



## **Pensions review means auto-enrolment alterations could be afoot**

**Legislation requiring employers to auto-enrol their staff into pensions is due to come into force in 2012. But how might the new government's pensions review affect matters?**

Ashley Brown and Rachel Ashwood

Increasing life expectancy rates in the UK have brought the adequacy of pension savings into question.

Because of this, and following extensive consultation, legislation was published earlier this year so that starting from 1 October 2012, employers in Great Britain will be required to automatically enrol eligible job holders into a "qualifying" pension scheme.

The new legislation is intended to come into force over a period of four years, from October 2012 to September 2016. The "staging process" is to bring large employers into the scope of the new rules first of all, with smaller and newer businesses being affected last.

For the purposes of the legislation, an eligible job holder is an employee aged between 22 and 65 (ie state pension age) and who earns "qualifying earnings". The current level of qualifying earnings is between £5,035 and £33,450, although this figure will be adjusted in line with earnings inflation. The definition of job holders is potentially wide in scope, covering permanent and temporary employees as well as agency workers.

Those employees that are automatically enrolled in a scheme by their employer will have the right to opt out of the scheme. They will, however, be automatically re-enrolled every three years. Employees who are not automatically enrolled into a pension scheme (ie because they are under 22, or are between state pension age and 75, or they have opted-out of the scheme) will be able to opt in (or back in) by giving their employer notice requiring that they join the scheme.

Certain existing pension schemes (ie occupational or personal schemes) may be recognised as a "qualifying scheme" if they satisfy various qualifying requirements or, alternatively, an employer may enrol eligible job holders in the National Employment Savings Trust (referred to as "Nest"), which is a new pension scheme to be centrally established by the government.

If an employer decides to automatically enrol its eligible employees in the Nest scheme, it will be required to make an employer contribution of at least 3 per cent. Alternatively, if a defined contribution “qualifying scheme” is preferred, the employer will be required to make a similar level of employer contribution.

Last week the government announced its proposals for an independent review to be carried out on how best to support the implementation of automatic enrolment into workplace pensions. Entitled *Workplace Pension Reforms Review*, this is to be concluded by September 2010.

Given the government’s stated commitment to automatic enrolment, it is unlikely that the substantive measures mentioned above will be affected. However, it is likely that the review will make certain recommendations on how the auto-enrolment provisions are to apply in practice and may amend the size of employers that are to come within the rules of the regulations and the age group to which automatic enrolment should apply. Critics of the review fear that such reconsideration of the issues will further extend the already lengthy timetable for implementing the legislation.

It is clear that pension reform is clearly on the agenda of the coalition government. On the same day as the review into Workplace Pension Reform was announced, the Department for Work and Pensions also announced a review into the timing of the increase in the state pension age to 66. Further, during the emergency budget last week, the chancellor confirmed that the government will be consulting about phasing out the default retirement age from April 2011.

Employers are advised to keep a watchful eye on pensions over the coming months as reform is seemingly inevitable.

#### **Further Info**

Ashley Brown and Rachel Ashwood are associates in the employment group of the London office of international law firm Morgan Lewis: [rashwood@morganlewis.com](mailto:rashwood@morganlewis.com); [Ashley.brown@morganlewis.com](mailto:Ashley.brown@morganlewis.com)