House of Commons
Library

BRIEFING PAPER

Number 8653, 12 June 2020

Workplace Pensions: FAQs

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Summary

This briefing paper answers FAQs constituents raise with their MPs about personal and workplace defined contribution (DC) pension arrangements (where you build up a pot of money that you can then use to provide an income in retirement).

It provides some general information in relation to these FAQs and signposts to more detailed sources of information and advice.

The FAQ cover issues including:

- **Auto-enrolment:** what it is? Why it was introduced? Which employers and workers are eligible for auto-enrolment? What help is available to employers? Does auto-enrolment apply to the self-employed? How much you and your employer need to contribute, and whether this will be enough for an adequate living standard in retirement.
- **Pension flexibilities and options at retirement:** How can pension pots now be taken? Who are the pension freedoms for? When do you have to take advice? How are people using the new options?
- **Scams, complaints and disputes:** What is the role of the Pensions Ombudsman and Financial Ombudsman? Help with finding a lost pension. What to do if you become a victim to pension scammers.

Please note that nothing in this paper should be considered as constituting legal advice. It is not intended to address the specific circumstances of a particular individual. A suitably qualified professional should be consulted if specific advice or information is required.

There are several statutory public bodies that provide good sources of advice:

- Pension Wise, the Pensions Advisory Service and the Money and Pensions Service merged to become part of the Money and Pensions Service (MAPS). Currently, the services still have separate websites and different functions:
  - The Pensions Advisory Service provides free independent and impartial help on **all private pension matters**.
  - Pension Wise gives free and impartial guidance to consumers aged 50 or over to help them understand their **options** for personal or workplace pensions.
  - The Money Advice Service offers free and impartial money advice: to help improve consumers' finances and money management; to help consumers keep track of their finances and plan ahead; over the phone and online.

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1. Introduction

The State Pension is intended to work in partnership with workplace and personal pensions. Many people will need to save privately if they are to achieve an adequate income in retirement.[1]

This note discusses some of the FAQs around workplace defined contribution (DC) pension schemes and personal pensions. In a DC pension, you build up a pot of money which you then use to provide an income at retirement.

This is as opposed to defined benefit (DB) schemes which promise to pay a specific amount, based on salary and length of service.

DC pensions can be either set up by the employer (workplace pensions) or by an individual who chooses a provider and arranges for contributions to be made (personal pension).

Workplace pensions can be either:

- **Contract-based** – where an employer appoints a pension provider, often an insurance company, to run the scheme. The scheme members will sign a contract with the provider who will make most of the decisions about the way the scheme is run; or
- **Trust-based** – where they are sponsored by the employer but managed by a board of trustees (who have full responsibility for the management, administration and investment of the plan. The trustee's fiduciary duty is to act in the interests of members).

There is information about the different types of pension on the Pension Wise website. It also has a service to help people work out what type of pension they have.

Are the rules the same across the UK?

For Wales and Scotland, policy on occupational and personal pensions is reserved to the UK Government.[2]

Northern Ireland (NI) operates a policy of "parity" with Great Britain, with the aim of facilitating free movement within the UK. Furthermore, the "private pension sector is too small to support a separate Northern Ireland system, and, without parity, the current private pension system, the current private pension system could not operate." The Pensions Regulator and the Pensions Ombudsman operate UK-wide.[3]

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1 See, for example, DWP, A new State Pension for the 21st century, **Cm 8053**, April 2011, p. 8

2 *Scotland Act 1998,* Sch 5 (11) (F3); *Wales Act 2017,* Sch 7A (2) (134); Library Briefing Paper CBP 8544 Reserved matters in the United Kingdom (April 2019)

3 *Northern Ireland Act 1998*, s87; 'Understanding "parity" – Departmental Briefing Paper", NI Assembly

1.1 How are DC pensions regulated?

The overall framework for pensions is set by the Government. Responsibility for regulation falls to the Financial Conduct Authority (FCA) and the Pensions Regulator (TPR) – both statutory bodies[4]. There are several areas where the FCA and TPR's remits intersect. In general:

- **FCA** is responsible for regulating areas of the retirement sector where individuals access pensions directly and firms that provide products and services for pensions.
- **TPR** is responsible for regulating the areas where individuals access pensions via their employers.

A joint strategy document published by both statutory bodies explains their division of responsibilities as follows:

> **Financial Conduct Authority**
>
> 2.5 The FCA, which regulates the providers of personal pensions, stakeholder personal pensions, self-invested personal pensions (SIPPs) and workplace (group) personal pensions. The FCA regulates advice in the pensions market, and sets the rules for contract-based pensions.
>
> 2.6 The FCA also has broad responsibilities for regulating asset managers and other investment services firms. This includes firms providing investment services to occupational pension schemes, except where they provide advice on asset allocation or investment strategy.
>
> **The Pensions Regulator**
>
> 2.7 TPR regulates the trustees of occupational pension schemes – both defined benefit (DB) and defined contribution (DC) schemes. TPR oversees the governance and administration of public service schemes. It is also responsible for implementing AE and ensuring employers comply with their AE responsibilities. It achieves its objectives through exercising the functions as set out in pensions legislation, and setting standards via codes and guidance.
>
> 2.8 *The Pension Schemes Act 2017* gave TPR new powers to authorise and supervise master trusts.
>
> **Where our remits intersect**
>
> 2.9 There are a number of areas where FCA and TPR's remits intersect, such as in relation to winding up schemes, transfers from DB to DC schemes and where individuals exercise the pensions freedoms. [5]

Further, a Memorandum of Understanding (MoU) sets out the arrangements for co-operation and co-ordination as the two bodies carry out their statutory regulatory responsibilities.[6]

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[4] *Financial Services and Markets Act 2000 (FSMA),* the *Pensions Acts of 2004* and 2008, and other relevant legislation.

[5] TPR and FCA, Regulating the pensions and retirement income sector: Our strategic approach, March 2018

[6] Memorandum of Understanding between the Financial Conduct Authority and the Pensions Regulator, 2013; Guide to the regulation of workplace defined contribution pensions, 2014

1.2 How can I challenge decisions or complain?

See also: COVID-19 and your pension: where to get help

There are two different routes of complaint – one leading to the Pensions Ombudsman, the other to the Financial Ombudsman Service – which is appropriate will depend on the nature of the complaint.

There are different routes for dealing with problems about workplace pensions, depending on the nature of the problem. The Money Advice Service explains that for defined contribution (DC) pensions these are:

> **Complaints about the way your pension scheme is being run**
>
> In the first instance you should contact the company through which you joined the pension scheme.
>
> This might be the pension provider itself, or it could be a professional financial adviser.
>
> If you're unable to resolve the problem in this way, your next step is to contact the Pensions Ombudsman by phoning 0800 917 4487.
>
> It offers a free service aimed at settling disputes of this kind.
>
> **Complaints about the selling and marketing of pensions**
>
> If you think you were wrongly advised when you bought your pension, or, for example, you were given information that's turned out to be incorrect, you should complain to the company you bought the pension from (the provider or financial adviser).
>
> If you are not happy with the way they deal with your complaint, you should contact the Financial Ombudsman Service (FOS) on 0800 023 4567 or 0300 123 9 123.
>
> A typical example of the kind of complaint handled by the Ombudsman would be where someone was advised to take out a personal pension when they should have joined their workplace scheme.
>
> **If your pension provider goes out of business**
>
> If your pension provider goes out of business or goes into insolvency, leaving it unable to pay you money you're owed, you should contact the Financial Services Compensation Scheme (FSCS) on 0800 678 1100.[7]

Defined benefit pension schemes are required to have an internal dispute resolution process. If unresolved at this stage, the next step is to complain to the Pensions Ombudsman (see below). Where a DB scheme has wound up underfunded on the insolvency of the employer, compensation may be available through the Pension Protection Fund – see Library Briefing Paper CBP 3917.

[7] Money Advice Service – your options if things go wrong with your pension

Pensions Ombudsman

The Pensions Ombudsman (TPO), set up under the *Pension Schemes Act 1993* (Pt X), has the power to deal with complaints of maladministration and disputes of fact or law concerning personal and occupational pension schemes. See can I complain? on the PO website and the section on the PO in COVID19 and my pension – where can I get help?

A complaint to TPO will follow one of two distinct workstreams; early resolution or adjudication:

- At **early resolution** stage, TPO resolves complaints informally at an early stage, frequently before the issues have been formally considered by the parties. Information about how to use this service is on TPO's website. Using this service does not affect people's rights to apply to the ombudsman for formal adjudication if they later choose to do so.
- At **adjudication** stage, TPO investigates and determines complaints that were not resolved by the parties or by TPO at early resolution stage. Before completing a complaint form, So, for example, the individual will generally be expected to have gone through (or attempted to go through) the internal dispute resolution procedure that occupational pension schemes are required to have for use by all those with an 'interest' in the scheme.[8]

Information about the legal framework, how to complain, and the process is on the PO website. In general, you need to make contact with the PO within three years of when the event(s) you are complaining about happened – or, if later, within three years of when you first knew about it (or ought to have known about it). There is discretion for those time limits to be extended.[9]

The functions of the Pensions Ombudsman, aside from making determinations on complaints, are delegated to staff (which includes the use of caseworkers on determinations).[10]

If it decides a complaint should be upheld, it will usually tell the person at fault to put things right. This might include:

- Making good a financial loss or taking other steps to correct the problem. The Ombudsman can usually only consider whether there has been any harm to the individual who has come to us with the problem. There are some exceptions, for example if money has been paid out of a pension scheme in breach of trust at a loss to the whole scheme.
- Paying compensation for any non-financial injustice, such as distress or inconvenience caused. More information about non-financial injustice and the way in which the

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[8] TPR website, Code of Practice 11, July 2018; *Pensions Act 1995*, s50, 50A and 50B; Pensions Act 2004, s273; *The Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008 (SI 2008/649).*

[9] Money Advice Service website, Dealing with pension problems and making a complaint

[10] *Pension Schemes Act 1993*, s145

> > Ombudsman addresses it is in our **Determination factsheet**.
>
> There is no financial limit to the value of the award the Ombudsman can make.[11]

Its decisions are final and binding, subject to an appeal to the High Court, and can be enforced through the Courts – see Determination factsheet.

Previous decisions of the PO can be seen on its website.

Areas of potential overlap with the Financial Ombudsman Service are discussed in a Memorandum of Understanding (December 2017).

Financial Ombudsman Service

The Financial Ombudsman Service (FOS), set up under the *Financial Services and Markets Act 2000* (ch XV1), looks at complaints about businesses regulated by the Financial Conduct Authority (FCA), so it can look at a complaint about workplace pensions if it's about the way it's been administered by an FCA-regulated business, or if it has been advised upon by an FCA-regulated business.[12]

Its website explains the types of complaints it can help with, see pensions and annuities. There is also information about the time limits for complaints and the process:

> We'll look at the facts and circumstances of each individual complaint and we'll listen impartially to both what you and the business have to say.
>
> We'll reach what we consider to be a fair and reasonable outcome in the particular circumstances of a complaint. We'll also take into account whether – and how – the business you've complained about has tried to put things right.
>
> If we uphold a complaint we'll try, as far as possible, to put you in the position you would have been but for the business' error. This could take the form of financial compensation paid to your pension plan or directly to you. We might also make an award for any trouble and upset caused.
>
> There are limits to the amount of an award we can make. You can find out more about our award limits.[13]

The FOS can also award compensation for non-financial loss, such as distress and inconvenience.

1.3 Compensation schemes

As discussed in section 1.2 above, individuals with complaints about their pension, or the advice they have received, may be able to get redress by making a complaint to the Ombudsman.

However, if the complaint relates to an FCA-regulated business that has gone out of business, the individual should contact the Financial Services Compensation Scheme (FSCS), which is the UK's statutory compensation scheme for customers of authorised financial services

11 PO website – what's involved
12 *Financial Services and Markets Act 2000*, chapter XV1
13 FOS/complaints we can help with/pensions and annuitiesv

firms. It was set up by Government in 2001 and is funded by the financial services industry through a levy. FSCS can pay for financial loss if a firm is unable, or likely to be unable, to pay claims against it. If a firm is able to pay, it is for the firm to compensate the customer (which may be covered by the firm's Professional Indemnity Insurance).

There are caps on the compensation the FSCS can pay for claims relating to pensions:

> If the firm failed after 1 Apr 2019
>
> **If your pension provider fails**
>
> **100%** of your claim, with no upper limit.
>
> **If your SIPP operator fails**
>
> up to **£85,000** per eligible person, per firm.
>
> **Bad pension advice**
>
> If you've received bad advice in relation to your pension, you could be eligible to claim compensation.
>
> up to **£85,000** per eligible person, per firm.[14]

There is information about the claims process on its website.

The Pension Protection Fund, which can provide compensation to members of defined benefit pension schemes that wind up underfunded on the insolvency of the employer, is discussed in Library Briefing Paper CBP 3917.

1.4 How can I find a lost pension?

The Government estimates there is £400 million in unclaimed or lost pension savings.[15] In 2016, the Government launched the Pension Tracing Service which can help people find contact details for a workplace and personal pension scheme. The Pensions Advisory Service has a leaflet with suggestions of what to do in different circumstances.

1.5 What help is available in case of scams?

Pension scams can cost people their life savings, and leave people facing retirement with limited income, and little or no opportunity to build their pension savings back up. However, it is not always easy to spot a scam. Scammers use an array of different and often sophisticated techniques to part savers from their money. When considering pension transfers, investments or other opportunities, people should proceed with caution.

There is guidance on pension scams and an online tool on the Pensions Advisory Service website. This tool cannot give definitive answers and does not give regulated financial advice. The FCA suggests four simple steps to protect yourself from pension scams:

1. Reject unexpected pension offers whether made online, on social media or over the phone

The Library brief, Pension scams (CBP-8643) has more information on how to spot scams and aims to answer some of the frequently asked questions on which constituents ask for help with from their MPs.

[14] FSCS website – what we cover
[15] DWP, Pension dasboard feasibilty study, December 2018, para 53

2. Check who you're dealing with before changing your pension arrangements – check the FCA Register or call the FCA contact centre on 0800 111 6768 to see if the firm you are dealing with is authorised by the FCA

3. Don't be rushed or pressured into making any decision about your pension

4. Consider getting impartial information and advice.[16]

If you suspect a scam, acting fast *could* save your money. It may be possible to stop pension transfers before the money is transferred to the scammers. The Pensions Advisory Service says:

> If you think you might have already been targeted and you've agreed to transfer your pension, you should:
>
> 1. **Contact your pension provider immediately**- they may be able to stop the transfer if it has not already gone through.
>
> 2. **Contact Action Fraud 0300 123 2040** and report the scam.[17]

Investment scams can also be reported to the FCA Scam Smart website.

If you have been a victim of a pension scam, you may be struggling with a range of financial or personal issues. You can call the Pensions Advisory Service for help on **0300 123 1047** or visit the TPAS website for free pensions guidance and information on the the options available. It is unlikely TPAS can put people back into the financial position before the scam. Nevertheless, it might be helpful to discuss the situation with a technical specialist to consider next steps. For example, if you fell victim to a scam following advice from a regulated adviser, you may be able to seek redress by making a complaint (see below).

It is important to remain vigilant even after you have been on the receiving end of a scam. This is because once scammers have your details, they may attempt to find ways to scam you again.

If you fell victim to a scam following advice from a regulated financial adviser, you may be able to get compensation. As discussed in section 1.2 above, those wishing to make a complaint must first complain to the firm that gave the advice. If they are not satisfied with the response they receive or the firm does not respond, they can refer the complaint to the Financial Ombudsman Service (FOS). If the firm that gave the advice is insolvent and cannot pay compensation, a claim can be made to the Financial Services Compensation Scheme (FSCS).[18]

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16 FCA, 5 million pension savers could put their retirement savings at risk to scammers, release, 7 Aug 2019

17 TPAS, Common concerns: Pension Scams, [accessed: 24 June 2019]

18 Work and Pensions Select Committee, British Steel Pension Scheme, Feb 2018, para 63-65

2. Information and advice

2.1 What information do schemes have to provide?

There are a range of statutory requirements on workplace pension schemes to provide certain information to scheme members and others. As outlined in TPR guidance for trustees, these range from "information provided when a member joins the scheme, in ongoing communications throughout the membership period, when a member takes benefits from the scheme, and beyond."[19] Inevitably, these requirements have developed over time and to reflect other policy developments.

Annual benefit statements

Pension schemes must send you an annual benefit statement automatically once a year. There are a number of key pieces of information that must be included in the benefit statement itself, which are set out in legislation. TPR explains that some of the key components relate to:

- Contribution levels – how much the member and employer have contributed to their pension over the last year, and what the contribution levels will be in the future. This should also show the tax relief that has been received on behalf of the member in a relief at source arrangement.
- The current value of the member's pension savings and an illustration of future pension entitlement using assumptions prescribed in law.
- Chair's statement: if your scheme needs to prepare a chair's statement (see 'who needs to prepare a chair's statement'), the address of the website where the trustees have made publicly available and free of charge, certain information on investments and costs and charges that appears in that statement.
- Pooled funds: members of such schemes must also be told that they can request certain information relating to pooled funds in which they are directly invested.[20]

See Pension Wise – understand your benefit statement.

At retirement communications

There are statutory requirements on schemes to signpost to Pension Wise in communications as a member approaches retirement, and where contact is made by either the member or the trustee board about what the member may do with their flexible benefits.[21]

Pension wise was set up following the introduction of the 'pension freedoms' in April 2015 (giving scheme members age 55 and over more

19 Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (SI 2013/2734); TPR, Governance and administration of occupational trust-based schemes providing money purchase benefits, COP 13, July 2016
20 TPR, Guide to Communicating and reporting, July 2019
21 SI 2013/2734, reg 18A to 20 and Sch 10

choice about when and how to access their DC pension savings – see section 4) to inform individuals of the options available to them.[22]

Communications about scheme governance and investment

There are also requirements relating to governance and investment. These apply in different ways, depending on whether the scheme is trust-based or contract-based.

- **Chairs statement:** Trustee boards are required to report annually on how the scheme is governed, and material breaches of legal requirements.[23] This must be produced in the form of an annual chair's statement within seven months of the end of the scheme year explaining how they have met certain legislative requirements. It must be available on request to members and included in the scheme's annual report.[24] TPR has produced a quick guide to the chair's statement detailing what should be included in a compliant report.
- **Statement of Investment Principles (SIP)**: Trust-based schemes with at least 100 members are required to produce a Statement of Investment Principles (SIP), which must be made available on the internet. Under new rules which come into force in October 2019, this will need to include the policy in relation to the policy in relation to environment, social and governance (ESG) considerations and the extent to which members' views are taken into account in investment decisions.[25] Providers of contract-based schemes are required to have independent governance committees (IGCs). [26] One of the requirements of IGCs is that they report annually on what they have done.

Clause 123 of the *Pension Schemes Bill 2019/21* would require trustees of defined benefits pension schemes to have a written statement of their scheme funding and investment strategy – see section 4.3 of Library Briefing Paper CBP 4877 Defined benefit pension scheme funding.

Information at death for beneficiaries

For workplace pension schemes, guidance from the Pensions Regulator explains that the trustees must make information available to a range of people including members, prospective members and other people entitled to benefits under the scheme. TPR requires that information be provided to individuals "on other occasions either automatically or if they request it, e.g. when a member retires, dies or leaves the scheme."[27]

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[22] For more on the background, see Library Briefing Paper CBP 6891 Pension flexibilities: the freedom and choice reforms

[23] Where trustees or managers submit non-compliant returns, they can be personally liable to pay a fine of between £500 and £2,000. See: TPR, Quick guide to the chair's statement, Sept 2018

[24] TPR, COP 13, p32; SI 2013/2734, reg 12 (1); *Occupational Pension Schemes (Scheme Administration) Regulations 1996 (SI 1996/1715)*

[25] TPR, Managing DC benefits, Investment governance

[26] For the background to their introduction, see Library Briefing Paper SN 6956 Improving outcomes for DC pension savers (September 2014), section 4

[27] TPR website – providing information to members

For personal pension schemes, *Tolley's pension Law* explains that "where a member of beneficiary dies, the person entitled to the benefits must have certain information provided to them about their rights and options, the procedures for exercising them and whether the pension payable can be increased." This is provided for in the *Personal Pension Schemes (Disclosure of Information) Regulations 2013(SI 2013/2734)* reg 21.

Further, *Tolley's Pension Law* explains there is also a non-statutory duty to inform the beneficiary of entitlement:

> E2.91 Trustees have a duty under the general law to distribute trust moneys (in other words to pay the scheme benefits) to those who are entitled to them and of whose entitlement the trustees have notice, whether or not the beneficiary makes any express claim to his benefits: see Hawkesley v May [1956] 1 QB 304. It follows that trustees are under a duty to inform the beneficiary concerned of his entitlement, if the trustees themselves are aware of it.[…] In the context of a pension scheme this obligation to inform is most likely to arise in relation to spouses and other dependants who become entitled to benefits after the death of members and who might otherwise be unaware of their interests or entitlement.

2.2 Where can I get guidance?

Pensions guidance differs from personalised pensions advice, which should only be provided by regulated financial advisors (See section on where to get advice below). The FCA lists several statutory[28] public bodies that can help consumers with general queries about private pensions, and provide them with guidance about their retirement choices:

- The Pensions Advisory Service: Provides free independent and impartial help on all your private pension matters. The Pensions Advisory Service:
  - has pension specialists who can discuss any issue you may have with your pension
  - can be contacted over the phone or online
  - offers information and tools through its website
- Pension Wise: Gives free and impartial guidance to consumers aged 50 or over to help them understand their options for personal or workplace pensions. It will never contact you out of the blue to offer you a pension review and it has only one website: pensionwise.gov.uk.
- The Money Advice Service; This free and impartial money advice service provides:
  - guidance to help improve consumers' finances and money management

[28] Financial Claims and Guidance Act 2018; For background see the Library brief, Financial Guidance and Claims Bill 2017-19, CBP-8033

- tools and calculators to help consumers keep track of their finances and plan ahead
- support over the phone and online

These three bodies merged to become part of the Money and Pensions Service under the *Financial Guidance and Claims Act 2018.* [29] They currently still have different websites and functions.

The value of my pension has gone down since the coronavirus outbreak. What advice is available?

The value of some people's pensions pots may have decreased as a result of the economic impacts of the coronavirus. This may result in risky decisions and/or make people more susceptible to scams. The Pensions Regulator (TPR) The Financial Conduct Authority (FCA), supported by the Money and Pensions Service (MaPS) have urged savers "to keep calm and not rush to make any decisions about their pension in response to the COVID-19 pandemic." [30]

The regulators and statutory guidance bodies have guidance on COVID19 and your pension – where to get help. This includes information on how your pension is protected and how you can avoid scams during the COVID-19 pandemic, including answers to the following questions:

- What happens to my pensions contributions if I've been furloughed?
- Is my pension protected by the PPF?
- How can the Pensions Ombudsman help me?
- How do I protect myself from pensions scams?
- Is it safe to move my pension?

Where can I get financial advice?

There are many situations in which you may want to get financial advice. Since the introduction of pension freedom reforms, people approaching retirement have more options than ever before, as well as complicated financial questions to consider.[31] The Money Advice Service has produced guidance on how to choose a financial adviser. It highlights that in choosing to get advice from a regulated financial advisor, you should get "more choice, less risk". This is because, first, you can take advisors to the Financial Ombudsman and Pensions Ombudsman if you get bad advice (see section 1.3 for more on complaints) and second:

> Financial advisers providing personalised financial advice have access to a wider range of choices than you would be able to access realistically on your own.

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[29] See Library Briefing Paper CBP 8033 Financial Guidance and Claims Bill 2017-19 (August 2018)

[30] TPR, COVID-19: savers - stay calm and don't rush financial decisions, 1 April 2020

[31] Money Advice Service, Retirement – why should I get advice?, [accessed: 30 Aug 2019]

> They also have expertise and qualifications in the area you need advice on.[32]

Financial advice, or a specific recommendation of what you should do, should only be provided by a firm that is authorised by the FCA. You can check which firms are regulated on the Financial Services Register. The Money Advice Service briefly explains the financial advice process as follows:

> With personalised financial advice your adviser will take you through a fact-finding process to collect information about you.
>
> They then use this to assess your circumstances and give you a personal recommendation about what they think you should do.
>
> Any action they recommend must be suitable for you.[33]

Personalised financial advice is not free. It has to be paid for and it is important to check all of the fees and charging regimes associated with any advice before going ahead.

How can I view all my pensions savings? What is a Pensions Dashboard?

A Pensions Dashboard is a digital interface that enables people to see all their lifetime pension savings in one place. Evidence from the Netherlands is that this can encourage consumer engagement with pensions by making them more tangible and visible.[34] The Financial Conduct Authority highlighted the need for such a tool in the UK as people increasingly have multiple sources of retirement income.[35]

You can read more about the Pensions dashboard in Library brief, CBP-8407

Following a feasibility study, the Government confirmed that:

- To improve consumer choice, multiple dashboards, developed by industry would sit alongside a non-commercial dashboard hosted by the Money and Pensions Service.
- It would legislate to require pension schemes to provide individuals data (with their consent) via pensions dashboards. There might be some exemptions, such as for Small Self-Administered Schemes (SSAS) and Executive Pension Plans (EPP).
- It would work with the industry delivery group to integrate the State Pension into pensions dashboards.

Legislation is on Part 4 of the *Pensions Schemes [HL] Bill 2019-21*.

The Pensions Dashboard Programme published a programme update in April 2020, in which it set out some of the challenges that needed to be addressed. It said it hoped to provide a clearer timetable for delivery before the end of 2020.[36]

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[32] Money Advice Service, Retirement – why should I get advice?, [accessed: 30 Aug 2019]
[33] Money Advice Service, Retirement – why should I get advice?, [accessed: 30 Aug 2019]
[34] FCA, Retirement Income Market Study: interim report, December 2014, p.71
[35] FCA, Financial Advice Market Review (FAMR): Final Report, March 2016, p. 47
[36] Pensions update programme: progress update reportv, April 2020

3. Auto-enrolment

What is auto-enrolment?

To increase participation in workplace pensions, the Government has introduced a duty on employers to automatically enrol workers into a workplace pension scheme. This requirement has been phased in starting with larger employers and widening to include all employers since April 2018.

For more on the background see

SN-06417 Pensions: Automatic enrolment –- current issues (Feb 2019)

SN-04847 Pensions: Automatic enrolment - background (Sept 2012)

This duty to provide a workplace pension scheme applies if all the following criteria are met:

- you're classed as a 'worker'
- you're aged between 22 and State Pension age
- you earn at least £10,000 per year
- you usually ('ordinarily') work in the UK (read the detailed guidance if you're not sure)

Workers can choose to opt out of auto-enrolment. Where they remain in the scheme, they and their employer must make minimum contributions on 'qualifying earnings.' Minimum contribution rates have been phased-in to help employers and individuals adjust. From April 2019, full contributions must be paid:[37]

Phasing period	Minimum employer contribution % of qualifying earnings	Worker contribution % of qualifying earnings (incl. employee tax relief)	Total contribution % of qualifying earnings
October 2012 to March 2018	1	1	2
April 2018 to March 2019	2	3	5
April 2019 onwards	3	5	8

Why was it introduced?

The Pensions Commission, set up by the last Labour Government to review the regime for private pensions, concluded that it would increasingly deliver unequal and inadequate results. It recommended:

- **Auto-enrolment** because the "overwhelming evidence is that many people do not make rational long-term decisions in their own self-interest without encouragement and advice."
- Requiring employers to make a **minimum employer contribution** on the grounds that, even if relatively small, it would help produce a "major increase in employee participation rates", would help to ensure that "all members of the scheme can achieve a reasonable return on investment, even if subject to some means-testing" and would help create a more level playing

[37] Pensions Act 2008, s20

field between those who already made pension contributions and those who do not.

- The **creation of a low cost national pension savings scheme** (now NEST) available to any employer who wanted to use it. This was needed because there was a segment of the market - employees of average and lower earnings working in small and medium companies, plus many self-employed – that the financial services industry could not serve profitably except at charge levels that were a disincentive to save and would substantially reduce pensions in retirement.[38]

The Labour Government legislated for this in the *Pensions Act 2008*.

Following the general election in 2010, the Coalition Government set up a review to look at whether the policy was still appropriate. The Making Automatic Enrolment Work Review (MAEWR) recommended some amendments to the policy that would act as easements to employers, including:

- Aligning the auto-enrolment thresholds with those for tax and NI;
- Introducing an optional "waiting period" of up to three months before a worker needs to be auto-enrolled (although workers may opt in during this period);
- A simple system for employers to certify that their scheme meets the required contribution levels.

The Government decided to proceed with implementation of the reforms on that basis.[39]

Information about what the policy has achieved so far is in Library Briefing Paper CBP 6417 Automatic enrolment – current issues (May 2020).

Does auto-enrolment apply to all employers?

Auto-enrolment applies to all employers that employ at least one person. There is an optional three-month waiting period before employers must auto enrol their staff.

TPR guidance for employers says that if you "employ at least one person you are an employer and you have certain legal duties."[40] One of the very few exceptions to this requirement is where a director is the one and only employee of a limited company.[41]

The question of whether to exempt very small employers was considered – and rejected – both by the Labour Government, which legislated for the reforms, and the Coalition Government, which implemented them. The 2010 Making Automatic Enrolment Work Review found that exempting them would "exclude 1.2 million employees from auto-enrolment"; there would be substantial practical problems in enforcing the boundaries; and a "significant disincentive to

[38] Pensions Commission, Second Report, November 2005, Executive Summary and p154-160
[39] HC Deb 27 October 2010 c11WS; *Pensions Act 2011*
[40] TPR, automatic enrolment – get to know your duties
[41] The Pensions Advisory Service, Automatic Enrolment: FAQs, [accessed: 16 July 2019]

business growth would be created." However, it did recommend changes that it thought would ease the burden for employers, including allowing employers to postpone auto-enrolment for up to three months – see the section on seasonal workers below.[42]

Responding to the 2010 review, the Federation of Small Businesses was "severely disappointed" that small firms were not to be excluded from the reforms.[43] However, the decision was welcomed by organisations representing savers and by the CBI which said the Government "has rightly chosen to simplify the rules for all employers, rather than carve some out and leave others to cope with a high regulatory burden."[44]

The optional three-month waiting period was legislated for in the *Pensions Act 2011* (s6).

The 2017 review of auto-enrolment looked at whether "in the light of the continuing evolution of the labour market", there was a "case for exempting any group or groups of employers from automatic enrolment duties." It said that there was a group of around 1 million individuals working in flexible or "atypical" ways, many of whom would already come within the existing auto-enrolment framework:

> There is a group of around 1 million individuals according to some estimates – including agency workers and those on zero hours contracts – who are working in increasingly flexible or "atypical" ways in less standard forms of employment. In our view, a large number of these most likely come within the existing automatic enrolment framework. We will work with the Pensions Regulator to ensure there is sufficient clarity for them and those who engage them so that the system and its enforcement continues to operate effectively.[45]

It concluded that the current arrangements struck the right balance:

> The vast majority of respondents to the initial review questions agreed that no groups of either workers or employers should be excluded from automatic enrolment. Responses cited concerns around such action undermining the policy intent and being discriminatory, as well as disadvantaging workers who were excluded from the opportunity to build retirement savings for their later life. The government agrees that there is no legitimate aim in treating certain sectors of the workforce differently from others and that therefore there is no legal basis to do so.
>
> We also considered the case for extending the postponement period but have concluded that the current three-month period strikes the right balance between avoiding longer-term detriment

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42 Johnson et al, Making auto-enrolment work review, 2010, p5

43 See, for example, Personnel Today, 'FSB severely disappointed small firms not excluded from auto-enrolment.', 27 Oct 2010

44 CBI press release, 'CBI responds to Government review of 2012 reforms', 27 October 2010; See also, Age UK Press Release 27 October 2010; NAPF press release, 27 October 2010, Green light for pensions auto-enrolment welcomed by NAPF;BCC Press Release, 27 October 2010, 'BCC welcomes simplification of 2012 private pension reforms'

45 DWP, Automatic Enrolment Review 2017: Maintaining the Momentum, Cm 9546, December 2017

> to an individual's saving ability, and the need to exempt workers employed for very short temporary periods.[46]

What about people employing carers?

People who directly employ a personal assistant or a personal care assistant must auto-enrol their carer into a pension. This requirement does not apply to carers providing informal care. The Pensions Regulator (TPR) explained:

> If you directly employ one or more people to provide you with care and support, often called a personal assistant or a personal care assistant, you're an employer and automatic enrolment duties will apply to you. This will be the case whether you use the money provided by your local authority or the NHS in the form of direct payments or a personal budget to pay your personal care assistant, or you use your own money.[47]

Disability Rights UK runs a personal budgets helpline. The Disability Law Service provides provide information, advice and assistance to those with disabilities and their carers.

The 2017 review received representations that carers providing informal care should be brought into auto-enrolment, with the government paying their contributions. However, it concluded that "bringing in individuals who are not subject to a contract of employment would be a fundamental change to the framework of automatic enrolment which works through the employer/worker relationship."[48]

For more information see

TPR Duties checker/employing seasonal or temporary staff)

What about seasonal workers?

In employment law a person's employment status helps determine their rights and their employer's responsibilities. Auto-enrolment applies to employers of short-term, seasonal, temporary incomes (so long as they meet the income threshold and are aged 22 or over).

In July 2016, the Government explained that all workers that fulfil the criteria must be auto-enrolled, including seasonal workers, but that employers can choose to postpone for up to three months:

> All workers that fulfil the automatic enrolment eligibility criteria, including seasonal workers, must be enrolled into a workplace pension scheme. To help minimise burden on employers and help manage their business processes, they can choose to postpone automatic enrolment for up to three months for some or all of their staff.
>
> Furthermore, although employers must automatically enrol their eligible workers into a qualifying workplace pension scheme, there is no requirement for workers to save into a pension scheme, unless they wish to do so. Those who genuinely believe it's not in their best interest to save are free to opt out.
>
> The Department has legislative commitments to review some of the specifics of automatic enrolment in 2017. In addition to these areas, we intend to use the opportunity of the Review to cover a

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46 DWP, Automatic Enrolment Review 2017: Maintaining the Momentum, Cm 9546, December 2017, p51

47 TPR, FAQs employing carers; See also DoH Care and Support Statutory Guidance, Feb 2017, footnote 51

48 DWP, Automatic Enrolment Review 2017: Maintaining the Momentum, Cm 9546, December 2017, p52

> broader range of automatic enrolment policy issues and consider how best to build on the success of the programme, which may include the impact on different groups of workers.[49]

The option to postpone was introduced by the Coalition Government in the *Pensions Act 2011* with the aim of reducing the burden on employers.[50] It was a change to the approach taken by the Labour Government, which had been for immediate auto-enrolment, so that "people who change job frequently, together with casual and seasonal workers, have the best possible access to pension saving and the prospect of building a sufficient pension pot."[51]

What about people on zero hours contracts?

Employers must auto-enrol workers on zero hours contracts if they meet the earnings threshold and are aged 22 and above. While it can be complex to calculate whether someone on a zero hours contract will earn more than the £10,000 threshold for auto-enrolment, once it is met, and a worker is auto-enrolled, they must remain in. Payments will only be made in weeks and months when the worker earns money i.e. if they have no working hours in one week no payments will be made into the pension.

An individual falls within the scope of auto-enrolment if they are a 'jobholder', aged between 22 and State Pension age, and earn more than a set amount - £10,000 in 2017/18.[52] A Jobholder is a worker:

> (a) who is working or ordinarily works in Great Britain under the worker's contract,
>
> (b) who is aged at least 16 and under 75, and
>
> (c) to whom qualifying earnings are payable by the employer in the relevant pay reference period (see sections 13 and 15).[53]

The Pensions Regulator's guidance for employers explains that the first step in deciding whether a person should be auto-enrolled - is to identify if they are a 'worker'. This depends on their contractual relationship:

> 9. A worker is defined as any individual who:
>
> • works under a contract of employment (an employee), or
>
> • has a contract to perform work or services personally and is not undertaking the work as part of their own business.
>
> 10. Anyone who has entered into a contract of this type with an individual is an employer and is required to comply with the new employer duties.
>
> 11. This may include agency workers if they have such a contract with either the agent or the principal (the third party to whom the individual is being supplied by the agent) […][54]

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49 PQ 41855, 11 July 2016
50 Section 6; Johnson et al, Making auto-enrolment work review, October 2010
51 HL Deb 17 June 2008 c965 [Lord McKenzie]
52 *Pensions Act 2008*, s3
53 Ibid s1
54 TPR, Auto-enrolment detailed guidance, April 2017, chapter 1

An assessment must be made as to whether an individual's earnings have exceeded the 'earnings trigger', which is more complex when earnings fluctuate.[55] Former Pensions Minister Steve Webb explained the position as follows:

> Most people on zero-hours contracts work 20-odd hours a week, and as long as, at some point, they trigger auto-enrolment—as long as they earn above the threshold, ever—they will be put in. If I am on a zero-hours contract and work zero, zero, zero, zero, and then 20 hours over a pay period and go above the trigger, my employer has a legal duty to put me in. There are complexities about waiting periods and the rest, but the basic principle is that I must be put in once I am over the trigger. Once I am in, if there is a week when I have no earnings, of course no money goes in; but if there is a week when I do have earnings, money goes in. I do not fall out of the pension. Once I am in, I am in. Auto-enrolment happens once. It is triggered by earning above the threshold once in a pay period.[56]

Individuals earning less than the £10,000 threshold

An individual earning below the £10,000 threshold with an employer have the right to opt in and may be eligible for employer contributions:

- **If you earn less than £6,240 annually:** You won't be automatically enrolled into your employer's workplace pension scheme. If you ask, your employer must give you access to a pension to save into, and has to make arrangements for you to join, but they are not required to contribute to it.[57]
- **If you earn more than £6,240, but less than £10,000 annually:** You won't be automatically enrolled into your employer's workplace pension scheme, but you have the right to opt in. If you join the scheme, your employer will have to contribute to it as well. [58]

These thresholds are assessed in the regular period over which a worker is paid – the "pay reference period" – i.e. weekly, fortnightly, monthly. The thresholds are reviewed each year. For 2020-21, they are:[59]

	Pay reference period				
2020/21	**Annual**	**Weekly**	**Fortnightly**	**4-weekly**	**Monthly**
Lower level of qualifying earnings	£6,240	£120	£240	£480	£520
Earnings trigger for auto-enrolment	£10,000	£192	£384	£768	£833

[55] TPR, Auto-enrolment detailed guidance, April 2017, chapter 3, para 54-55
[56] HC Deb 8 April 2014, c51WH
[57] Money Advice Service, Automatic enrolment if you earn up to £10,000, [accessed: 2 September 2019]
[58] Money Advice Service, Automatic enrolment if you earn up to £10,000, [accessed: 2 September 2019]
[59] DWP, Review of auto-enrolment earnings trigger and qualifying earnings band – supporting analysis, Feb 2020

Are employers liable for their choice of scheme?

A member *could* bring legal action against an employer in respect performance of the pension scheme. However, the Government said it was highly unlikely that they would have a strong claim, so long as the employer can show due regard and good faith in selecting a qualifying scheme.

In its report on auto-enrolment in May 2016, the Work and Pensions Committee called on the Government to make a clear and comprehensive statement regarding an employers' liability for their choice of scheme:

> 36. The Department have stated unambiguously that employers are not liable for their choice of AE pension scheme. Legal experts, however, have told us there could be grounds for legal action if employers cannot demonstrate due diligence. We recommend DWP use their response to this report to make a clear and comprehensive statement about an employer's potential liability. DWP should also confirm where liability will fall if a scheme performs badly or fails. This would provide reassurance to small and micro-employers choosing a scheme.[60]

In its response, the Government said although there was nothing specific to prevent a member taking legal action against an employer as respects the performance of a scheme, it was difficult to envisage there being a strong case if an employer had had due regard and acted in good faith in its selection. It noted that:

> 16. An automatic enrolment workplace pension scheme must already be a qualifying occupational pension scheme or qualifying personal pension scheme, and in doing so meet minimum standards and quality requirements. They must also enable automatic enrolment to take place to satisfy statutory requirements. An employer must ensure that any pension scheme they choose meets these requirements if they want to use it for automatic enrolment.
>
> 17. Provided an employer has automatically enrolled their eligible staff into a qualifying scheme and declared their compliance with TPR, their legal duties under automatic enrolment legislation in relation to scheme choice are met.
>
> 18. Risks are inherent in any form of investment and performance will vary due to a range of factors, including, but not to limited to, the external financial environment and individual scheme management. Automatic enrolment legislation does not impose any obligation on the employer to ensure a certain level of investment returns for their employees.
>
> 19. While there is no specific provision in automatic enrolment, or wider pensions legislation to prevent a member bringing legal action against an employer as respects performance of the pension scheme, provided an employer can evidence that they have had due regard to their choice of qualifying scheme and have acted in good faith in its selection, it is difficult to envisage that someone would have a strong claim against an employer in regards to this.
>
> 20. Having a landscape of quality scheme provision that employers and members can be confident in using is a key priority

[60] Work and Pensions Committee, Automatic enrolment, **HC 579**, May 2016 para 36

> for the Government. TPR has already published a list of independently reviewed 'Master Trust' pension schemes on its automatic enrolment guidance pages for employers. The Regulator also provides links to other lists of schemes held, for example, by the Association of British Insurers – including schemes offered by insurance providers who are regulated by the Financial Conduct Authority. TPR is planning to add Group Personal Pensions that are open to all employers to the list held on its website following engagement with the industry.
>
> 21. Furthermore, the Government intends to strengthen the provision of essential protections for people in Master Trusts in its Pensions Bill this session.[61]

The Government set up the National Employment Savings Trust (NEST) for employers that wish to use it for automatic enrolment and the Pensions Regulator has produced guidance for employers on choosing a pension scheme.[62]

Can I choose the scheme I am enrolled into?

The choice of scheme an individual is automatically enrolled into is down to the employer, provided it meets certain criteria.[63] However, employees can opt to save elsewhere. Should you choose another pension scheme, the employer may not be obliged to contribute to it. TPR has produced information to help employers select a pension scheme – see step 2 – choosing a pension scheme and automatic enrolment detailed guidance – chapter 4, pension schemes.

The reason for designing the policy in this way was that, faced with choices about complex financial products, people tended to put off deciding. Auto-enrolment was intended to harness the power of inertia – individuals would be put in a pension scheme by an employer, who would make minimum contributions for them.[64]

However, one downside is that it gives rise to the 'principal-agent problem' – whereby the employer makes the choice of scheme but does not have the same incentive as the saver to ensure good outcomes. A recognition of this led to measures to improve value for money – in particular, increasing governance requirements and placing restrictions on the charges that can apply.[65] If someone has opted out, why do they have to be auto-re-enrolled?

Under *Pensions Act 2008* (s5) employers are required to periodically automatically re-enol workers who stop saving and still meet the criteria. In a 2007 White Paper, the Labour Government explained that this was necessary because circumstances change:

> 1.22 People's circumstances do not stay the same. Individuals may choose to opt out of personal accounts at the outset, perhaps because they do not believe they can afford to save. A year or two later, their circumstances could be completely different but inertia

61 Government response to Work and Pensions Select Committee, July 2016
62 Pensions Act 2008, Part 1, chapter 5; TPR, The essential guide for automatic enrolment, November 2016
63 *Pensions Act 2008* , s17; TPR auto-enrolment guidance, Pension Schemes
64 Pensions Commission, Second Report, December 2005, Chapter 1, p67
65 FCA, CP 14/24, October 2014; DWP, Better workplace pensions: further outcomes for savers, March 2014

> may prevent them from doing anything about it. The Pensions Commission recommended that employees who opt out should be automatically re-enrolled every three to five years. The treatment for exempt schemes is dealt with in Chapter 6, but we agree that employees who have opted out of personal accounts should be automatically enrolled again periodically.
>
> 1.23 The May 2006 White Paper stated that employees would be automatically enrolled when they change employers and every three years if they continued to work with the same employer. Research shows individuals recognise how quickly people's circumstances can change. Therefore, three years seems the right period.[66]

The issue was reconsidered by the *Making Automatic Enrolment Work Review* established by the Coalition Government in 2010. It concluded that some form of re-enrolment was necessary to the overall success of the reforms and that removing it would reduce the numbers enrolled into pension saving.[67] It recommended that employers should be given more flexibility about the timing of this, which the Government legislated for in the *Pensions Act 2011* (s7).

How does the Coronavirus furlough scheme affect auto-enrolment?

On 20 March 2020, the Government announced the Coronavirus Job Retention Scheme (CJRS). The purpose of the Scheme is to provide grants to employers to ensure that they can retain and continue to pay staff, despite the effects of the Covid-19 pandemic.

You can read more about the CJRS in the Commons Library briefing: FAQs: Coronavirus Job Retention Scheme.

Employers

Under the CJRS, employers can "furlough" workers, and claim a grant which covers 80% of that workers salary up to a maximum £2,500/month). In the first phase, employers could also claim a grant to cover the AE statutory minimum employer contribution on the furlough pay. Employee contributions would be subtracted from the furlough pay.

However, on 29 April 2020, the Government announced that changes to the CJRS would be phased-in, prior to closure of the scheme at the end of October. From August, employers would be asked to pay employer NICs and pensions contributions for their workers.[68]

All AE duties continued to apply as normal during this period. This means without a formal agreement to reduce contributions, employers and would need to make up the difference between what is covered by the Government grant and the requirements set out in the scheme rules. The Pensions Regulator explains:

> The existence of the grant available under the Coronavirus Job Retention Scheme does not change an employer's usual pension contribution payment obligations or processes.
>
> When calculating the pension contribution due for a furloughed worker who has agreed a salary sacrifice arrangement for pension

[66] DWP, Personal accounts: a new way to save, Cm 6975, December 2006
[67] Johnson et al, Making Automatic Enrolment Work Review, October 2010, section 6.4
[68] PQ 51613, 9 June 2020

> contributions, any contractual obligations you have entered into and the obligation in the pension scheme rules continue to apply as normal.[69]

Some employers may pay more than the statutory employer minimum AE contribution as part of the pension scheme rules. If that is the case, the CJRS would not cover these additional payments. Further, CJRS grants for pension contributions can only be claimed provided the employer will pay the whole amount claimed to a pension scheme for the employee as an employer contribution.

TPR has published guidance on how the CJRS interacts with employer contributions:

- DC pension contributions: COVID-19 technical guidance for large employers (17 April 2020).
- Automatic enrolment and DC pension contributions: COVID-19 guidance for employers (updated 6 May 2020).

Employees/workers

The obligation for workers to make contributions to their pension will be set out in their pension scheme's rules (or other governing documentation). Being furloughed does not alone alter these requirements. TPR explains:

> Unless a member of your staff asks to opt out of their workplace pension or reduces their contributions, you and your staff members must continue to make the contributions required under the scheme at the correct time.[70]

Workers may choose to either reduce their contribution level (if the scheme rules allow this) or opt out or cease active membership of the scheme. Employers are not permitted to encourage/induce them to choose this option.

Any worker who opts out, can also choose to opt back in to pension saving before the re-enrolment date if they wish.

The regulators, statutory guidance bodies and the Pension Protection Fund have produced COVID 19 and your pension – where to get help. This includes guidance for people are considering accessing their pension earlier than they would have done and how to protect themselves against scams.

The Pensions Advisory Service has produced COVID19 guidance for pension savers.

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69 TPR, Automatic enrolment and DC pension contributions: COVID-19 guidance for employers, updated 17 April 2020

70 TPR, Automatic enrolment and DC pension contributions: COVID-19 guidance for employers, updated 17 April 2020

Does auto-enrolment apply to the self-employed?

Auto-enrolment does not apply to the self-employed who are much less likely than employed workers to accumulate private pension saving. Conscious of this, the Government is evaluating different options aimed at increasing retirement savings among the self-employed.

For more information see

Library Briefing Paper SN-06417 (April 2018), section 3.1 (coverage)

NEST – self-employed

The *Pensions Act 2008* placed a duty on employers to automatically enrol certain 'jobholders' into a workplace pension scheme. A jobholder is defined in section 1 of the Act as a worker:

> (a) who is working or ordinarily works in Great Britain under the worker's contract,
>
> (b) who is aged at least 16 and under 75, and
>
> (c) to whom qualifying earnings are payable by the employer in the relevant pay reference period (see sections 13 and 15

This definition does not apply to the 15% of the workforce who are self-employed.[71] The question of whether it should, was considered by the Pensions Commission. It recommended the option of allowing the self-employed to make payments to its proposed National Pension Savings Scheme alongside their National Insurance Contributions (NICs).[72] However, the Labour Government said the self-employed remained "best placed to make their own decisions about whether they can afford to save towards a pension, and if so, how much."[73]

Different options for increasing self-employed pension saving have been considered. In its May 2017 report, the Work and Pensions Select Committee suggested using the tax system to encourage greater saving among the self-employed.[74] As did the Taylor Review of Modern Working Practices:

> One approach would be to effectively auto-enrol self-employed people into a pension and administer this through the self-assessment process […] For instance, when the individual provided HMRC with their self-assessment, as well as providing funds to cover income tax and NICs liability, they could also be expected to provide 4% of income towards a pension unless they choose to opt out.[75]

It suggested that – because the self-employed would not have the incentive of the employer contribution – the Government could "look to establish a similar principle for the self-employed to save for their retirement."[76]

In its 2017 auto-enrolment review, DWP said that a large proportion of the self-employed experienced significant gaps in pension coverage but could not be covered by the current design of automatic enrolment. It

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[71] DWP, Automatic enrolment review: maintaining the momentum, December 2017, chapter 4

[72] Pensions Commission, 2nd report, December 2005, p370

[73] Government response to the Fifth Report of the Work and Pensions Select Committee, 2006-07, HC 220-1, para 29-36

[74] Work and Pensions Committee, Self-employment and the gig economy, HC 847 May 2017; See also Aviva and Royal London, A blueprint for getting the self-employed into pensions, 5 July 2015

[75] Good work: the Taylor review of modern working practices, 11 July 2017, p78

[76] Ibid

further said, around 2 million traditional self-employed individuals (including contractors in the construction sector and others), who would meet auto-enrolment age and income criteria if they were workers, were at risk of under-saving for retirement. The Government committed "to scope, develop and test targeted interventions aimed at establishing what works to increase retirement saving among the self-employed."[77] In December 2018, the Government published a report summarising this work and plans for further pilot projects. The report explains that

> The Department has entered into partnership with NEST Insight to deliver a programme of trialling activity. NEST Insight has a well-established research programme both internationally and in the UK. NEST accepts self-employed members and the scheme currently has over 7,000 members who joined as self-employed. This number is building steadily. NEST Insight is well placed to test how best to help improve retirement outcomes among the self-employed.[78]

The Department is also working on trials with organisations from the financial services sector, including Lloyds Banking Group, Barclays plc and Aviva plc; and trade bodies including IPSE.[79]

[77] DWP, Automatic enrolment review: maintaining the momentum, December 2017
[78] DWP, Enabling retirement savings for the self- employed: pensions and long term savings trials, Dec 2018
[79] Ibid, p. 33

4. Pension flexibilities – 'freedom and choice'

For more information see

Library Briefing Paper SN-06891 Pension flexibilities: the freedom and choice reforms (Dec 2019)

Before the March 2014 Budget, most people (three quarters) with DC pensions used them to buy an annuity.[80] An annuity is "a type of retirement income product that you buy with some or all of your pension pot. It pays a regular retirement income either for life or for a set period."[81]

This approach was strongly encouraged by pension tax legislation, which imposed significant tax charges where a payment was made outside the rules. The rationale for this policy was that: tax relief provided an incentive to save for an income in retirement, not for other purposes; by pooling risk annuities were the most financially efficient way of turning capital into an income stream; and it ensured people had an income throughout retirement.[82]

The Coalition Government announced that from 6 April 2015, people would have more flexibility about when and how to draw their pension savings. The then Chancellor, George Osborne said:

> The tax rules around these pensions are a manifestation of a patronising view that pensioners cannot be trusted with their own pension pots. I reject that. People who have worked hard and saved hard all their lives, and done the right thing, should be trusted with their own finances.[83]

This was legislated for in the *Taxation of Pensions Act 2014*. The increased flexibility was welcomed by some. However, there were also concerns that increased choice would bring with it a significant burden of responsibility for individuals to understand the choices they are making and that some might exhaust their savings prematurely.[84]

Pension Wise explains the options now available:

> There are 6 ways you can take your defined contribution pension pot.
>
> You can usually take 25% of your pot tax free.
>
> **Leave your whole pot untouched**
>
> You don't have to start taking money from your pension pot when you reach your 'selected retirement age'. You can leave your money invested in your pot until you need it.
>
> More on leaving your whole pot untouched
>
> **Guaranteed income (annuity)**

[80] HM Treasury, Freedom and choice in pensions, March 2014, p21
[81] Money Advice Service, What is an annuity?, viewed 22 July 2019
[82] DWP and Inland Revenue, Modernising annuities. A consultation document. February 2002; See also HM Treasury, 'Simplifying the taxation of pensions: increasing choice and flexibility for all', December 2002, para 5.45
[83] HC Deb 19 March 2014 c793
[84] NAPF comments on 2014 budget, 19 March 2014;TUC Pension changes go in wrong direction 20 March 2014; This pension reform is no liberation – and Labour must explain why', Comment is free, *The Guardian*, 24 March 2014

> You use your pot to buy an insurance policy that guarantees you an income for the rest of your life – no matter how long you live.
>
> More on getting a guaranteed income (annuity)
>
> **Adjustable income**
>
> Your pot is invested to give you a regular income. You decide how much to take out and when, and how long you want it to last.
>
> More on adjustable income
>
> **Take cash in chunks**
>
> You can take smaller sums of money from your pot until you run out. Your 25% tax-free amount isn't paid in one lump sum – you get it over time.
>
> More on taking cash in chunks
>
> **Take your whole pot in one go**
>
> You can cash in your entire pot – 25% is tax free, the rest is taxable.
>
> More on taking your whole pot in one go
>
> **Mix your options**
>
> You can mix different options. Usually, you would need a bigger pot to do this.
>
> More on mixing your options

There is more detailed information in HMRC's Pension Tax Manual – member benefits.

What do people need to think about?

To help people navigate the expanded range of options, the Government set up a guidance service – Pension Wise under the *Pension Schemes Act 2015* . Pension Wise and the Pensions Advisory Service merged to become part of the Money and Pensions Service under the *Financial Guidance and Claims Act 2018.* The process of developing an integrated service is ongoing. Currently, the two services still have separate websites and different functions.

The Pension Wise service is available to people who:

- are aged 50 or over
- have a personal or DC workplace pension
- want to make sense of their options

The service consists of a telephone or face-to-face appointment lasting between 45 minutes and an hour. There is also online guidance on key issues to consider.

The legislation allows DC pension providers to offer flexible retirement options. It did not oblige them to. The options available will depend on scheme rules.[85] If a provider does not offer an individual's preferred option, they may be able to transfer to a scheme that does.[86] The

85 HMRC, Pension Tax Manual: PTM 061100 - member's choice of benefits
86 *Pension Schemes Act 1993* (part 4, chapter 4; HM Treasury, Pension transfers and early exit charges: a consultation, July 2015, Annex B: the transfer process

Money Advice Service sets out some of the factors to think about before transferring pensions.

Who are the pension freedoms for?

The freedom and choice reforms were aimed at people with DC pensions. The reason was that:

- Annuity rates had reduced to the point that it was not clear they remain the correct product for everyone at the point of retirement;
- As auto-enrolment increased the number of people with DC pensions, there was a risk that the lack of choice available at the point of retirement would undermine confidence in longer term saving; and
- The introduction of the new State Pension would provide more certainty about what people could expect from the State.[87]

The Pension Wise website has information to help people find out their pension type. See also:

- Pension types
- Check how much is in your pension pot
- Understand your pension statement

Members of DB schemes

The pension freedoms were not primarily aimed at members of defined benefit (DB) pension schemes (such as final salary schemes) because, for the majority of members of such schemes, it was likely to be in their best financial interests to remain in their DB scheme.[88]

Members of private sector DB schemes (and funded public sector schemes) can request a Cash Equivalent Transfer Value (CETV) allowing them to transfer to a DC pension scheme.[89] However, the legislation requires providers to check whether an individual has received 'independent appropriate advice' before transferring or converting safeguarded benefits (see below) worth £30,000 or more into 'flexible benefits'. The advice must be given by an authorised independent adviser and meet requirements specified in regulations.[90]

For more detail, see Library Briefing Papers

CBP 8382 Pension freedoms: transfers from defined benefit pension schemes (May 2020) and CBP 8488 Pension transfer advice (June 2020).

[87] HM Treasury, Freedom and choice in pensions, Cm 8835, March 2014, para 2.27-30
[88] Cm 8901, July 2014, chapter 4; TPR, DB to DC transfers and conversions, April 2015, para 30
[89] *Pension Schemes Act 1993*, ss93-101
[90] *Pension Schemes Act 2015* s48; TPR, DB to DC transfers and conversions, April 2015

What are safeguarded benefits?

Safeguarded benefits are primarily pension benefits in DB schemes, but also include defined contribution benefits that include the promise to the member of the option to secure an income in retirement at a guaranteed rate, commonly a Guaranteed Annuity Rate (GAR). These are described by section 74(c) of the Pension Schemes Act 2015. The term is defined in the negative and referred to as any benefits other than money purchase benefits or cash balance benefits. (*Pension Scheme Act 2015, s48 (8)*). For further information on what is or is not a safeguarded benefit, government have provided industry with guidance.

The rationale for the requirement is to ensure that:

> … all pension fund members are fully informed before taking any decision, and counteract the risk that a significant number of pension scheme members act against their own best interests or are coerced out of their scheme.[91]

The Money Advice Service recommends taking advice in any case, unless you are sure it is what you want to do and that you understand the consequences:

> If you do take regulated advice and things go wrong, or it ends up being the wrong choice for you, you'll be able to use the complaints and compensation schemes available.[92]

The requirement does not apply to safeguarded benefits worth less than £30,000 (which could be taken as a lump sum in any case, under rules in force before April 2015).[93]

The Financial Conduct Authority has expressed concerns about the poor quality of advice in this area, saying much of it is unsuitable. It has issued new guidance for those considering a DB transfer and an advice checker for those with concerns about advice they have already received. For more detail, see Library Briefing Paper CBP 8488 Pension transfer advice (June 2020).

People with annuities

People who had already purchased a life-time annuity do not have flexibility about when and how they access its value. This is because buying an annuity is generally a one-off and irreversible decision.[94]

In its last Budget before the 2015 general election, the Coalition Government said that it wanted to allow annuity holders flexibility and proposed allowing them to sell the income stream from their annuity to a third party. The proceeds could then be taken as a lump sum or drawn down over several years, taxed at their marginal rate as for those taking DC pensions after April 2015.[95]

In July 2015, the new Government said implementation would be delayed until 2017 to ensure there was an in-depth package to support

For more information see

Library Briefing Paper CBP-07707 Secondary annuities market (August 2018).

[91] Cm 8901, July 2014, para 4.26
[92] Money Advice Service, transferring out of a defined benefit pension
[93] SI 2015/742, reg 5; Cm 8901, July 2014, para 4.26
[94] *Finance Act 2004*, s164 and Sch 28; Cm 9046, March 2015, para 3.1
[95] HM Treasury, Budget 2015, HC 1093, 18 March 2015, paras 1.229-31; Creating a secondary annuity market: call for evidence, March 2015

consumers in making their decision and understanding the value of their annuities.[96]

On 18 October 2016 it announced that it had cancelled plans for a secondary annuities market because it had become increasingly clear that "creating the conditions to allow a competitive market to emerge could not be balanced with sufficient consumer protections."[97]

Some stakeholders expressed disappointment that this would mean people who wanted to take advantage of the pension freedoms remaining "trapped in poor value annuities."[98]

Members of public service pension schemes?

Apart from the Local Government Pension Scheme, the main public service schemes are unfunded: they operate on a pay-as-you-go (PAYG) basis, which means that contributions from employees and employers are paid to the sponsoring government department who meets the cost of pensions in payment, netting off the contributions received.

Following consultation, the Coalition Government decided to legislate to prevent members of unfunded DB public service schemes transferring their pension rights to a DC scheme, except in very limited circumstances. This was because of concern that costs to the Exchequer would be brought forward if more public servants requested the transfer value of their pension rights.[99] However, public service pension scheme members with AVCs (additional voluntary contributions) in money purchase schemes can draw these flexibly.[100]

The Government decided that the prohibition on transfers would not apply to funded public service schemes (such as the LGPS) because they held assets, so the implications for the Exchequer were less direct.[101] However, to protect scheme members, the advice requirement would apply (see below) and, to protect schemes, there would be provision to reduce transfer values where a transfer increased the risk of taxpayer intervention in the scheme.[102] There is guidance for scheme members – LGPS: freedom and choice.

People with section 32 buy-out policies

For some types of pensions – such as 'section 32 buy-out policies' – there may be restrictions on transferring out.

A buy-out policy is a deferred annuity contract used to secure an early leavers' benefit from an insurance company of the individual's choice. One of the conditions applying to such policies is that they had to guarantee to provide a certain level of benefits at the old State Pension age of 60 for women and 65 for men (at least equal to the Guaranteed Minimum Pension (GMP) rights the individual had built up in their

96 HM Treasury, Summer Budget 2015, HC 264, July 2015; Creating a secondary annuity market: response to the call for evidence, December 2015, para 4.2
97 PQ 49517, 26 October 2016
98 See for example, HC Deb 19 October 2016 c809 [Greg Mulholland]
99 Cm 8835, para 5.6; *Pension Schemes Act 2015*, s68
100 PQ HL2099 14 October 2014
101 Cm 8835, para 5.6
102 HC Deb 25 November 2014 c814; *Pension Schemes Act 2015*, s69 and 72

occupational pension scheme). Furthermore, they cannot be assigned or surrendered except in limited circumstances - for example, to another buy-out policy meeting the same conditions.[103]

[103] *Pension Schemes Act 1993* and the *Occupational Pension Schemes (Discharge of Liability) Regulations 1997 (SI 1997/784)* reg 3 and 5; Tolley's loose-leaf Pensions Law, Section D, para 5.31-2).

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BRIEFING PAPER
Number 8653
12 June 2020