RUSSELL-COOKE | SOLICITORS

Pensions Act 2008

The Pensions Act was passed on 26 November 2008. Most of its provisions will come into force in 2012. The Act does defer several decisions to subsequent secondary legislation. Eleven sets of Regulations have subsequently been published in January 2010.

The Pensions Act 2008 – an overview

The Act contains a number of measures aimed at encouraging more people to build up a private pension income to supplement the State pension. It is one of a number of measures being introduced by the government in an attempt to address the very real demographic challenges Britain faces.

All eligible workers, who are not already in a good quality workplace scheme, will be automatically enrolled into either their employer's pension scheme or a new savings vehicle, which is known as a personal account scheme. To encourage participation, employees' pension contributions will be supplemented by contributions from employers and tax relief. There will no longer be the requirement to designate a stakeholder pension scheme.

Timeframe

There will be a four year staged implementation process running from 1 October 2012 to 1 September 2016, with larger employers becoming subject to enrolment duties before smaller employers.

Automatic enrolment

Employers will automatically enrol eligible workers' between the ages of 22 and State Pension Age who are not in a qualifying scheme into a qualifying workplace pension scheme (which can include the new 'personal accounts' scheme). Automatic enrolment means instead of choosing whether to join a workplace pension scheme provided by their employer, all eligible workers will have to actively decide not to be in a scheme, if for any reason they feel this is not a suitable form of personal saving for their situation.

The employer will have to put in place procedures so that all its workers are automatically enrolled into a 'qualifying workplace pension'. This must be done from the first day of work as long as the employee is over 22 and earns above £5,035. If they are younger, or earn below this lower threshold, the obligation begins when the employee turns 22 or if their earnings rise above the threshold. The earnings threshold will change annually in line with annual earnings growth.

Employers will have to enrol all their employees, workers and agency workers. Contributions for agency workers will be paid by whoever is responsible for paying the worker's wages and if this isn't clear, by whoever in fact pays them. Workers must be enrolled in either an occupational pension scheme that meets certain criteria or into a personal account.

The Act currently envisages all workers being enrolled immediately on starting work (as long as they are over 22 and earn more than £5,035). However, there will be an option where 'quality' occupational pension schemes can operate a three month deferral (or waiting) period on membership. The definition of a 'quality' scheme will be left to subsequent regulations, but is likely to cover money purchase schemes that offer employer contributions of between 6-10% of the worker's earnings and final salary schemes that have an accrual rate of at least 1/80ths.

Minimum employer contribution

For the first time all employers will be required to contribute a minimum of 3 percent (between £5,035 and £33,540 a year) to an eligible employee’s workplace pension scheme. There will be an implementation period where employers can introduce these contributions incrementally over a five year period. This will supplement the 4 percent contribution from the employee and around 1 percent from the Government in the form of tax relief.

There will also be administrative costs which the Department for Work and Pensions (DWP) estimates will be minimal on an ongoing basis but higher in the first year. Employers with a large number of temporary, part time, low paid or seasonal workers may see greater costs, especially if they do not provide pensions at present.

Existing occupational schemes

At the very least the employer will have to check that their existing occupational scheme satisfies the requirements for qualifying workplace pensions. For money purchase schemes this will be based on matching the minimum contributions of 3% from the employer and 8% overall contributions of a worker's earnings.

For final salary schemes the only requirement currently envisaged is that they either hold a contracting out certificate or meet a test scheme standard. Currently the test scheme standard requires that the scheme provides a pension for life and has no more than 40 years of accruals at a rate of at least 1/120ths of average qualifying earnings.

In addition, qualifying schemes must allow automatic enrolment from the start of employment, subject to possible deferral exemptions. Offering access to an occupational scheme will not be enough; employers will need to automatically enrol their employees into a scheme.

Failure to enrol/opting out

The Act contains specific provisions which are aimed at prohibiting employers offering inducements or forcing workers to opt out. The Employment Rights Act 1996 will be amended to extend unfair dismissal protection to cover workers who are trying to enforce their pension enrolment rights. Any provisions in a worker's contract which seek to exclude or limit these will be automatically void.

If an employer contravenes any of the provisions of the Act the Pensions Regulator can issue compliance notices or penalty notices. The former will require the employer to remedy whatever they were doing which contravened the prohibition, and, if the Regulator believes the employer has failed in this, the latter will open the door for fines. The penalties under the Act will be set by further regulations, but currently are not expected to exceed £50,000.

Employees can opt out of the scheme. The Act provides for re-enrolment to occur every three years, automatically enrolling employees including those who opted out previously. They will, however, be allowed to opt out again.

The Personal Accounts Scheme

A new low cost savings vehicle, NEST (National Employment Savings Trust) administered publicly by the Personal Accounts Delivery Authority is being created to provide a workplace pension that any employer can use. Employers will be able to choose between the personal accounts scheme and another qualifying workplace pension.

This scheme is aimed at employees who don’t have access to a good quality work based occupational pension scheme - in the main, median to low earners.

It will operate on a defined contribution basis – employees will contribute 4%, employers 3% and 1% tax relief. These rates will be phased in over five years.

There will be contribution limit of £3,600 per year (based on 2005 earning levels) and a general ban on transfers in and out of the scheme, to focus the scheme on the target market.

Preparing for 2012

Employers should be taking steps to prepare for the reforms well in advance of implementation, to look at their existing arrangements to assess and plan, to ensure that they have a complaint scheme and to deal with the not insignificant procedural requirements that will come with auto-enrolment.

For more information please contact:

RACHEL MORRIS
Solicitor
020 8394 6456
rachel.morris@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice.
No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP.
© Russell-Cooke LLP

January 2009 (updated January 2010)