

# JLT Employee Benefits

# AE Smart



## FACT SHEET 310. Should I Use Contractual Enrolment?

This fact sheet explains the difference between automatic-enrolment (AE) under the AE legislation and contractual enrolment under employees' contracts of employment (CE). It helps you work out if CE is an option you should use.

### Key Facts

- > A worker can become a pension scheme member, without first asking to join, in accordance with either their employment contract or the automatic enrolment legislation.
- > Contractual Enrolment is quite different to Automatic Enrolment.
- > In determining which option is better for an employer, there are a number of factors to consider.
- > It is possible to use Contractual Enrolment for some workers and Automatic Enrolment for others.

### Introduction

There are, broadly, two ways in which an employee can become a member of a pension scheme without first applying to join: *Contractual Enrolment and Automatic Enrolment*.

Contractual Enrolment (CE) requires the employee's consent to join the pension scheme which you usually get through the terms of their employment contract. This includes the authority to deduct pension contributions from their salary.

Automatic Enrolment (AE) does not require the worker's consent to join the pension scheme and its terms are set out by law.

### Summary of AE

AE means using the powers under the Pensions Act 2008 to put employees into a pension scheme automatically. It entails:

- > Sending information to all workers, including existing active pension scheme members.

- > Assessing workers to see if they are eligible jobholders, non-eligible jobholders or entitled workers (see *Fact Sheet 100: What Is Auto-Enrolment?*).
- > Automatically enrolling the eligible jobholders only into a suitable scheme.
- > Ensuring these workers receive an enrolment notice which, amongst other things, tells them about their right to opt-out of the scheme (see *Fact Sheet 320: Auto-Enrolment Notices*).
- > Processing any opt-outs, the effect of which is that workers are treated as never having joined the scheme.

### Summary of CE

CE is different. The idea behind this form of enrolment is to put all of your workers into the pension scheme before any assessment of them.

Consequently, everyone will be in a suitable scheme before you have a duty to automatically enrol them under the Pension Act. At that time, all you have to do is give your workers an active member notice, which confirms

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that they are already in a suitable scheme.

The contractual enrolment process is:

- > Enrol everyone into the scheme (except for individuals with enhanced or fixed protection, see later), before you need to enrol them using AE.
- > Send them an active member notice.
- > Enrol those with enhanced or fixed protection under AE.

### Workers with Enhanced or Fixed Protection

You need to be careful with workers who have enhanced or fixed protection. You must enrol them with AE, not CE. Here's why.

Enhanced or fixed protections are valuable tax advantages given to some individuals on the condition that they don't save in any pension scheme.

Workers who are contractually enrolled do not have an opt-out right, unless the scheme rules provide one. This means that they will be treated as

having joined the scheme, even if they choose to leave it soon afterwards.

These individuals will therefore lose their tax protection if they join a pension scheme using CE, which could be very costly for them.

You will need to enrol workers with protection using AE if they are eligible jobholders. They should then opt-out to be treated as never having joined the pension scheme.

We expect that, after April 2014, those with protection will be exempt from automatic enrolment, but this change hasn't happened yet.

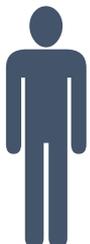
### Other CE issues

You need to be careful how you treat workers who leave the scheme. You may need to re-enrol them at some point. If they were never an eligible jobholder whilst they were in the scheme, you should enrol them using AE as soon as they become an eligible jobholder. Otherwise you must enrol them on your re-enrolment date (broadly every three years after your

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staging date). This means that you need to know what happened to people who leave the scheme when they were in it. This isn't a big deal if few people leave, or they are all eligible jobholders, but can be difficult if this isn't the case.

You will need to be clear to anyone who refuses to join using CE that they may get enrolled through AE anyway.

You may also need to change existing workers' contracts of employment to get them in the scheme by your staging date as well as put new hires on a revised contract.

### Which is should I use?

In general, CE works for you if:

- > All your workers are eligible jobholders; or
- > You want to enrol everybody; or
- > Almost everybody is already a member of your scheme.

It becomes more difficult if you have lots of people that aren't in the scheme, for example because they have tax protection, they have other

arrangements or they refuse for whatever reason. These people will need to be enrolled via AE, so you could end up with two main processes.

We see companies with generous schemes that don't require the employee to pay anything using contractual enrolment a lot.

### Summary

Here are the pros and cons of each approach.

#### Contractual enrolment

- ✓ Can enrol everybody, not just eligible jobholders
- ✓ No need to assess employees
- ✓ Won't have to process opt-outs
- ✓ Shorter, simpler statutory notice
- ✗ Need to identify and exclude employees with enhanced or fixed protection from contractual enrolment and use statutory enrolment for them instead
- ✗ Need to be careful about re-enrolment if employee ceases membership.

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- ✗ Need to change contract of employment

### Statutory enrolment

- ✓ Single process for everyone, regardless of tax protection
- ✓ Lower total contributions because you only enrol eligible job holders
- ✗ Need to assess employees
- ✗ Can't automatically enrol people who aren't eligible jobholders
- ✗ May have to process opt-outs

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