



# Assessing the workforce

How to identify the different categories of workers

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# About this guidance

- This guidance is aimed at employers and professional advisers who will support employers to comply with their new duties.
  - This guidance explains when the assessment of the worker must be made and describes how the employer identifies the three worker categories. As a result of this assessment, the employer will know whether the worker is an eligible jobholder, a non-eligible jobholder or an entitled worker.
  - This guidance is the first in a subset of guidance on the assessment of a worker. To understand the content in this guidance, employers should have already read the following guidance in this series:
    - **Detailed guidance no. 1 – Employer duties and defining the workforce**
    - **Detailed guidance no. 2 – Getting ready**
- Additionally, a flowchart is included as an appendix, which provides further help in understanding the processes involved in making assessments.
- The next guidance in this subset covers postponement. If an employer chooses to use postponement, they postpone the assessment of their worker for a period of up to three months. An employer considering using postponement should read **Detailed guidance no. 3a – Postponement**.
  - If an employer has an existing defined benefit or hybrid pension scheme and the worker meets certain conditions, the employer can choose to defer assessment of that worker until the end of a transitional period. An employer considering using this transitional period should read **Detailed guidance no. 3b – Transitional period for defined benefit and hybrid schemes**.
  - Regardless of when the assessment is carried out, an employer will know, as a result of the assessment, whether the worker is an eligible jobholder, non-eligible jobholder or entitled worker. **Detailed guidance no. 3c – Having completed the assessment** describes the next steps for an employer once they have completed the assessment process. Employers should read **3c** in conjunction with this guidance.
  - We recognise that many employers will already have pension provision for their workers, and that this will often match or exceed the minimum requirements contained in the duties.
  - In these cases, such employers may just need to check that the minimum requirements are covered in their existing processes.
  - We have identified **7 steps to prepare for automatic enrolment**, which summarise the main steps towards achieving compliance. Employers may find this helpful when navigating this guidance: [www.tpr.gov.uk/7-steps](http://www.tpr.gov.uk/7-steps)
  - It will be helpful to employers to be familiar with the different categories of workers. These are explained in detail in **Detailed guidance no. 1 – Employer duties and defining the workforce** or a quick reminder is available in **Key Terms** on page 24.
  - This guidance has been updated to add further examples and explanation to the 'Ordinarily working in the UK' section and to reflect the recent legislative changes in relation to cross-border schemes. Minor changes have been made to the section on assessing qualifying earnings to ensure consistency between the detailed guidance for employers and the updated guidance for software developers(v4). Appendix C provides details of significant changes made to this guidance. Further minor changes have been made but where these do not significantly impact on the structure or content, they are not listed in the appendix.

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# Key points

- An employer must assess each member of their workforce to identify into which category of worker they fall. This is to determine what duties the employer will have to carry out for that worker.
- To do this they must:
  - identify the worker's age
  - identify whether the worker is working or ordinarily works in the UK under their contract, and
  - assess the worker's earnings.
- An employer's payroll processes may support this assessment of earnings. Business software providers are being made aware of the pensions reform changes, so an employer may wish to discuss their requirements with their software provider.
- After completing the assessment, an employer will know whether the worker is an eligible jobholder, non-eligible jobholder or entitled worker.



**An employer  
must assess  
each member  
of their  
workforce**

# Introduction

1. An employer must assess each member of their workforce to identify into which category of worker they fall. This will determine what duties the employer will have in relation to each of those workers. The different categories of workers and the employer duties are set out in Detailed guidance no. 1 – Employer duties and defining the workforce.
2. As part of this assessment, the key criteria for an employer are:
  - the worker's age
  - whether the worker is working or ordinarily works in the UK under their contract, and
  - whether qualifying earnings are payable in the relevant pay reference period.
3. An employer must assess their worker at particular points in time, or when particular events occur.
4. There must be an individual assessment of these criteria for each worker. However, when the new duties are first introduced (on the employer's staging date), it may be possible for an employer to group together similar workers and carry out one assessment.
5. The process of assessing the workforce is explained in detail in this guidance. It is important that employers understand this process, although in practice, many elements of it may be supported by business software.



**It is important  
employers  
understand  
the process**

# When to make the assessment

6. There are a number of dates on which an employer will have to assess a worker. These are:
  - the employer's staging date, for a worker already in employment on that date
  - the first day of employment, for a worker who starts employment after the employer's staging date
  - the date of the worker's 22nd birthday, where this occurs after the employer's staging date
  - the date of the worker's 16th birthday, where this occurs after the employer's staging date
  - the date they receive an opt-in or joining notice from a worker (opting in notices and joining notices are described in **Detailed guidance no. 6 – Opting in, joining and contractual enrolment**)
  - the deferral date, if an employer has chosen to use the postponement provision for a worker (postponement and deferral dates are described in **Detailed guidance no. 3a – Postponement**).
  - the day after the transitional period has ended, if an employer has chosen to use the transitional period for defined benefit or hybrid schemes (described in **Detailed guidance no. 3b – Transitional period for defined benefit and hybrid schemes**)
  - the first day of each pay reference period, where the first assessment identifies the worker to be a non-eligible jobholder or entitled worker.
7. For a non-eligible jobholder or entitled worker, an employer will need to continue to assess the worker in order to identify a change to eligible jobholder status. So a further assessment date is the first day of a pay reference period.
8. The employer must make the assessment based on the worker's circumstances on the assessment date. The employer may be able to carry out the assessment ahead of time, if they are confident the circumstances will not change.
9. Similarly, it may be possible to make the assessment after the assessment date and look back to what the criteria was on the assessment date. However, an employer should be aware that if they choose to do it this way, they will reduce the amount of time available to them to complete automatic enrolment or provide information, as there are set time limits within which the employer duties must be complied with.
10. Regardless of when the assessment is carried out, an employer will know as a result of the assessment whether the worker is an eligible jobholder, non-eligible jobholder or entitled worker. **Detailed guidance no. 3c – Having completed the assessment** describes the next steps for an employer once they have carried out the assessment process. This should be read in conjunction with this guidance.

# Making the assessment

11. The assessment is broken down into three parts:

- Assessing the worker's age – identifying whether the worker meets different age brackets (see paragraphs 13-15)
- Assessing whether the worker is working or ordinarily works in the UK under their contract – identifying where the worker is based (see paragraphs 16-35), and
- Assessing the worker's earnings – identifying whether qualifying earnings are payable in the relevant pay reference period and at what amount (see paragraphs 37-77)

12. Each part is considered separately in this guidance.

## Assessing a worker's age

13. An employer needs to identify which of its workers are aged between 16 and 74. This is because these are the age criteria for both jobholder and entitled worker category of workers.
14. Further, an employer needs to also identify which of its workers are aged between 22 and state pension age, as this is the age criteria for eligible jobholders.
15. A worker's age should be straightforward to track for most employers using existing business processes.

## Assessing whether a worker is working or ordinarily works in the UK

16. The next criteria for the employer to consider is whether the worker is working or ordinarily works in the UK under their contract.
17. For most employers it will be clear that a member of their workforce is working in the UK. However, for some multi-national employers and employers who move their workers regularly between countries as part of their employment, whether the worker 'ordinarily works in the UK' will be less clear.
18. In both cases, the primary issue is where the worker is based.
19. With regard to making this assessment, there are two particular types of workers that it is worth commenting on now.
20. A worker in offshore employment is a person who works under a worker's contract in the territorial waters of the UK or in connection with the exploration of the sea bed or subsoil, or the exploitation of their natural resources, in the UK sector of the continental shelf (including the UK sector of a cross-boundary petroleum field). These workers are treated as if they are ordinarily working in the UK and employers should therefore go to the next step – Assessing whether qualifying earnings are payable (from paragraph 37).
21. A worker who is a seafarer is a person employed or engaged in any capacity on board a ship or hovercraft.
22. Employers of seafarers who work solely in UK territorial waters should refer to the section Working in the UK (paragraphs 25-27).
23. Employers of seafarers who are not restricted to UK territorial waters will be aware that the question of whether seafarers can be considered to be 'ordinarily working in the UK' has arisen in connection with employment rights. The Employment Rights Act 1996 provides that a

number of employment rights set down in the Act will apply to seafarers in certain prescribed conditions. Case law has subsequently established that if the statutory conditions are not met, then the court may still reach the conclusion that the seafarer is ordinarily working in the UK, where the facts of the case show that the individual is based in the UK.

24. There are no comparable statutory criteria in the Pensions Act for establishing when the employer duties apply to employers of seafarers. However, the principle of where the seafarer is based can be applied equally to seafarers as it is to other types of workers. Consequently, employers in the shipping industry should find the principles set out in the section Ordinarily working in the UK (paragraphs 28–35) as helpful as those employers in any other industry.

## Working in the UK

25. If a worker works wholly in the UK, then they can be considered to be working in the UK. By working wholly in the UK we mean:
- the worker's contract provides for the worker to be based at a location in the UK, and
  - there is no simultaneous employment relationship between the worker and an employer outside the UK (ie the worker is not someone who has been sent to the UK by an affiliated employer, for example on a secondment).
26. It does not matter whether the worker makes occasional business trips outside the UK as part of their work.
27. It does not matter whether the worker is a UK national or not (as long as they are working legally in the UK).

### Some examples of working in the UK

Oliver works for ABC Ltd. ABC Ltd is based in Reading. Under his contract of employment with ABC Ltd, he is contracted to usually work Monday to Thursday, 28 hours a week in Reading. His contract is for three months. He has no employment relationship with anybody else.

ABC Ltd is owned by ABC Corp – a French company with businesses across Europe. Once a month, Oliver attends meetings at ABC Corp in Paris. Occasionally, as part of his job he may have to visit other affiliated

companies in other European states. The ownership of ABC Ltd and the fact that Oliver occasionally travels outside the UK would not, in the regulator's view, affect the assessment of Oliver as working in the UK.

Tom works for XYZ Stationers Ltd at its printing factory in County Fermanagh, Northern Ireland. He lives in the Republic of Ireland. Under his contract of employment with XYZ, he is contracted to work 40 hours a week, Monday to Saturday at that factory. He has no employment relationship with anybody else.

The fact that Tom lives in the Republic of Ireland would not, on its own, affect the assessment of his working status. In the regulator's view, XYZ Stationers Ltd can consider Tom to be working in the UK.

Amy is in the UK for a year as part of her university studies. She is French and will be returning to France to complete her studies at the end of the 12-month period. Whilst in the UK, Amy starts work at The Student Pub, a pub and restaurant in Bristol. She is paid hourly and works varying hours each week to fit around her studies. In the regulator's view, The Student Pub can consider Amy to be working in the UK.

Antonio is Spanish but is currently living and working in the UK. He is employed by Tour Boats, a company that owns a fleet of pleasure boats that sail up and down the Thames. Antonio works as the pilot of a cruise boat that travels between central London and Kew each day. He has been hired for the summer season and will probably return to Spain when his contract ends. In the regulator's view, Tour Boats can consider Antonio to be working in the UK.

## Ordinarily working in the UK

28. Where a worker is not wholly working in the UK, it will need to be established whether the worker 'ordinarily works in the UK', and the primary issue to be considered is where the worker is based. The starting point for determining where a worker is based will be what the worker's contract of employment says and also how the contract is operated in practice.
29. Employers will need to consider factors including:
- where the worker begins and ends their work
  - where their private residence is, or is intended to be
  - where the worker's headquarters is
  - whether they pay National Insurance contributions in UK
  - what currency they are paid in.

30. These factors will be particularly important in assessing peripatetic workers such as airline pilots, seafarers and sales persons who regularly move between countries but whose base is still in the UK.

### Some examples of ordinarily working in the UK

Jon is an airline pilot, working out of London Heathrow. He flies long haul flights to the USA, Canada and the Caribbean for Letsgetaway Airlines. Letsgetaway Airlines' headquarters is at Heathrow and his contract of employment is with them. He is away from home for four or five days at a time. He lives in Reading and Letsgetaway Airlines pays him in sterling and deducts tax and National Insurance contributions from his salary. In the regulator's view, Letsgetaway Airlines can consider Jon to ordinarily work in the UK.

Rupert is also an airline pilot with Letsgetaway Airlines working long haul. As with Jon, his contract of employment is with Letsgetaway Airlines, whose headquarters is at Heathrow. His salary is paid in sterling and Letsgetaway Airlines deducts tax and National Insurance contributions. He lives in the south of France and commutes to Heathrow. Although he resides abroad, in the regulator's view, the fact that he begins and ends work in the UK, is paid in sterling, and pays National Insurance in the UK, is sufficient for Letsgetaway Airlines to consider that Rupert ordinarily works in the UK.

Helena is a pilot for Herecomesthesun Airlines. She flies long haul out of Heathrow, to South East Asia, and is away for four or five days at a time. She lives in Antwerp and commutes to Heathrow to start work. Herecomesthesun Airlines has offices based at Heathrow but its headquarters is in Antwerp. Helena is paid in euros and does not pay National Insurance contributions in the UK. In the regulator's view, although Helena begins and ends work in the UK, Herecomesthesun Airlines can consider that Helena does not ordinarily work in the UK.

Go Holidays is a UK-based tour operator that specialises in package holidays to Turkey. It recruits tour representatives each season to work in various Turkish resorts. These representatives are recruited on a fixed-term contract which states that they will be based in Turkey. Debbie applies for a six-month contract covering the 2013 season. Before

commencing her duties in Turkey, Debbie must undergo a two-week training programme at Go Holidays' head office in Crawley. On completion of her training, Debbie flies out to Turkey where she will live and work at various different resorts. She will be paid locally in Turkish Lira.

In the regulator's view, although she is in the UK for initial training, under the terms of her contract Debbie is based in Turkey and she is also not paid in sterling. Go Holidays can consider that Debbie does not ordinarily work in the UK.

Big Holidays is a UK-based tour operator that specialises in package holidays to Spain and the Balearics. Tour representatives have a contract with Big Holidays, under which they will be required to go on placement to any Spanish resort and work at Big Holidays' head office in Slough between placements. They are paid in sterling and pay tax and National Insurance contributions. Katy lives in Windsor and starts work at Big Holidays and, two months into her employment, she is asked to go to Malaga for six months. At the end of the six months, she returns to the UK for two weeks before going out to Palma for a six-month winter season. In the regulator's view, although Katy resides outside the UK for periods of her contract, the fact that she is paid in sterling, pays National Insurance in the UK and has a private residence in the UK, and that Big Holidays' head quarters are in the UK, is sufficient for Big Holidays to consider that Katy ordinarily works in the UK.

Alan works as a barman on a cross channel ferry, sailing between Dover and Calais. He is employed by White Cliff Ferries Ltd, which is registered and based in the UK. He lives in the UK and returns to Dover at the end of each working day. The ship he normally sails on is registered in the UK. In the regulator's view, as Alan begins and ends work in the UK, White Cliff Ferries Ltd can consider that Alan ordinarily works in the UK.

Charles works on a cargo ship for Le Cargo, a company registered and based in France. Charles lives in the UK and his contract states that he is based in the UK. A usual route for the cargo ship he works on starts in Felixstowe, then goes to Hamburg, Singapore and the USA. It usually finishes in Southampton. In the regulator's view, although Le Cargo is based in France, the other factors present are sufficient for Le Cargo to consider that Charles ordinarily works in the UK.

31. Where a UK-based employer is making a short term placement of a worker outside the UK and that worker has been (or would be, were it not for the placement) assessed as working or ordinarily working in the UK, they will need to consider whether the worker's base remains in the UK despite their placement overseas. If the worker's contract remains with the employer located in the UK and there is an expectation on the part of the employer that the worker will resume working in the UK for the UK-based employer at the end of their placement, the worker is likely to be considered to be ordinarily working in the UK.

#### Some examples of short-term placements outside the UK

Steve works for GB Computers, a UK subsidiary of Global Computers, a US company. He has been seconded to the US headquarters for a period of five years. On GB Computers' staging date, Steve is half way through his secondment period so GB Computers initially assesses him as if he were not on secondment. Before he went on secondment, Steve lived and worked in the UK, was paid in sterling and paid National Insurance contributions. GB Computers therefore concludes that he is based in the UK. They then consider whether Steve's base has altered as a result of his secondment. Steve's contract has remained with GB Computers and at the end of his secondment, they expect him to return to work with them in the UK. GB Computers therefore concludes that Steve's base remains in the UK and therefore considers him to be ordinarily working in the UK.

Simon works for One-of-One Ltd who are based in Croydon. Simon lives in Brighton and commutes to Croydon each day. On their staging date, One-of-One assesses that he is working in the UK. However, two years later, Simon is seconded to Italy for six months. His employment contract with One-of-One will remain in place during the secondment and One-of-One expects that Simon will return to work in Croydon at the end of his secondment. They conclude that Simon's base remains in the UK and that he is ordinarily working in the UK.

32. Individuals working on secondment from another company will usually remain a worker for the company from which they are seconded. This remains the case where the employer is a non-UK employer. Where a non-UK employer is placing a worker on a secondment basis to a UK employer, the non-UK employer will need to consider whether the worker's base remains outside the UK despite their secondment to the UK. If the worker's contract remains with the employer located outside the UK, and there is an expectation on the part of the employer that the worker will return to work which is based outside the UK for their non-UK employer at the end of their placement, the worker is unlikely to be considered to be 'ordinarily working in the UK'.

### Some examples of short-term placements to the UK

Sophie is from Belgium, working for a Belgian employer. She is seconded to the UK for one year. Whilst on secondment, Sophie will be paid by the UK employer on behalf of her employer in Belgium and will pay National Insurance contributions in the UK. However, her contract of employment will remain with the Belgian employer and they expect her to return to work with them in Belgium at the end of her secondment.

The UK employer knows that they do not have to carry out an assessment for Sophie because her contract of employment is not with them. The Belgian employer considers whether Sophie's base will remain outside the UK and concludes that, because her contract remains with them and they expect her to return, her base will remain in Belgium.

In actual fact, the secondment is extended by three years. This does not alter the fact that her contract remains with the Belgian employer and that they expect her to return to Belgium, therefore she can still be considered to be based outside the UK.

Miranda is seconded to work in the UK by her US employer for six months. She will continue to be paid in the US and will continue to contribute to her US pension scheme during her secondment. She will also continue to make contributions to US social security.

At the commencement of her secondment, the US employer considers that Miranda's base remains in the US because her contract of employment will remain with them and they expect her to return to work for them in the US at the end of her secondment.

However, at the end of her secondment, Miranda decides to stay in the UK and negotiates a permanent contract with the UK employer. Now that her contract of employment is with the UK employer, they must assess her as a new employee to ascertain whether she is working, or ordinarily working, in the UK.

They conclude that her contract provides for her to be based in the UK and there is no longer a simultaneous employment relationship with a non UK employer, therefore Miranda is working in the UK.

33. It is expected that over time, case law will develop which interprets what the law means by 'working or ordinarily works in the UK under the worker's contract' for the purposes of pensions legislation.

We will update the guidance as this happens, although because case law can develop quickly, this guidance should not be read as an authoritative statement of case law at any given time. If an employer is having difficulties determining whether a worker is working or ordinarily works in the UK, they should seek appropriate legal advice.

34. In a minority of cases, a worker whom the employer has assessed as working or ordinarily working in the UK may also meet the definition of a 'qualifying person'. 'Qualifying person' is relevant for the purposes of separate UK legislation on occupational pension schemes and cross-border activities within the European Union.
35. In this case, and where the employer proposes to, or is making contributions in respect of that worker to an occupational pension scheme, then the employer is exempted from a number of the employer duties and safeguards for that worker. For more information see our resource – **Employer duties and safeguards**, available in the resource section on our website.
36. The next criteria an employer must assess is whether qualifying earnings are payable in the relevant pay reference period.

### Assessing whether qualifying earnings are payable

37. When assessing most workers, the determining factor will usually be whether qualifying earnings are payable in the relevant pay reference period and at what level. This is because for most workers, the assessment of age and whether they are working or ordinarily work in the UK will be straightforward for their employer.
38. To explain the principles behind the assessment of whether qualifying earnings are payable in the relevant pay reference period, we have broken it down into a number of sequential steps. It is, however, up to the employer to incorporate these principles into their processes in whichever way best suits their organisation. Business software providers are being made aware of the pensions reform changes, so an employer may wish to discuss their requirements with their software provider. If an employer chooses to automate the earnings assessment through, eg payroll software, they should still understand the principles behind the assessment, so they are able to incorporate them lawfully and effectively.

39. For some workers, the assessment will be straightforward, eg workers who are paid a regular, non-fluctuating amount in each pay reference period. Some examples of straightforward assessments are provided after paragraph 88.

40. However, for workers whose earnings fluctuate, the earnings assessment will be less straightforward. In this case, on the assessment date, the employer will have to complete the following steps:

**Step A:** Identify the relevant pay reference period.

**Step B:** Identify what is payable in that period.

**Step C:** Compare what is payable with the lower level of qualifying earnings and the earnings trigger for automatic enrolment.

### Step A: Identify the relevant pay reference period

41. This step is about identifying the period of time over which earnings are to be measured. The period of time is the 'relevant pay reference period'. The first step in identifying the relevant pay reference period is to understand what a pay reference period is for the worker.

42. The term 'pay reference period' is used in two different ways within the employer duties. Here, it is used for the purposes of measuring a worker's earnings. For these purposes, a worker's pay reference period is:

- one week, in the case of a worker who is paid their regular wage or salary by reference to a period of a week, or
- in the case of a worker who is paid their regular wage or salary by reference to a period longer than a week, whichever period the worker is paid by reference to. For example, for a person paid by reference to a monthly period, the pay reference period will be one month.

43. The usual pay reference period for a worker therefore is the period of time by reference to which the employer pays the worker their regular wage or salary. The pay reference period is not the interval between the dates the worker actually receives their pay, ie it is not the pay frequency, although sometimes the two will coincide. For example, a salaried worker who is paid by reference to the work done in a calendar month will have a monthly pay reference period and will also have a monthly pay frequency.

44. As it is not the pay frequency, it is separate to PAYE and National Insurance contributions, so it is not the tax week or tax month. Understanding by reference to what period of time an employer is paying a worker is key to identifying pay reference periods.

45. An employer should consider in respect of which period of time their payroll operates. For example, if they collate hours worked on a four-weekly basis and pay in respect of those hours worked every four weeks, their pay reference period will be four-weekly. This is the period of time by reference to which they pay their workers. It does not matter if the employer pays in arrears. It does not matter if the period of time over which they collate overtime is different. It does not matter if the pay date is the same date each month. The employer is identifying the general period of time by reference to which they pay.

46. The principle is the same for salaried workers although the employer is not collating hours. The employer needs to consider by reference to what period of time they pay the worker's salary.

### Some examples of pay reference periods

Stewart receives a fixed basic salary, regardless of how many hours he has worked in the month, and is paid monthly. This is paid on the last working day of the calendar month.

This payment relates to work done during the period from 1st of the month to the end of the month. For example, the pay reference period for March runs from 1 March to 31 March. The first day of the next pay reference period is 1 April.

Ann receives a fixed, basic salary regardless of how many hours she has worked in the month, and is paid monthly. This is paid on the 23rd of each month. The payment relates to work done between 24th and the 23rd day of the following month.

Ann's March pay reference period runs from 24 February to 23 March.

Jermaine is paid weekly on a Friday for the hours worked during the week, beginning on a Monday and ending on the Sunday. His pay reference period runs from Monday to Sunday.

Mira receives her pay on a Friday for the hours worked during the week, beginning on a Saturday and ending on that Friday. Mira's pay reference period runs from Saturday to Friday.

47. Once an employer knows by reference to what period of time they pay, they will know what their general pay reference period is, eg they will know whether it is calendar monthly, four-weekly etc. They will also know how to identify the start and end date of any pay reference period.
48. The final step is to identify the relevant pay reference period for the worker. The relevant pay reference period for these purposes is the pay reference period in which the assessment date falls (see example 1a).

### Example 1a

Ruth is 21 and studying IT at college. She supplements her study by working four hours a day, Monday to Thursday, selling advertising space for Local News.

Ruth is paid a basic salary plus commission on the amount of slots she sells in a month.

Local News is owned and run by Bob, and employs nine people. Bob runs his payroll monthly. Payroll closes on the 24th of each month, the money is transferred to the bank on the 26th of each month, and his staff receive their salary directly into their account on the last working day of each month.

Bob has never really thought about it before but now he does, he considers that he pays his staff each month in respect of the work they have done for a calendar month.

Ruth therefore has a pay reference period that starts on the 1st calendar day of each month and runs to the last calendar day, even though sometimes she may receive her salary slightly earlier, on the last working day of the month.

Ruth turns 22 years old on 15 May. Bob knows that age is one of the assessment criteria and the date when he needs to consider whether he must put Ruth into a pension scheme. Ruth's relevant pay reference period for working that out is the one that runs from 1 May to 31 May, as this is the pay reference period in which her birthday falls.

### Step B: Identify what is payable in that period

49. Having identified the period of time over which earnings are to be measured, the next step for an employer is to identify which earnings are to be measured in that period.
50. The employer is considering whether qualifying earnings are payable above the lower level of qualifying earnings or the earnings trigger for automatic enrolment that apply to that relevant pay reference period. We split this into two steps below, first identifying what is 'payable' and then in step C whether what is payable is above the applicable thresholds.
51. An employer must consider what is payable to the worker in the relevant pay reference period, and how much of this is made up of qualifying earnings.
52. 'Qualifying earnings' is a reference to earnings of between £5,564 and £42,475 made up of any of the following components of pay that are due to be paid to the worker:
- salary
  - wages
  - commission
  - bonuses
  - overtime
  - statutory sick pay
  - statutory maternity pay
  - ordinary or additional statutory paternity pay
  - statutory adoption pay.
53. When determining whether qualifying earnings are payable, an employer needs to identify the gross qualifying earnings payable in the relevant pay reference period. They then compare that figure against the lower level of qualifying earnings applicable to that pay reference period (listed in table 1).
54. For example, if the pay reference period is monthly, the employer will compare the gross qualifying earnings in a month against the monthly lower level of qualifying earnings, currently £464. Step C on page 16 describes this in more detail.

<sup>1</sup> These figures are for the 2012-2013 tax year. The Department for Work and Pensions (DWP) intends to announce the thresholds for the 2013-2014 tax year in November 2012. Following DWP's announcement, you will find these figures in the resources section on our website.

55. It is for the employer to determine if a payment they are making falls into one of the components of pay that make up qualifying earnings.
56. The assessment of whether a component of pay constitutes an element of qualifying earnings is a separate and distinct assessment to deciding what constitutes basic pay for the purposes of a pension scheme that is using certification to meet minimum requirements as part of the qualifying criteria.
57. However, when deciding what constitutes salary or wages for the purposes of a worker's qualifying earnings, an employer may find it useful to refer to the basic pay definition used for certification which is set out in paragraph 71 of **Detailed guidance no. 4 – Pension schemes**.
58. If an employer is treating multiple employment contracts with the same worker as a single employment relationship, they should include all the components of pay that make up qualifying earnings under all the contracts in the assessment.
59. The employer must consider what is payable in the whole pay reference period, irrespective of whether the assessment date (such as the worker's 22nd birthday, the first day of employment or the date they reach state pension age) falls part way through a pay reference period. And they must consider what is payable in the relevant pay reference period irrespective of whether the earnings are payable in separate payroll runs for example a supplementary and main payroll run.

#### A note about calculation of contributions

If automatic enrolment is triggered from the assessment date, contributions are calculated on the earnings paid from the assessment date, regardless of at which point in the pay reference period the assessment date falls.

For more information see **Detailed guidance no. 5 – Automatic enrolment**.

60. The key word is 'payable'. Payable means earnings actually paid in the pay reference period, also what is due to be paid, or was due to be paid, in the pay reference period.

61. This means that an employer must consider what is due to be paid in the relevant pay reference period, regardless of to what period that payment relates (see example 1b). For example, if a bonus is due to be paid in March in relation to performance in January, then this is included in the qualifying earnings due to be paid for March, not January.

#### Example 1b

Ruth's relevant pay reference period is 1 May to 31 May. On 15 May, when Ruth turns 22 years old, Bob needs to consider what is due to be paid to Ruth in this period. Bob has not yet run payroll for May so has to predict what would be due to Ruth in this period.

Ruth receives a monthly salary of £500.

On Friday 28 April, Ruth worked four hours' overtime. This will be paid to her in her May pay packet because it is after payroll has closed for April. Ruth also works overtime on Friday 26 May but, because payroll for May has closed, this is not due to be paid to her until the next payroll in June. It will therefore not count towards her qualifying earnings.

Bob calculates that based on the sales Ruth has made up to 15 May, she will earn commission of £100, and estimates that Ruth's commission for the month will be £150.

Bob identifies, therefore, that Ruth has gross earnings due in the relevant pay reference of:

- £500 basic salary
- £50 overtime (for Friday 28 April)
- £150 commission.

Since qualifying earnings includes overtime as well as basic pay, Bob identifies that Ruth's payable qualifying earnings in her relevant pay reference period will be £700.

62. 'Payable' does not mean 'earned'. This is important to remember where a worker is being paid in arrears. When a worker is paid in arrears, the employer considers what is due to be paid in this period, not what is due to be earned.

**Example 2**

Jasper works for ABC Systems Ltd. He is paid monthly on the 15th of the month in respect of work done between the 1st and the last day of the calendar month. He is paid in arrears and payroll closes on 3rd of the month. His basic monthly salary is £650.

On 30 July he was awarded a bonus of £100. On 5 August he worked some overtime, for which he earned £50. He turns 22 on 24 August. His employer knows that this a date on which it must assess this worker.

The first step for the employer is to work out the relevant pay reference period. ABC Systems Ltd knows that it pays Jasper by reference to the period between the 1st of each month and the last. So it knows that it operates calendar-monthly pay reference periods.

Jasper's 22nd birthday is on 24 August, so ABC Systems Ltd works out that the relevant pay reference period for him is the one that runs from 1 August to 31 August.

The next step for ABC Systems Ltd is to establish what qualifying earnings are payable to Jasper in the period 1 August to 31 August. This will be what is payable on 15 August. Because Jasper is paid in arrears, the amount that is payable on 15 August relates to the work done between 1 July and 31 July. Therefore ABC Systems Ltd assesses that the qualifying earnings payable on 15 August will be £750 (basic salary of £650 + £100 bonus on 30 July).

The overtime that Jasper earned on 5 August may be earned during the period 1 August to 31 August but it is not payable until 15 September. Therefore it is disregarded in the assessment of qualifying earnings payable during the period 1 August to 31 August.

63. When a worker starts employment for the first time, it may be that they start part-way through a pay reference period. The employer must assess qualifying earnings for the whole period to identify which category of worker they are on the first day of employment. In practice, there will be zero qualifying earnings for the part of the period before the start date of employment. If an employer is paying in arrears, there may be zero qualifying earnings payable in the entire first pay reference period.

64. As the employer must assess what is payable, where an overpayment or underpayment of qualifying earnings has been made in one pay reference period and is corrected in a following pay reference period, the employer should assess what ought to have been paid in each pay reference period.

65. Many employers will enter into administrative pay arrangements to pay salary in advance, for example, holiday pay arrangements or arrangement for advances of salary to new starters. Such administrative arrangements do not negate the fact that although the salary was paid in one period, it was due to be paid in a different period.

**Example 3**

ETC Manufacturing operates a weekly payroll. For the week before Christmas and Christmas week, they close the factory completely. They have an administrative pay arrangement whereby in the last pay reference period before they close, they pay their workers three weeks' salary in one week.

Evan is paid a salary of £100 per week. For the one-week period 11-17 December, he is paid £300. For the week 18-24 December he receives zero earnings and the same is true of the week 25 December to 1 January.

ETC Manufacturing should assess qualifying earnings of £100 in the week 11-17 December, even though £300 was actually paid, because this is the amount that was due to be paid in this period.

They should assess £100 of qualifying earnings in the week 18-24 December, even though zero was actually paid, because this is what ought to have been paid in this period but for an administrative arrangement.

Finally, they should assess £100 of qualifying earnings for the period 25 December to 1 January, because again, this is what ought to have been paid.

### Step C: Compare what is payable with the lower level of qualifying earnings and the earnings trigger for automatic enrolment

66. The final step for an employer is to compare the payable qualifying earnings payable in the relevant pay reference period against the lower threshold of qualifying earnings and/or the earnings trigger for automatic enrolment applicable to that relevant pay reference period.
67. For a worker aged between 22 and state pension age, the employer must identify whether the qualifying earnings payable (as identified in step B on page 13), are:
- above the earnings trigger for automatic enrolment, or
  - between the lower level of qualifying earnings and the earnings trigger for automatic enrolment.

68. For all other workers, the employer must compare the qualifying earnings payable with the lower level of qualifying earnings.
69. The Department for Work and Pensions has published the legislative thresholds for the 2012-2013 tax year. The thresholds for a relevant pay reference period of one week, two weeks, four weeks, one month, three months, four months, six months or annual are set out in the legislation. An employer can use table 1 where we have reproduced the legislative thresholds to look up the appropriate value.
70. If the relevant pay reference period is a period that is not on the list, an employer will need to derive the appropriate threshold amount. For variations of a weekly period, an employer should multiply the number of weeks in the relevant pay reference period by the appropriate weekly threshold in table 1.

**Table 1**  
The lower level of qualifying earnings and the earnings trigger for automatic enrolment

Pay reference period	Lower level of qualifying earnings	The earnings trigger for automatic enrolment
1 week	£107.00	£156.00
Fortnight	£214.00	£312.00
4 weeks	£428.00	£624.00
1 month	£464.00	£676.00
1 quarter	£1,391.00	£2,027.00
4 monthly	£1,855.00	£2,702.00
Bi-annual	£2,782.00	£4,053.00
Annual	£5,564.00	£8,105.00

**Note:** These figures are for the 2012-2013 tax year. The Department for Work and Pensions (DWP) will announce the figures for the 2013-2014 tax year in November 2012. These are available in the resources section on our website following DWP's announcement.

71. For example, if the relevant pay reference period is a five weekly period, the earnings trigger for automatic enrolment will be £780 (5 x £156).
72. For variations of a monthly period, an employer should multiply the number of months in the relevant pay reference period by the appropriate monthly threshold in table 1.
73. For example, if the relevant pay reference period is a two monthly period, the earnings trigger for automatic enrolment will be £1352 (2 x £676).
74. If the earnings identified at step B are above the earnings trigger for the relevant pay reference period and the worker is aged between 22 and state pension age and is working or ordinarily works in the UK, then the worker is an eligible jobholder (see example 4).

75. If the earnings identified at step B are above the earnings trigger for the relevant pay reference period but the worker is aged between 16 and 21 or state pension age and 74 and is working or ordinarily works in the UK, then the worker is a non-eligible jobholder.
76. If the earnings identified at step B are between the lower level of qualifying earnings and the earnings trigger for the relevant pay reference period, and the worker is aged between 16 and 74 and is working or ordinarily works in the UK, then the worker is a non-eligible jobholder (see example 5).
77. If the earnings identified at step B are less than the lower level of qualifying earnings for the relevant pay reference period, and the worker is aged between 16 and 74 and is working or ordinarily works in the UK, then the worker is an entitled worker.

#### Example 4

Ruth (as described in examples 1a and 1b) is paid monthly so the appropriate earnings trigger for her would be £676.00.

Because Bob has identified that Ruth has qualifying earnings of £700 payable to her, he knows that Ruth earns above the earnings trigger and is therefore an eligible jobholder.

#### Example 5

Ritchie owns and runs Rocky's Gym. As well as himself, he employs three other personal trainers in the gym, two full time and one part time. He pays his staff on a monthly basis, on the last Friday of the month, in respect of hours worked up to the 15th of the month.

Ritchie works out that his pay reference periods run from the 16th of the month to the 15th of the following month.

Ritchie has recruited a new member of staff. Sarah is 20 years old and will be working part time at Rocky's Gym. Sarah is starting work at Rocky's Gym on 4 April. Ritchie knows that this is one of the

days he must assess into what category of worker Sarah falls. Ritchie identifies that the relevant pay reference period for Sarah is 16 March to 15 April.

Sarah works her hours at Rocky's Gym to fit around her own training. Ritchie occasionally pays a bonus, but does not generally pay any overtime. He knows Sarah's basic monthly salary is £1,500 and so calculates that the qualifying earnings payable to Sarah in the relevant pay reference period will be £575 because she started work part-way through the pay reference period.

Sarah is paid monthly so Ritchie identifies that the band of earnings to compare is £464-£676. Ritchie compares Sarah's qualifying earnings of £575 with this monthly band and concludes that it is within the band. Ritchie knows that because of her earnings level Sarah is a non-eligible jobholder.

**78. Detailed guidance no. 3c – Having completed the assessment** explains the next steps an employer must take for each category of worker.

79. Appendix A contains a flowchart that outlines the steps for assessing a worker.

#### Predicting earnings

80. This consideration of earnings and comparison must take place on the assessment date. This means that in practice, there may be an element of earnings prediction, as the employer looks forward from the assessment date to the end of the pay reference period. Again, for some workers, such as those paid regular fixed monthly salaries, this will be straightforward.
81. For those with fluctuating earnings it is less straightforward. An employer may therefore consider waiting until payroll is run to avoid having to make a prediction of earnings for these, or any of its workers. Where this is the case, it is important to remember that any calculation within the payroll system is still making the assessment as at the assessment date falling within the pay reference period.
82. However, any employer making this choice should be aware that it may reduce the amount of time they have in which to complete the automatic enrolment process (see **Detailed guidance no. 5 – Automatic enrolment**), should automatic

enrolment be triggered for that worker. It may also reduce the amount of time they have to provide information to categories of workers other than eligible jobholders.

83. For example, if a worker starts employment mid-way through the pay reference period, this is the worker's assessment date. If they are an eligible jobholder and automatic enrolment is triggered, the employer has one month from this date to complete automatic enrolment. If the employer waits two weeks until payroll is run in the relevant pay reference period to know what qualifying earnings are payable, they will therefore already have used up two weeks of that one-month period in which to complete automatic enrolment.
84. Where the pay reference period is equal to, or shorter than, the one-month joining window, the employer will need to ensure that they can complete the administrative steps for automatic enrolment within what is left of the joining window, in the event that the automatic enrolment date is between the start of the pay reference period and payroll run date.
85. An employer with a pay reference period longer than one month and where pay is not calculated within one month of the start of the pay reference period will need to predict earnings. They should automatically enrol all their workers not in a qualifying scheme in at the start of the pay reference period unless they are absolutely sure that the earnings trigger will never be reached. For example, they may be sure that a worker with a salary below the lower level of qualifying earnings and with no expectation of a bonus, overtime or commission payments will not reach the earnings trigger in a pay reference period.
86. An employer will need to talk to their pension provider and make sure that they and the provider are able to complete the administrative steps for automatic enrolment and then be able to unravel those steps should the payroll run confirm the worker is not an eligible jobholder.
87. An employer may also wish to consider adding to the enrolment information to explain to the worker that, if the earnings trigger is not met in the pay reference period, then automatic enrolment will not go ahead.

### Assessments that appear straightforward

88. Having worked through the steps for assessing workers, an employer can see that for some workers, it may be immediately obvious into which category of worker they fall, without the need to carry out all these steps. Some examples are provided below.

#### Some examples of straightforward assessments

Samir is starting work with his employer on 5 February. He is contracted to earn £19,000 per annum and is 20 years old. His employer knows that on that first day of employment, Samir will be a non-eligible jobholder.

Nathan works for his employer as an architect. He is paid monthly on the last day of the month in respect of work done over the calendar month. He is contracted to earn £45,000 and is 43 years old. His employer knows that he is an eligible jobholder on their staging date of 1 October 2014.

Oscar is paid £120 a week and is aged 35. On his employer's staging date of 1 June 2014, Oscar's employer knows that, because his earnings are between £107.00 and £156.00 a week, Oscar is a non-eligible jobholder with a right to opt in.

Jo is starting work, part time on 22 June, on a salary of £4,000. She is 62 years old. Her employer knows that Jo is an entitled worker on 22 June.

89. However, an employer should exercise caution when it comes to identifying eligible jobholders. This is because it is important to also establish the first day that the criteria to be an eligible jobholder are met. This is known as the 'automatic enrolment date' and it is the date from which the employer must automatically enrol the eligible jobholder. The automatic enrolment date is explained in **Detailed guidance no. 5 – Automatic enrolment**.
90. Although a worker may appear to be an eligible jobholder, eg if they are contracted to earn far in excess of the earnings trigger, an employer will still usually have to assess their earnings to identify the first day that these earnings exceed the earnings trigger for automatic enrolment (see example 7).

**Example 7**

Organic Dairies Ltd has recruited a new finance manager, Charlie, who is 42 years old. Charlie will be starting work on 21 June. His basic salary will be £24,000. John runs the HR department at Organic Dairies and knows that the first day of employment is one of the assessment dates and that he must assess to see if Charlie is an eligible jobholder. At first glance, John considers that Charlie is obviously an eligible jobholder on 21 June.

However, on assessing earnings in the relevant pay reference period, he would see that is not the case for the pay reference period in which Charlie starts employment.

Organic Dairies pays its staff monthly in respect of the work done in the calendar month. The relevant pay reference period for Charlie is the pay reference period from 1 June to 30 June.

In this period, the qualifying earnings payable to him are £600 as he will only start work on 21 June. This is below the monthly earnings trigger for automatic enrolment.

**Assessing groups of workers**

91. The processes described in this guidance are for the assessment of an individual worker. However, when the new duties are first introduced for an employer, they will have to assess a number of workers at the same time.
92. The employer will have to make this assessment on their staging date or, if the employer is using postponement on their staging date for all their workers, on the deferral date(s) they have chosen.
93. The principles for undertaking the assessment remain the same, whether an employer is assessing one or many workers. Appendix B contains a flowchart that outlines the steps for assessing groups of workers on the employer's staging date.
94. Some of this process may be supported by an employer's payroll systems and processes. Some may be supported by a HR function.

# What next?

Having completed the assessment, the employer will know what category of worker or workers they have.

**Detailed guidance no. 3c – Having completed the assessment** contains the next steps for an employer and should be read in conjunction with this guidance.

An employer may postpone automatic enrolment of their workers for a period of up to three months. Postponement is essentially the postponement of the assessment of the worker and therefore a postponement of whichever employer duty may apply, depending on the category of worker. **Detailed guidance no. 3a – Postponement** will tell employers how to use postponement and the outcome of the assessing process where postponement is used.

An employer may defer the assessment of their worker if that worker meets certain conditions and the pension scheme for automatic enrolment is a defined benefit or hybrid scheme. **Detailed guidance no. 3b – Transitional period for defined benefit and hybrid schemes** has more information.

# Appendix A:

## Assessing a worker

This flowchart is intended as supporting material for Detailed guidance no. 3 – Assessing the workforce.

It's best viewed as A3 size. Before you print, you'll need to ensure that the A3 paper tray is selected on your printer. If your printer doesn't have an A3 tray, the document will print on A4 but you may find the text size too small to read comfortably.

Download the flowchart:

[www.tpr.gov.uk/docs/pensions-reform-assessing-workforce-appendix-a.pdf](http://www.tpr.gov.uk/docs/pensions-reform-assessing-workforce-appendix-a.pdf)

# Appendix B:

## Assessing groups of workers on an employer's staging date

This flowchart is intended as supporting material for **Detailed guidance no. 3 – Assessing the workforce**.

It's best viewed as A3 size. Before you print, you'll need to ensure that the A3 paper tray is selected on your printer. If your printer doesn't have an A3 tray, the document will print on A4 but you may find the text size too small to read comfortably.

Download the flowchart:

[www.tpr.gov.uk/docs/pensions-reform-assessing-workforce-appendix-b.pdf](http://www.tpr.gov.uk/docs/pensions-reform-assessing-workforce-appendix-b.pdf)

# Appendix C:

## Changes from v3.1

We have added further examples and explanation to the ordinarily working in the UK section and to reflect the recent legislative changes in relation to cross border schemes.

Minor changes have been made to the section on assessing qualifying earnings to ensure consistency between the detailed guidance for employers and the updated guidance for software developers(v4).

Some editorial changes have also been made to bring the guidance up to date now the law has commenced.

Table 2 lists other substantial changes included in version 4. This list is not exhaustive. It does not include minor editorial changes.

**Table 2**  
Record of additional changes included in v4.0

Page	Location	Change
8	Paragraph 25	Updated content on position of workers ordinarily working in the UK but who are subject to laws of EEA state in which they are located
10	After paragraphs 31 and 32	Two new examples relating to short-term placements outside the UK
9	After paragraph 30	Example has moved, it was after paragraph 35 in v3.1
	Example 6	This has been removed

# Key terms

## Summary of the different categories of worker

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

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Detailed guidance no. 3

### **Assessing the workforce**

How to identify the different categories of workers

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