Q&A | EMPLOYERS

BILL ON THE FUTURE OF PENSIONS

1. The Dutch National Pension Agreement was signed in June 2019. It was fine-tuned in a draft bill for the Dutch Future of Pensions Act (*Wet toekomst pensioenen*), which was published on 16 December 2020 and available for consultation until 12 February 2021. So what is a consultation proposal? Can the proposal's details still change?

Ministries determine which bills are suitable for consultation. The bill on the National Pension Agreement was made available on internetconsultatie.nl, where anyone could make suggestions to improve the draft bill. The aim is to increase engagement of all stakeholders. The consultation closed on 12 February 2021, and the Dutch Ministry of Social Affairs and Employment is now reviewing the suggestions that were put forward during this consultation period. Once this review is complete, a revised bill will be prepared, and it is almost certain that some of the details will be modified. Once the bill has been passed by the Dutch House of Representatives and Senate, the new legislative act will be published in the Dutch Bulletin of Acts, Orders and Decrees (*Staatsblad*). The act was originally meant to come into force on 1 January 2022. However, so many suggestions were put forward during the consultation phase, causing the Minister to postpone the effective date by a year.

2. How has the timetable changed so far?

In May 2021, Minister Wouter Koolmees of Social Affairs and Employment sent a letter to the House of Representatives announcing that the introduction of the Future of Pensions Act would be pushed back by a year, thus, it will not enter into force on 1 January 2022. The plan is to introduce it on 1 January 2023 instead, implementing it no later than 1 January 2027. The targeted implementation date is still 1 January 2026.

The letter does not address every element of the Future of Pensions Act. For instance, it makes no mention of how the transition plans will be affected or what the deadline is for deciding on the transitional rules for defined contribution agreements and retention of age-linked contributions. It is likely that these transitional periods will also move back a year.

That said, it is crucial for social partners to act now. The delay highlights that overhauling the pension system is more difficult than was expected.

3. What are the bill's main points?

1. All existing pension plans under which their members accrue pensions on 31 December 2022 must be changed.
2. The commonly used “average-pay plans” and other defined benefit agreements will be abolished. Starting 1 January 2022, accruing a pension will only be possible under one of four types of defined contribution plans:
   - New contract;
   - Updated defined contribution plan;
   - Existing defined contribution/guaranteed capital agreement; or

- Existing defined contribution/guaranteed benefit agreement.

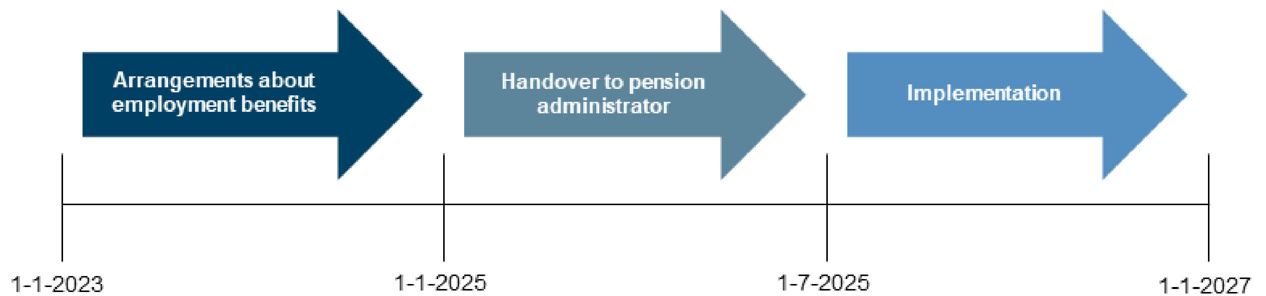
3. The first and second options will be available to all pension administrators, while the third and fourth types may only be offered by insurers. The differences between the types of plans lie mainly in how the risks are shared or insured.
4. In principle, as soon as the new legislative act enters into force, it will only be possible to accrue pension capital through age-independent (i.e. “flat rate”) contributions under a defined contribution plan. The averaging system, as it is known (which combines age-independent contributions with age-independent, and therefore, time-proportionate – accrual of pension entitlements) will be abolished.
5. Existing pension plans will need to be updated in an equitable manner. Social partners (employers and their employees, or else employer and employee organisations acting on their behalf) will need to make every effort to ensure this. This means making arrangements as to whether or not existing and new pension entitlements/rights should be bundled together. This “entitlement conversion”, as it is known, effectively involves a collective value transfer. However, arrangements will also need to be made about compensation (where applicable) and funding.
6. The bill also requires overhauling the tax framework (wage tax) for pension accrual. The existing tax limits will be capped at a uniform fixed percentage of the payroll, which according to the bill is 30% of the pension base (though that maximum will be raised by 3% during the transitional period).
7. The transitional rules make an exception for existing members of defined contribution plans and defined benefit plans administered by insurers. Those transitional rules are based on continuing the progressive contribution system and are not concerned with the type of pension plan. In any event, effective 2026 at the latest (now 2027, with the entry into force being postponed), all pension plans will need to be converted into defined contribution agreements. For insured defined benefit plans (including average-pay plans), employers and employees will need to decide between a system of progressive contributions or age-independent contributions.

4. What is the timeline for the transition?

During the transitional period (2023-2027), management and labour must agree on how to modify their pension plans, on whether or not to convert existing pension entitlements and rights, and on proper compensation. Pension administrators will need to update their pension records to administer the revised pension plans and the transitional arrangements, preferably on or before 1 January 2026, but no later than 1 January 2027.

All the various decisions, considerations and calculations underlying the arrangements for transitioning to the new pension plan will need to be recorded in a transition plan: a document explaining to all stakeholders involved why the particular decisions were made, and how they provide an equitable solution.

The employer is responsible for drawing up the transition plan in the employment benefits phase.



Note 1: although the phases are presented here as separate elements, in practice the phases are likely to overlap.

Click here to download the planned timetable for giving shape to the National Pension Agreement.

5. What are the milestones in the transition period?

The transition plan must be finalised by 1 January 2025 at the latest (milestone 1). The pension administrator must then draw up an implementation plan – including a communication plan – and finalise it by 1 July 2025 (milestone 2). The implementation must be finalised no later than 1 January 2027 (milestone 3). As this shows, some steps need to be completed by specific dates. However, they may also be completed sooner if this is considered best.

6. Should employers act now?

For pension plans, the bill presents the greatest overhaul of the Dutch pension system in recent decades. The changes will impact all existing pension plans. As such, employers should carefully consider the situation and determine how to prepare. If the employer's administration agreement with the pension administrator is due to be cancelled or renewed soon, in those cases, it is advisable to start looking at the bill's potential consequences and what approach would be practical. Drawing up the transition plan is the employer's responsibility. This plan describes the choices, considerations and calculations relating to the changes to the pension agreement and what will happen with accrued pensions, as well as substantiating information. This also includes compensation, where appropriate, for groups that would otherwise be adversely impacted. The transition must be demonstrably equitable for current and former employees and pension beneficiaries.

Click here to download a visual showing the key points of action and timetable.

7. My employees' pension plan is handled by a mandatory industry-wide pension fund. Should I bear anything specific in mind?

The primary responsibility for drawing up a transition plan (or giving the necessary instructions) lies with the employer. If the employer participates in a mandatory industry-wide pension fund, that obligation passes to the parties of the original pension plan, i.e. social partners. It is important, therefore, to carefully monitor information shared by any employer organisations involved.

8. My employees' pension plan is handled by an insurer or a premium pension institution ("PPI"). Should I bear anything specific in mind?

The new system mandates age-independent contribution rates, however, under the transitional rules there is a narrow exemption. This exemption applies to existing members of defined contribution plans and insurer administered administration agreements pre-dating the bill's entry into effect. Those plans currently use progressive contribution rates that increase with the member's age.

In addition, the insurer or PPI should, ideally, make the employer a proposal based on the existing proposal for these pension plans: this will help employers (particularly smaller companies), and insurers and PPIs to keep abreast of all the changes in many thousands of plans. The employer can then use the proposal as a point of reference for employment benefit arrangements. That said, it is important to note that the employer is responsible for making the changes on time, before 1 January 2025, and that employers are free to make their own proposals first.

9. The company has a works council. What rights does the works council have in this connection?

The works council has rights of consent, including changes to the arrangements under a pension agreement. That right of consent will extend to the new pension plan, unless a collective labour agreement dictates otherwise or if the employer falls under a mandatory industry-wide pension fund. The transition plan must be finalised by 1 January 2025 at the latest (milestone 1). This includes the procedure for obtaining the works council's consent. The transition plan must be included in the request for the works council's consent.

The works council has other rights which play an important part in this process. For example, a general discussion with the company's management as to how matters are proceeding, including the management's obligations to discuss resolutions it is preparing on matters requiring the works council's consent. Arrangements will then be made regarding when and how to include the works council. A particular obligation is to provide specific information about any changes to an administration agreement. Essentially, the works council will need to be involved early on in the process. It is safe to assume that the works council will engage an expert/adviser to assist on this issue. The costs will be payable by the company, and in principle the company may not refuse.

10. The company has an employee representation council. What rights does that council have in this connection?

While an employee representation council does not have a right of consent, it does have a limited right to advise on important changes to the employment benefits affecting at least 25% of the workforce. This 25% threshold will presumably be met, and the employee representation council will therefore need to be involved in the process. This advisory right is limited, in that – unlike the advisory right of a works council – an employee representation council cannot bring appeals before the Enterprise Division of the Court of Appeal in Amsterdam. This limited advisory right will also extend to the new pension plan. The transition plan must be finalised by 1 January 2025 at the latest (milestone 1), including the procedure for obtaining consent from the employee representation council. If the company agrees, the council may consult or hire an expert. On request, the council must be sent a copy of the transition plan, although logically this will already be part of the advisory procedure as it explains the reasons for the decisions made.

If you need any help or advice adapting to or preparing for the new pension system, our pension specialists are always available. Contact us to find out more.