Van Doorne for the world of tomorrow.

Key aspects of the Dutch Future Pensions Act

The Dutch pension system is constantly evolving. The introduction of the Future Pensions Act is a good example. The aim is to make the system more balanced, more personal and more transparent. The transition creates leeway for customisation and flexibility. It is a complex process involving many parties. Van Doorne guides its clients through this transition.

Van Doorne

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New Dutch pensions

The pension system in the Netherlands is about to change. The Future Pensions Act came into force on 1 July 2023. This marks the start of a transitional period of several years during which employers and employees will have to reach new agreements on pensions. Pension providers – pension funds, insurers and PPIs – will have to implement these agreements. This is a multi-year transition process that must be completed by 1 January 2027 at the latest.

The Dutch pension system in brief

Three pillars

The Dutch pension system is usually described as having three pillars.

1. State pension: part of the national social security system and consists of pensions based on the Old Age Pensions Act (Dutch acronym: AOW). Contributions are included in payroll taxes.

2. Occupation pension schemes: employer pension schemes that provide a pension that supplements the AOW. The pension scheme must be fully funded and may be operated by a pension fund, an insurance company or a premium pension institution (PPI).

3. Individually arranged pensions: These pensions are largely provided by insurance companies.

Dutch Pensions Act and the Future Pensions

The Dutch 2nd pillar is regulated by the Pensions Act (in Dutch: "Pensioenwet"). The Pensions Act was substantially amended by the Future Pensions Act mid-2023.

No general obligation for employers to offer occupational pensions

Under Dutch law, there is no general obligation for an employer to offer its employees a pension plan. In principle, there is freedom of contract. However, in some sectors of industry social partners (employers' organisations and trade unions) have established mandatory industry-wide pension funds. This covers roughly 70% of the Dutch work-force.

Three legal relationships

1. The employer and the employee enter into a pension agreement ("pensioenovereenkomst"). The pension agreement usually consists of a short paragraph in the employment contract dealing with pensions.

2. An employer who has concluded a pension agreement with his employee(s) must conclude an operating agreement ("uitvoeringsovereenkomst") with a pension operator ("pensioenuitvoerder").

3. The pension operator must draw up pension regulations ("pensioenreglement") in accordance with the pension agreement and the operating agreement. These pension regulations must set out in detail the rights of individual scheme members vis-à-vis the pension fund, insurer or PPI.

In the case of a mandatory industry-wide pension fund, these relationships are established by law. There is then no need to conclude contracts with employees or the pension fund.

What will change?

1. Only defined contribution schemes

In the new system, everyone builds up a pension through a defined contribution scheme. Existing defined benefit schemes operated by pension funds must, in principle, be converted to a defined contribution scheme.

2. Three types of DC pension schemes

In the new pension system, there are three types of defined contribution schemes: 1. the solidarity contribution scheme, 2. the flexible contribution scheme and 3. the contributory benefit agreement.

The solidarity and flexible contribution schemes are new. Participants build up a personal pension capital, which is invested by the pension provider. The solidarity-based and flexible contribution schemes differ in the way financial gains and losses are shared among (active, former and future) participants and pensioners, and how certain risks can be shared/distributed. The degree of choice and flexibility is also different. The contributory benefit agreement is not new and will remain in the revised pension system for employers who place the scheme with an insurer/PPI.

3. Age-independent contribution

In the transition to the new pension system, everyone will move to a flat contribution rate. This means that the average system (the system for pension funds, which assumes an equal contribution rate with equal accrual for each participant) and the progressive defined contribution system (the system especially for insurance companies and PPIs, where the contribution increases with age) will be abolished. The new pension system switches to an equal contribution rate for all participants.

4. Survivors' pension

Under the new pension system, there is only the option of a partner's pension on a risk basis in the event of death before the retirement date. No value is accrued. The risk coverage ends when participation in the pension scheme ends. The survivor's pension to cover the risk of death before retirement is linked to the pensionable salary without considering the number of years of service (service independent). The survivor's pension is based on a percentage of salary, regardless of the length of service. For the partner's pension, a maximum of 50% of the last pensionable salary can be insured. For the orphan's pension, the maximum is 20%.

5. Partner's pension

The Future Pensions Act introduces a uniform partner concept. The requirement for entitlement to a partner's pension as an unmarried cohabitant without a notarized cohabitation contract is that they maintain a joint household. A person who was classified as a partner before the transition and who no longer qualifies as a partner after the transition due to the unified partner concept will continue to be classified as a partner as long as the relevant relationship between the person and the (former) participant continues.

When to act?

Act now, ...

Some pension requirements have already changed from 1 July 2023. For example, the tax exemption for pension savings in the third pillar will be increased from 13% to 30%. The waiting period for temporary workers to start accruing a pension has also been abolished from 1 July 2023. Furthermore, from 1 July 2023, a new high standard of guidance on pension plan choices will apply. Pension providers will have to provide even better guidance on pension choices. Finaly, if a pension scheme is in place, as of 1 January 2024, it cannot have a starting age later than 18 years. The starting age used to be 21 years.

... so all is done before 1 January 2027

Employers, employees and pension providers such as pension funds and insurers have some time to adjust. If employers decide to switch to the new system, pension funds will have to implement this decision by 1 January 2027 or, if Parliament decides, by 1 January 2028. Pension funds will have to ensure that the funding of accrued pensions is spread evenly across all participants.

What needs to be done?

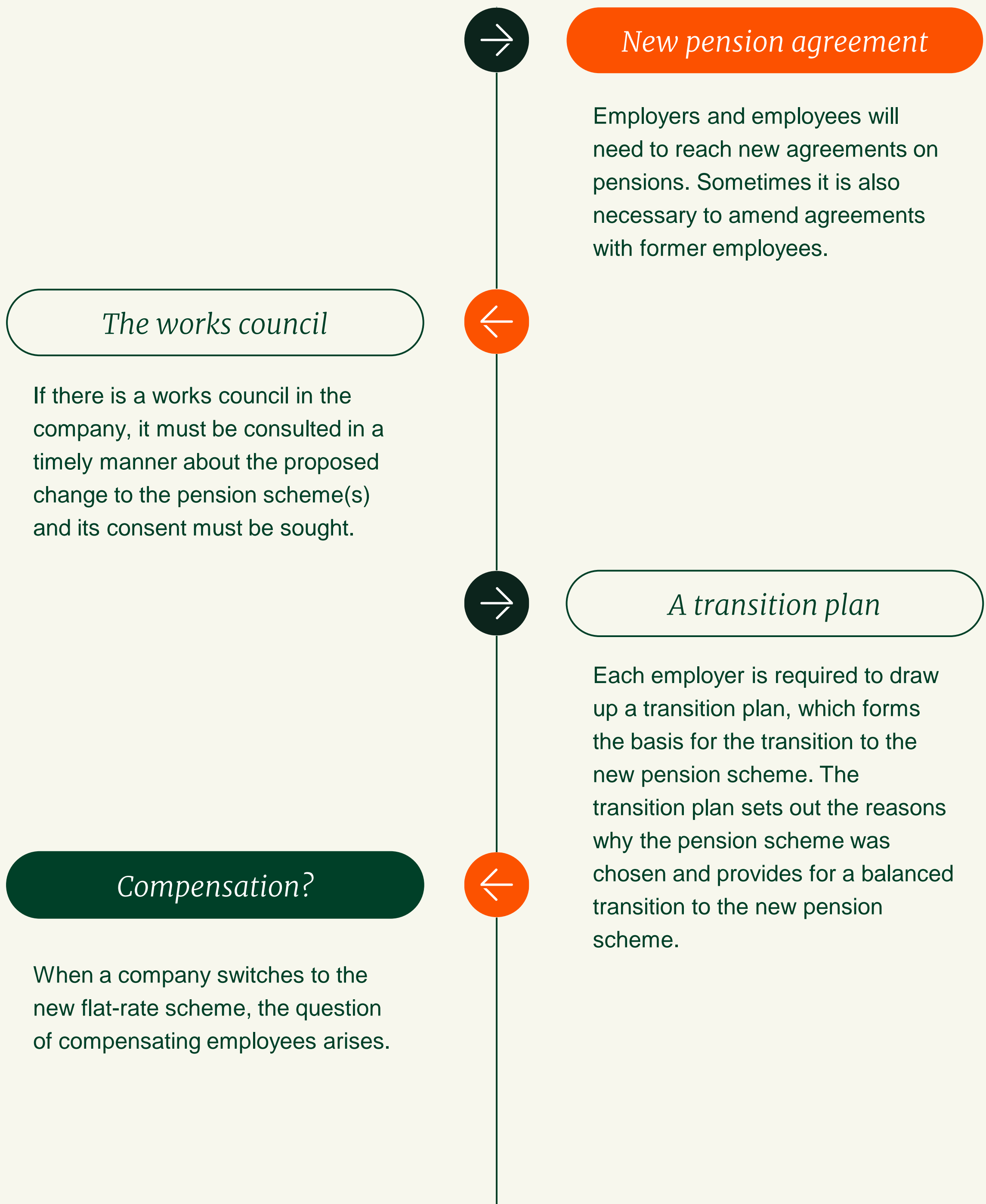
Amendment of the employment contracts

Employers need to decide what type of pension contract to offer their employees. This often means that they will need to amend their employees' contracts of employment. Old schemes that have been transferred to an insurer or Pension Protection Institution (PPI) can often be maintained (see "Maintaining old schemes" below).

Coordinate with your pension provider

Pension providers such as insurers and premium pension institutions (PPI), will adapt their product ranges accordingly and are busy preparing. Pension funds will have to covert the collective 'pension savings pots' into individual savings pots. It is vital that calculations, data and IT are in order so that all pension rights enter the new system correctly. Pension funds will also need to balance interests when transferring to individual savings pots. Most employers and pension providers have already begun preparations.

Changes and decisions by employers



New pension agreement

How can the terms and conditions on pensions in the employment contract be changed?

In principle, a change in the pension scheme can only be made after the consent of the works council has been obtained (if there is one) and the individual agreement of the employees. Sometimes it is also necessary to change agreements with former employees. The employer can, under certain conditions, unilaterally change the pension agreement of employees and former employees without their consent. There must be a written clause and a sufficiently weighty interest. The works council's consent will be taken into account by the court in assessing whether there is a sufficiently weighty interest.

If the employment condition pension is regulated in a collective agreement, the agreement on the new pension scheme requires an amendment to the collective agreement and therefore the involvement of the trade unions. In the case of participation in a compulsory sectoral pension fund, the changed pension scheme applies by law to employers operating in the sector for which the pension fund is compulsory. There is no immediate need to change the terms and conditions of employment unless, for example, other pension arrangements have been made with employees or former employees.

Can I keep the old scheme (for a while)?

Employees who are already participating in the employer's pension scheme at the time the employer switches to the new pension scheme can keep the progressive contribution pension scheme. These employees do not have to switch to a flat-rate contribution. However, for future employees (employees who join after the changeover to the new pension scheme), a flat contribution rate must be applied.

To take advantage of the deferral effect, the current pension scheme must be in place before 1 July 2023 and must have an age-related contribution rate. If the old scheme is not a defined contribution scheme but an average or final salary scheme (defined benefit scheme), it must have been converted to a defined contribution scheme with increasing contributions before 1 January 2027 if an employer wishes to take advantage of the transitional right. Other aspects of the pension scheme must also comply with the new legislation.

The consequence of opting for deferral is that two different pension schemes will co-exist within the company. A distinction will be made between those employees who were employed before the transfer to the new scheme (vested rights) and those who join the company after the transfer to the new scheme.

Works council

If there is a works council in place within the company, it must be consulted in a timely manner about the proposed change of pension scheme(s). The works council has a right of consent not only on the proposed change of the pension scheme, but also on the proposed change of pension provider, if this is an issue. In addition to the (proposed) transitional plan, any compensation measures must also be submitted to the works council. Although the works council represents the employees, the individual employee is in principle only bound if he or she has agreed to the change on an individual basis. The works council does not bind the individual employee, but it does weigh up in the judicial assessment whether there is a sufficiently weighty interest in the change. The works council must also be informed in writing as soon as possible of any proposed decision by the employer to set up, amend or withdraw the pension scheme.

A transition plan

Each employer is required to draw up a transition plan, which forms the basis for the transition to the new pension scheme. The transition plan sets out the reasons why the pension scheme has been chosen and provides for a balanced transition to the new pension scheme. The transition plan is the final part of the consultation between the social partners on the terms and conditions of the new pension scheme.

In the transition plan, the employer sets out in writing the decisions, considerations and calculations underlying the change in the pension agreement and the way in which accrued pension rights and pension entitlements will be treated, as well as the justification for a balanced transition.

The transition plan must include:

- the nature of the modified pension arrangement
- the treatment of accrued pension rights and benefits
- the impact of the change in the pension scheme and the treatment of accrued pension rights
- the arrangements for compensation
- where arrangements have been made for compensation in the form of additional pension rights for participants, the plan for financing that compensation, showing the extent to which each source will be used.

The employer must send the transition plan to the pension administrator within two weeks of its completion. The pension administrator shall make the transition plan available to participants on its website.

Compensation

When a company switches to the new flat-rate pension scheme, the question of compensation arises. In particular, older employees may be disadvantaged by the change. Contributions are currently age-related. This means that the contribution increases as the employee gets older. The future contribution rate will be a flat rate. This means that older workers will pay less and younger workers will pay more than they do now. The changeover from the old to the new pension system may be disadvantageous for some age groups.

It is not stated as such in the law, but the starting point for many is that groups of workers who are adversely affected by the transition to the new pension system should be compensated adequately and cost-neutrally.

This is likely to affect workers in the 40-55 age group in particular. Younger employees are unlikely to be adversely affected by the transition. Adequate compensation does not mean that the disadvantage experienced by some groups of workers should be fully compensated. The purpose of compensation is to enable a balanced transition to the new pension scheme for all your employees.

An employer must include something about compensation in the transitional plan. Compensation outside the terms and conditions of employment is permitted. Compensation can also take the form of a (additional) pension (with the corresponding tax advantages). Special legal rules apply:

- Compensation is only possible until 1 January 2037 at the latest;
- Compensation should be time-proportional (not more or less in one year than in another).
- Compensation applies to all employees (covered by the pension scheme), including future employees.
- Compensation should be by age cohort (blocks of certain birth years) and may vary by age cohort (equal compensation within age cohorts but not necessarily between age cohorts).

The transition plan should include and explain the compensation scheme. It should also cover the financing of the compensation (the financing plan, which is also part of the transition plan; the financing plan is only mandatory if the compensation takes place within the employment condition pension). The compensation can be provided by granting additional pension rights financed by a contribution surcharge. If the compensation is provided by a pension fund, it can also be provided by granting additional pension rights financed by the one-off release of the pension fund's buffers in the event of the transfer of the fund's existing pension scheme to a new defined contribution scheme.

Important questions for your Dutch reports

What do you want to know when you invest in a Dutch company that has a pension plan for its employees? What do you expect the Dutch company to report to you?

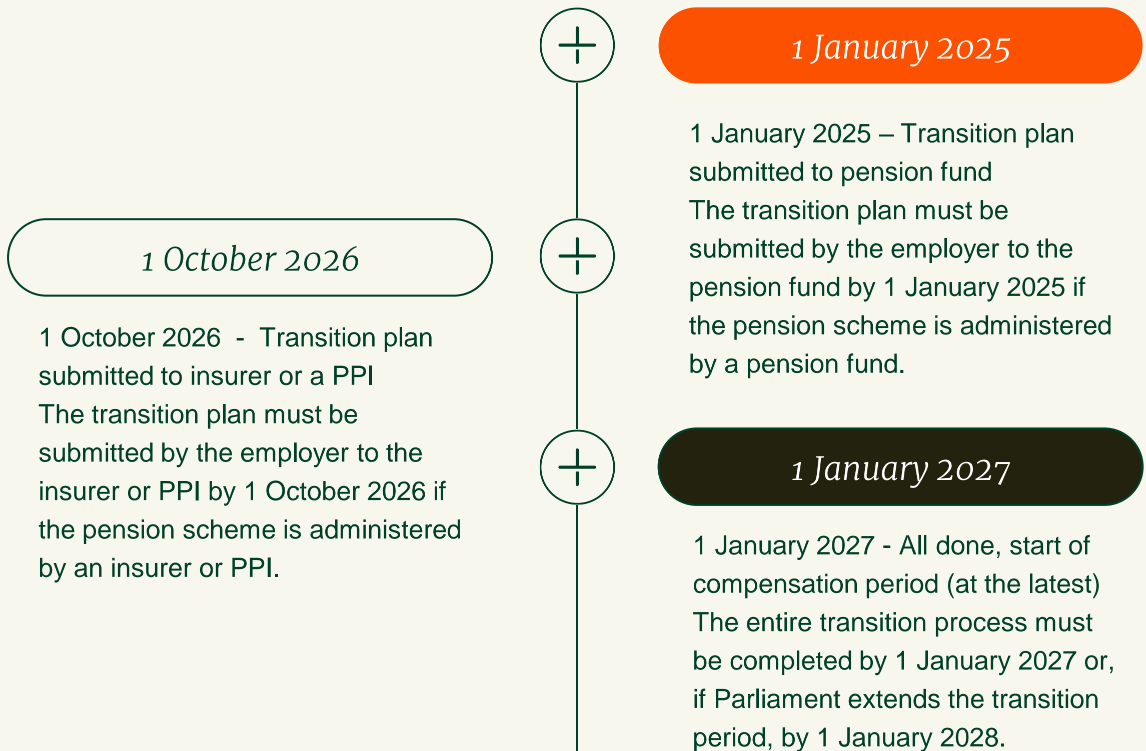
Find out if the company has already started to prepare for the pension transition under the Future Pensions Act:

1. Discussion notes between the social partners.
2. The (draft of the) revised pension agreement.
3. The transition plan, including:
   a) The nature of the amended pension agreement.
   b) How accrued pension rights and entitlements will be treated.
   c) The impact of the amended pension arrangement
   d) How the accrued pension rights and entitlements of participants, former participants, former partners and pensioners will be treated.
   e) The arrangements for compensation.
   f) The plan for funding the compensation.
   g) The arrangements for the initial funding of the pension fund's solidarity reserve or risk-sharing reserve of the pension fund (n.a. if the pension plan is operated by an insurer or PPI).
4. If a transitional committee has been appointed, the request for mediation and/or the binding opinion.
5. The request for the works council's consent (and its response).
6. The opinion of the retiree and/or former participant association (if any).
7. The request / instructions to the pension fund / insurer / PPI.

If the process under the new pension legislation has not yet started, it is important to understand what the timelines are/will be to ensure a timely process. As a minimum, gather the following information:

- How does the company intend to change the pension plan? How has the pension plan been changed in the past?
- Is there a commitment to join an industry-wide pension fund (in which case the individual employer plays a less active role in the transition process)?
- Are there any compensation commitments? To which groups of employees? What are the estimated costs?

Milestones and timeline



1 January 2025

1 January 2025 – Transition plan submitted to pension fund
The transition plan must be submitted by the employer to the pension fund by 1 January 2025 if the pension scheme is administered by a pension fund.

1 October 2026

1 October 2026 - Transition plan submitted to insurer or a PPI
The transition plan must be submitted by the employer to the insurer or PPI by 1 October 2026 if the pension scheme is administered by an insurer or PPI.

1 January 2027

1 January 2027 - All done, start of compensation period (at the latest)
The entire transition process must be completed by 1 January 2027 or, if Parliament extends the transition period, by 1 January 2028.

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