



Department  
for Work &  
Pensions

# Technical Changes to Automatic Enrolment

Public consultation on draft regulations and other  
proposed changes

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March 2013

# Contents

- Introduction..... 3
  - About this consultation ..... 3
  - How to respond to this consultation ..... 4
  - How we consult..... 5
- Executive Summary..... 7
  - Background..... 7
  - Proposed changes to Regulations ..... 7
  - Proposed changes to primary legislation ..... 8
  - Timing of changes..... 8
- Automatic Enrolment – changes to regulations ..... 9
  - Defining pay reference periods for assessing automatic enrolment duties ..... 9
  - Defining pay reference periods for assessing scheme quality ..... 14
  - Introducing consistency for contribution payment deadlines for all joiners..... 15
  - Jobholders who opted out of pension saving before automatic enrolment..... 17
  - Clarifying the form and content of the opt out notice ..... 18
  - The joining window ..... 19
  - Test scheme standard..... 21
- Automatic Enrolment – other changes..... 24
  - Excluding certain categories of worker from the automatic enrolment duty ..... 24
  - Other possible easements for employers providing good pension schemes..... 25
  - Consultation questions..... 28
- Annex A: Draft regulations..... 30

# Introduction

This consultation seeks views on proposals to improve the automatic enrolment process.

Since October 2012, there has been a duty to offer staff a workplace pension. The roll-out of automatic enrolment started with the largest organisations and will be extended to all employers over the next five years.

A number of areas which could benefit from practical or technical improvements have been identified, based on the feedback received in the run up to October 2012 and since implementation. We are also asking some wider questions about how best to establish what is a qualifying scheme for defined benefit or other schemes that exceed the minimum requirements.

An executive summary is provided on page 7.

## About this consultation

### Who this consultation is aimed at

This consultation is aimed at employers, pension schemes, their advisers, and providers of payroll services. We welcome comments, however, on the proposed changes from anyone with an interest in automatic enrolment.

This consultation document can be found on the DWP website at:

<http://www.dwp.gov.uk/consultations/>

### Purpose of the consultation

The purpose of this consultation is to:

- seek comments on whether the draft regulations achieve their intended aims, and
- confirm the changes will simplify the automatic enrolment process

### Scope of consultation

This consultation applies to England, Wales and Scotland.

### Duration of the consultation

The consultation period begins on 25 March 2013 and runs until 7 May 2013.

Please ensure your response reaches us by that date as any replies received after this may not be taken into account.

The Government's new Consultation Principles were introduced on 17 July 2012.

The new Principles are at <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

## How to respond to this consultation

Please send your consultation responses, preferably by e-mail, to:

[workplacepensionreform.consultation@dwp.gsi.gov.uk](mailto:workplacepensionreform.consultation@dwp.gsi.gov.uk)

Or, by post to:

David Hone

Automatic Enrolment Policy

1<sup>st</sup> Floor, Caxton House,

6-12 Tothill Street

London

SW1H 9NA

Please ensure your response reaches us by 7 May 2013.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled. We will acknowledge your response.

We have sent this consultation document to a number of people and organisations who have expressed an interest in these issues. Please do share this document with, or tell us about, anyone you think will want to be involved in this consultation.

We will publish the responses to the consultation in a report on the [consultations](#) section of our website. The report will summarise the responses and the action we will take as a result.

## Queries about the content of this document

Please direct any queries about the subject matter of this consultation to the e-mail address given above.

# How we consult

## Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Freedom of Information Team  
Caxton House  
6-12 Tothill Street  
London  
SW1H 9NA

[Freedom-of-information-request@dwp.gsi.gov.uk](mailto:Freedom-of-information-request@dwp.gsi.gov.uk)

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at [www.dwp.gov.uk/freedom-of-information](http://www.dwp.gov.uk/freedom-of-information)

## The consultation criteria

The consultation is being conducted in line with the new Cabinet Office consultation principles. The key principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected

## **Feedback on the consultation process**

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Elias Koufou  
DWP Consultation Coordinator  
2<sup>nd</sup> Floor  
Caxton House  
Tothill Street  
London  
SW1H 9NA  
Phone 020 7449 7439

[elias.koufou@dwp.gsi.gov.uk](mailto:elias.koufou@dwp.gsi.gov.uk)

In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria. Please also make any suggestions as to how the process of consultation could be improved further.

If you have any requirements that we need to meet to enable you to comment, please let us know.

# Executive Summary

## Background

- 1 Since October 2012, there has been a duty to offer staff a workplace pension. The roll-out of automatic enrolment started with the largest organisations with over 120,000 staff, and will be extended to all employers over the next five years.
- 2 The Government has been gathering information about employers' and pension schemes' early experiences of automatic enrolment. This includes feedback from the Pensions Regulator which is engaging extensively with employers, pensions and payroll providers and the advice community as part of its responsibility for maximising compliance with employer duties.
- 3 As a result, a number of technical changes to legislation are being considered to improve the operation of automatic enrolment for employers and pension providers. This is not a review of Government policy on automatic enrolment into workplace pensions, it is a pragmatic response to practical issues identified during implementation that can be improved.

## Proposed changes to Regulations

- 4 The changes we propose to make through these regulations relate to:
  - Defining pay reference periods for assessing automatic enrolment duties;
  - Defining pay reference periods for assessing scheme quality;
  - Introducing consistency for contribution payment deadlines for all joiners;
  - Jobholders who opted out of pension saving before automatic enrolment;
  - Clarifying the form and content of the opt out notice;
  - The joining window;
  - The test scheme standard for defined benefit schemes.

## Proposed changes to primary legislation

- 5 Some changes are proposed to primary legislation, and the intention is that these will be included in the forthcoming Pensions Bill. These changes are not the subject of this consultation, but for information they are:
- Technical changes to transitional arrangements to ensure they operate as intended where a scheme offers both money-purchase benefits and defined benefits
  - Technical changes to provision for exceptions where automatic enrolment is deferred.<sup>1</sup>
  - Technical changes to ensure penalty notices under sections 40 and 41 of the Pensions Act 2008 only apply to breaches of automatic enrolment duties.<sup>2</sup>
- 6 We are proposing that the Bill should include a power to make regulations excluding specified groups of individuals from automatic enrolment. More information on this can be found on page 24.

## Timing of changes

- 7 We want to make changes as soon as possible, but we also recognise the need for stability and to allow time for providers and others to prepare.
- 8 Our proposal is that the regulations should be brought into force in time for April 2014, and we expect to lay secondary legislation before Parliament before the summer recess. We will consider bringing specific changes into force earlier if consultation responses show there is demand and it can be achieved without unwelcome consequences.
- 9 We expect all the proposed changes to primary legislation to be included in the Pensions Bill when it is introduced.
- 10 Employers will need to carry on complying with the law as it stands until any changes are brought into force.

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<sup>1</sup> This measure is contained in the draft Pensions Bill (clause 34), published 18 January 2013. The draft Pensions Bill can be found at [www.dwp.gov.uk/draft-pensions-bill](http://www.dwp.gov.uk/draft-pensions-bill)

<sup>2</sup> This measure is contained in the draft Pensions Bill (clause 35), published 18 January 2013. The draft Pensions Bill can be found at [www.dwp.gov.uk/draft-pensions-bill](http://www.dwp.gov.uk/draft-pensions-bill)



# Automatic Enrolment – changes to regulations

## Defining pay reference periods for assessing automatic enrolment duties

### Background

- 11 Under Part 1 of the 2008 Act employers have a duty to automatically enrol eligible jobholders into a pension scheme that meets minimum standards.
- 12 Eligible jobholders are defined in section 3 of the Pensions Act 2008 as those that:
  - Are aged at least 22,
  - Are not of pensionable age, and
  - Have earnings more than £8,105 (the earnings trigger) in the relevant Pay Reference Period (£9,440 from 6 April 2013).
- 13 The pay reference period used in deciding whether a jobholder is eligible for automatic enrolment is defined in regulation 4 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010. The same definition is used for deciding whether a worker is a jobholder under section 1 and for automatic re-enrolment under section 5 of the Pensions Act 2008. The pay reference period is defined as:
  - in the case of a person paid by reference to a period of a week, the period of one week;
  - in the case of a person paid by reference to a period longer than a week, that longer period.

### The issue

- 14 The current definition of a payroll reference period can be difficult for payroll systems which have been developed to work for PAYE and NICS. This can make it hard to match a payment of salary or wages to the relevant pay reference period adopted for the purpose of assessing jobholder status.
- 15 It can also cause significant challenges for payroll systems when the earnings trigger and qualifying earnings band change. These figures will normally change from the start of a tax year (6<sup>th</sup> April) which under the current definition

will most likely be part way through a pay reference period. Again, this is not something payroll systems are currently set up to deal with.

## What we propose

- 16 We want to make it easier for employers to use existing payroll processes to determine whether a worker is a jobholder or an eligible jobholder. To do this, we are proposing to add a new way to determine a pay reference period. The aim of this is to allow employers the option of using periods already recognised by established payroll software. This will run alongside the existing provision which will remain unchanged for any employer that wishes to carry on using it.
- 17 In order to determine whether a jobholder has trigger or qualifying earnings, an employer needs to establish which pay reference period is the “relevant” pay reference period for assessing earnings, and what earnings are payable in that period.
- 18 Current payroll systems are designed to operate PAYE and NICS, both of which are linked to tax periods (weeks and months), paydays and pay frequency.
- 19 From 6 April 2013, most employers will have to start reporting PAYE information to HMRC in real time (RTI). This means employers will have to send details to HMRC every time they pay an employee, using payroll software to send this information electronically as part of their routine payroll process. The RTI process means there is some information every payroll system will have to capture.
- 20 The information with each payment submission will include:
  - the pay frequency and the tax week or tax month applied to the payment, and;
  - the number of earnings periods covered by the payment.
- 21 We want to allow employers to use payroll systems to calculate whether a worker has qualifying earnings with the information that will already be available. To do this, we propose to give employers the option to adopt a different approach to determining pay reference periods, driven by the date on which the wage or salary falls to be paid.
- 22 For the alternative method we propose:
  - Defining the length of a pay reference period as the period equal in length to the period by reference to which the person is paid their regular wage or salary. So if the worker is paid on a weekly basis the pay reference period will last for one week.

- Defining the first day of the pay reference period as the first day of the tax week or month in which the payable earnings fall to be paid. So if the person is paid on Friday, the pay reference period will start on the first day of the tax week that covers that day.
  - If the worker is paid by reference to something other than a period of a week or a month, the pay reference period will be a multiple of weeks or months as appropriate.
- 23 With this approach, the process of assessing qualifying earnings will start with determining the day on which the person is paid. From that the pay reference period can be determined. The earnings payable in the pay reference period will then be used to assess whether there are qualifying earnings. This will make it easier for payroll to assess jobholder status.
- 24 The automatic enrolment date will still be the first day on which all the eligibility conditions are satisfied.
- 25 The changes are in regulation 4(2) of the draft regulations attached at **Annex A**.

## Examples of how the changes work in practice

The following examples assume the other eligibility conditions are satisfied and that the only thing left to determine is whether the jobholder has qualifying or trigger earnings in a relevant pay reference period.

### Example 1:

**Harvey is a new joiner who is paid monthly.** He joins the company on the 1<sup>st</sup> of April. He is paid on the last day of the month in respect of the same calendar month, so in April he is paid on 30<sup>th</sup> for the work he does from 1<sup>st</sup> to 30<sup>th</sup>.

If the employer opts to align with tax periods:

- The pay reference period lasts for one month as this is the period equal in length to the period by reference to which Harvey is paid his regular wage or salary.
- The first pay reference period starts on first day of the tax month which includes Harvey's first pay day. As Harvey is paid on 30<sup>th</sup> April this will be 6<sup>th</sup> April and the first pay reference period runs for one month from 6<sup>th</sup> April to 5<sup>th</sup> May. Although Harvey's start date falls within the pay reference period from 6<sup>th</sup> March to 5<sup>th</sup> April, because no earnings fell to be paid in that month it is not relevant under the new definition.
- The earnings payable in the pay reference period are whatever is payable on 30<sup>th</sup> April. If this triggers the duty to enrol, the automatic enrolment date will be 6<sup>th</sup> April – the first day of the pay reference period.
- Contributions will be deducted at the end of April, in respect of earnings from 6<sup>th</sup> April.

### Example 2:

**Samantha is an existing member of staff at an employer that reaches its staging date on Monday 1<sup>st</sup> April.** She is paid monthly on the last day of the month in respect of the same calendar month. So in April he is paid on 30<sup>th</sup> for the work she does from 1<sup>st</sup> to 30<sup>th</sup>.

If the employer chooses to align with tax periods:

- The pay reference period lasts for one month as this is the period equal in length to the period by reference to which Samantha is paid her regular wage or salary
- Samantha's first payday after the staging date is 30<sup>th</sup> April. This falls in the tax month that runs from 6<sup>th</sup> April to 5<sup>th</sup> May, so this will be the relevant pay reference period. Although the staging date for Samantha falls within the pay reference period from 6<sup>th</sup> March to 5<sup>th</sup> April it is not a relevant pay reference period for assessing status under the new provision as the earnings are payable before the staging date.
- The earnings payable on 30<sup>th</sup> April are used to assess whether she is an eligible jobholder.
- If she is an eligible jobholder, the automatic enrolment date will be 6<sup>th</sup> April – the first day of the relevant pay reference period.
- Contributions will be deducted at the end of April, in respect of earnings from 6<sup>th</sup> April.

### Example 3:

**Fred is a new joiner who is paid weekly.** He joins the company on Monday 8<sup>th</sup> April, he is paid weekly for the week Monday to Sunday, payable on the following Friday.

If the employer opts to align with tax periods:

- The pay reference period lasts for one week as this is the period equal in length to the period by reference to which Fred is paid his regular wage or salary
- The pay reference period starts on first day of the tax week which includes Fred's first pay day. As the first payday after Fred joined the company is Friday 12<sup>th</sup>, the first pay reference period after he joins the company will be from 6<sup>th</sup> to 12<sup>th</sup> April.
- Because he is paid in arrears no earnings are payable on the payday in that pay reference period, and there is no duty to enrol.
- The next pay reference period is from 13<sup>th</sup> to 19<sup>th</sup> April. On the payday in this period (Friday 19<sup>th</sup>) Fred is paid for the work he did from 8<sup>th</sup> to 14<sup>th</sup> April. If this is enough to trigger enrolment, his automatic enrolment date will be 13<sup>th</sup> April as this is the first day of the pay reference period where sufficient earnings are payable.
- Contributions are payable from 13<sup>th</sup> April, and will be deducted on 19<sup>th</sup> when the earnings from 8<sup>th</sup> to 14<sup>th</sup> are payable.

#### Example 4

**Charlie is a new joiner who is paid fortnightly.** She joins the company on Monday 15<sup>th</sup> April, is paid for two weeks starting on Monday and her payday is the following Friday.

If the employer opts to align with tax periods:

- The pay reference period lasts for two weeks as this is the period equal in length to the period by reference to which Charlie is paid her regular wage or salary
- The first day of the first pay reference period after Charlie joins the company will be 13<sup>th</sup> April as this is the first day of the tax week in the pay reference period which includes the first payday after she joins
- The first pay reference period runs from 13<sup>th</sup> April to 26<sup>th</sup> April. The first payday after Charlie joins is 19<sup>th</sup>, but as she is paid in arrears no earnings are payable on that date.
- As no earnings are payable on the payday in that pay reference period, there is no duty to enrol
- The next pay reference period is from 27<sup>th</sup> April to 10<sup>th</sup> May, which includes the next payday on 3<sup>rd</sup> May. If earnings payable on 3<sup>rd</sup> May are enough to trigger the enrolment duty, his automatic enrolment date will be 27<sup>th</sup> April as this is the first day of the pay reference period where sufficient earnings are payable
- Contributions are payable from 27<sup>th</sup> April, and will be deducted on 3<sup>rd</sup> May when earnings from 15<sup>th</sup> to 28<sup>th</sup> are payable.

**Q1** – Does the existing approach to pay reference periods cause you any difficulties? If it does, can you explain how, if possible with specific examples?

**Q2** – Will adding the proposed alternative method of determining a pay reference period to align with tax and NICS periods make assessing jobholder status more straightforward?

### Transitional Issues

- 26 The proposed changes to the pay reference period regulation aim to make assessment of earnings significantly easier for many employers. We are also conscious, however, that employers who have already staged have done so under existing legislation. We do not want to force employers who have already staged to change anything as a result of the proposed changes.
- 27 We propose running the existing and new provisions alongside each other, with the employer having the discretion to determine which to apply. Employers will want to discuss and agree their approach with their pension and payroll providers.

28 We therefore propose to bring the new requirements into force as quickly as possible, giving employers in a position to use the new approach the opportunity to take advantage of this improvement sooner than April 2014.

**Q3** – Should both the old and the new definitions of a pay reference period remain in force? If so for how long?

**Q4** – If we allow a period where both the old and new definitions of a pay reference period are in force, would it be useful to bring the new requirements as soon as possible.

## Defining pay reference periods for assessing scheme quality

### Background

29 To meet their obligations under part 1 of the Pensions Act 2008, employers are required to enrol eligible jobholders into a qualifying scheme. One of the conditions for being a qualifying scheme is that it meets the quality requirements set out in sections 20 to 28 of the Pensions Act 2008.

30 One of the quality requirements relates to the level of contributions under the rules of the scheme:

- the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period;
- the total amount of contributions paid by the jobholder and the employer, however calculated, must be equal to or more than 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.

(Note this is subject to transitional provision – the current minimum rates are 1% employer and 2% total).

31 Pay reference periods for the purpose of the quality requirements for money purchase occupational pension schemes and personal pension schemes are defined in regulation 5 of the [automatic enrolment regulations](#). Apart from the first period which depends on when the person first becomes an active member under automatic enrolment, each subsequent period is one year starting with the anniversary of the employer's staging date. This means the scheme must provide for the minimum contributions to be paid on the qualifying earnings in each one year period.

## The issue

- 32 There are circumstances where contributions calculated and deducted from monthly or weekly pay are less than contributions when calculated on an annual basis. This won't happen where there are consistent monthly or weekly earnings but could happen, for example, where a bonus paid in one month causes the earnings for that month to exceed the upper limit of the qualifying earnings band.
- 33 This makes it difficult for schemes to be certain they have collected enough contributions without performing an annual reconciliation for each member. This is not the intention. The intention is that a scheme and employer should be able to satisfy the quality requirement simply by requiring the minimum contributions under the scheme.

## What we propose

- 34 We propose that the revised definition of pay reference period being adopted for the purpose of assessing jobholder status as set out above should also be used for assessing scheme quality. This will remove the possibility of a mismatch between contributions calculated on the basis of pay periods and contributions calculated annually.
- 35 The changes are in regulation 4(2) and (3) of the draft regulations attached at **Annex A**.

**Q5** – Does adopting the revised definition of a pay reference period for assessing scheme quality remove any possible need for annual reconciliation for automatic enrolment compliance?

**Q6** - Are there any potential difficulties with the proposed change you wish to highlight?

**Q7** – Is there any reason not to bring the revised definition of a payroll reference period for assessing scheme quality into force as soon as possible?

## Introducing consistency for contribution payment deadlines for all joiners

### Background

- 36 Employers are required to pass contributions deducted from a jobholder's pay to the pension scheme by the 19<sup>th</sup> or 22<sup>nd</sup> day of the month after the month in

which the deduction was made (the 22 day limit applies if the payment is sent electronically). This deadline is extended to the last day of the second month after the month which includes the automatic enrolment date for contributions deducted before the end of the opt out period. This gives employers the option to retain the contributions until the possibility of an opt out has passed in most circumstances. Thereafter, the deadline is the normal 19<sup>th</sup> or 22<sup>nd</sup> day.

## The issue

- 37 This extended deadline currently only applies to jobholders and to contributions taken as part of the automatic enrolment, re-enrolment or opt in process. It does not apply to contributions deducted from pay for entitled workers (those with earnings under the lower limit of the qualifying earnings band.) Nor does it apply to contributions taken as a result of workers joining a pension scheme under the terms of a contract of employment (“contract joiners”). A single rule for the payment of contributions to the scheme for all new joiners may make the administration easier.

## What we propose

- 38 We propose to increase the scope of the extended deadline to all new joiners. As there is no opt out period in respect of entitled workers or contract joiners we propose to change the definition so that the extended deadline applies to contributions deducted during the first two months of membership, irrespective of the enrolment circumstances.
- 39 The extended deadline is permissive. Employers can choose to pay contributions over earlier.
- 40 The changes are in regulation 2 and 3 of the draft regulations attached at **Annex A**.

**Q8** – Does extending the deadline for passing over contributions make administration easier?

**Q9** – Are there any risks associated with extending the deadline in this way?

**Q10** – Is there any reason not to bring the change to contribution payment deadlines into force as soon as possible?

- 41 Contributions deducted after the first two months would still have to be passed over to the scheme by the 19<sup>th</sup>/22<sup>nd</sup> day of the next month to maintain payments and the flow of contributions into pension saving.



# Jobholders who opted out of pension saving before automatic enrolment

## Background

- 42 Automatic enrolment into workplace pension saving applies to all eligible jobholders as soon as the employer's statutory duty applies. In practice many employers make membership of a workplace pension scheme part of the contract of employment (so called "contract joining") and workers join the scheme in advance of their automatic enrolment date.
- 43 Contract joining can continue in an automatic enrolment environment, and many employers are choosing to operate this way. Providing the employer is using a scheme that meets the minimum quality requirements they will meet their automatic enrolment obligations.

## The issue

- 44 Contract joining does not take away the duty to automatically enrol in every circumstance. Any individuals who are contractually enrolled who then cancel their membership still have to be automatically enrolled when they become eligible jobholders for the first time, even if they have only recently cancelled active membership. This adds to the employer's administrative burdens and may cause frustration or confusion for people who have decided, for whatever reason, that pension saving is not right for them at this time.
- 45 An employer is not required to automatically re-enrol anyone who has opted out within the previous 12 months.<sup>3</sup> We have been asked to consider a similar easement to turn off the employer duty at automatic enrolment where a member has recently opted out of pension saving.
- 46 One argument put forward for not providing such an easement is that it would introduce a new monitoring requirement, as employers would need to keep records of anyone cancelling or ceasing pension scheme membership before automatic enrolment. Arguably, however, employers have to monitor all jobholders anyway, and the only difference is they would be monitoring jobholders who cancelled membership after contract joining to make sure that they do not automatically enrol them rather than monitoring to ensure they do.
- 47 Such a provision would require an employer using contract joining to defer any further enrolment action for anyone who cancelled active membership within a prescribed period until the three yearly re-enrolment exercise. It cannot,

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<sup>3</sup> regulation 14 of the automatic enrolment regulations

however, be optional. An employer could not choose whether or not to use the easement.

## What we propose

48 The draft Regulations provide for an exclusion from automatic enrolment duties in respect of any jobholder who voluntarily ceased active membership in the 12 months before the duty would otherwise have arisen. We welcome responses about the principle of turning off the automatic enrolment duty for people who choose to leave a scheme and the appropriate length of any prescribed period. We would also welcome views on the monitoring requirements

49 The change is in regulation 4(5) of the draft regulations attached at **Annex A**.

**Q11** – Should there be a prescribed period under section 3(4) of the Pensions Act 2008 to turn off the automatic enrolment duty? Please set out the reasons for your view.

**Q12** – If so, how long should that period be?

**Q13** – Does the ongoing monitoring requirement limit how useful this would be as an easement?

## Clarifying the form and content of the opt out notice

### Background

50 Following automatic enrolment, an individual has the right to opt out of pension saving. The opt out right only starts once the person is an active scheme member and has been given information that includes details about the scheme, how much it will cost and how much the employer will contribute. The member then has a month to opt out by giving notice to the employer.

51 We want any decision to opt out to be considered in full knowledge of the potential effects of opting out on retirement income, the importance of the employer's contribution and the right to opt back in. Once a decision has been made to opt out we want the process to be straightforward.

## The issue

- 52 The Regulations set out the minimum content of an opt out notice. We expect schemes to add branding and supplementary information about pension saving and we also anticipate schemes will need to adapt the form to make it suitable for on-line completion and submission.
- 53 Some stakeholders have expressed concern that the Regulation as drafted may be more restrictive than we intended.

## What we propose

- 54 We propose a minor amendment to the Regulations to put beyond any doubt the intended flexibility. Opt out notices must be in substantially the same form as set out in the Schedule 1 to the Regulations. This does not mean that notices have to look exactly like the schedule. The proposed amendment also includes provision to put beyond doubt that any opt out notice which meets that requirement and is accepted before these amending regulations come into force, will explicitly be deemed valid under the new regulations. This is intended to remove any risk of past opt out notices being called into question as a result of this amendment.
- 55 The changes are in regulation 4(7) of the draft regulations attached at **Annex A**.

**Q14** – Do the proposed changes on the form of opt out notices make it easier to design and use?

**Q15** – Is there any reason not to bring the clarification on the form of opt out notices into force as soon as possible?

## The joining window

### Background

- 56 An employer has one month from the automatic enrolment date to achieve active membership and issue enrolment information to the jobholder – “the joining window”. The jobholder then has one month to opt out. The Pensions Act 2008 does not define what must be done to achieve active membership. That is a matter for the pension scheme.
- 57 The end of the one month joining window is a deadline not a target. The employer may be able to complete the joining process far earlier. The one month opt out window starts when the joining process is complete.

## The issue

- 58 In some situations an employer may find it difficult to meet the one month deadline. This is most likely to happen where workers with widely fluctuating earnings or zero hours contracts are automatically enrolled. In this situation, it may not be possible to assess earnings until payroll is run, meaning that some time may have elapsed since the automatic enrolment date before the employer can start the joining process. Consequently schemes may not have enough time to complete their part of the joining process by the current deadline. This may put the employer in breach of the duty.
- 59 We propose to protect the employer from unwitting non-compliance and allow schemes sufficient time to achieve active membership by the deadline.
- 60 In deciding how far to extend the deadline we also have to consider the interests of the jobholder. The joining window should be long enough to allow employers and schemes time to do what they have to do as soon as they know the facts. It should not be too long so that deductions from wages continue when the person who wants to opt out cannot stop them.
- 61 It continues to be the case that we would not expect employers to leave it until the end of the joining window where the facts are known much earlier, for example where earnings are payable weekly and eligibility can be established relatively early in the window.

## What we propose

- 62 We propose extending the deadline from one month to six weeks.
- 63 The changes are in regulation 4(4), (6) and (8) to (11) of the draft regulations attached at **Annex A**.

**Q16** - Do you think extending the deadline from one to six weeks strikes the right balance between the needs of employers and jobholders?

**Q17** - An extended joining window could cut across the disclosure requirements that are currently linked to a one month joining window. Would this cause administrative difficulties?

# Test scheme standard

## Background

- 64 The test scheme is a hypothetical defined benefit scheme. The benefits of the test scheme are compared with those payable from schemes to be used as qualifying schemes to meet an employer's automatic enrolment duties. Only those non-contracted-out schemes that satisfy the test scheme standard in relation to all relevant jobholders may be used as qualifying schemes. Contracted-out schemes will qualify without needing to meet the standard if a reference scheme test certificate has been issued in respect of all relevant jobholders.
- 65 Section 23(2)(a) of Pensions Act 2008 and regulation 39 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 ('the automatic enrolment regulations') set out the requirements for a defined benefits pension test scheme. Section 23(2)(b) of the Pensions Act 2008 and regulation 39A of the automatic enrolment regulations set out the requirements for defined benefits lump sum test schemes.
- 66 We are proposing to amend three aspects of the regulations:
- (1) application of the "appropriate age" requirement,
  - (2) the maximum service limit for lump sum test schemes, and
  - (3) the revaluation requirements for lump sum test schemes providing average salary benefits.

## The issues

### The appropriate age

- 67 Section 23 of the Pensions Act 2008 requires a test scheme to provide either for a member to be entitled to a pension commencing at the 'appropriate age', or a lump sum to provide benefits to be made available to a member commencing at the same 'appropriate age'. That age is 65 or any higher age prescribed. Regulation 38 of the automatic enrolment regulations provides for staged increases in the appropriate age to 66, 67 and then 68 from 2020, 2034 and 2044 respectively.
- 68 Regulation 38 prescribes the 'appropriate age' for the purposes of s23(2), i.e. the pension age in the test scheme. The intention is that the appropriate age should mirror the State Pension Age including the planned increases to 66, 67 and 68.
- 69 It should be possible for someone determining whether their scheme meets the test scheme standard to be able to take future increases in state pension

age into account if their scheme is mirroring those. The wording of regulation 38(2) means, however, that only determinations made after the dates in the table (6<sup>th</sup> April 2010, 6<sup>th</sup> April 2034 and 6<sup>th</sup> April 2044) can allow for the higher pension age in the test scheme.

- 70 The result is that the test is harder for schemes that provide for a normal pension age that mirrors the state pension age to satisfy than was intended. The normal pension age for a younger member in such a scheme now may be 66 or higher but the Appropriate Age in the test scheme would remain 65 until 2020. So the benefits in the scheme being compared with those from the test scheme would have to be better in some way (accrue at a higher rate) in order to make up for the fact that entitlement to the pension or lump sum will be from a later date.

### **The maximum service limit**

- 71 Regulation 39A of the automatic enrolment regulations provides requirements relating to the lump sum test schemes. There are two alternative requirements that lump sum schemes not linked to final salary need to satisfy:

- (1) the sum of money made available for the provision of benefits at retirement must be 16% of average qualifying earnings for each year of pensionable service multiplied by up to a maximum of 40 years of pensionable service, or
- (2) the sum of money at retirement must be 8% of average qualifying earnings and until the date the member reaches the appropriate age, the sum must be increased as a minimum by 3.5% per annum in addition to any statutory increases in deferment

- 72 The intention was for the requirement that the sum of money be multiplied by up to a maximum of 40 years of pensionable service to apply equally to schemes where the lump sum amounts to 8% of average qualifying earnings each year of pensionable service but it was omitted from the regulation. The consequence of there not being such a limit means that the quality requirements are inconsistent for lump sum schemes.

### **The revaluation of benefits in lump sum test schemes providing average salary benefits**

- 73 Lump sum schemes that provide average salary benefits must, if they are to be used as qualifying schemes, meet the requirement in regulation 36 of the automatic enrolment regulations that accrued benefits must be revalued annually in service at no less than the minimum rate, i.e. the lower of RPI, CPI or 2.5%.
- 74 The intention was that that level of revaluation in service should be reflected in both test schemes for lump sum schemes not linked to final salary and in addition to the annual increases mentioned above at 71(2). Without it the

levels of revaluation in the test schemes for lump sum schemes not linked to final salary are uneven in service and in deferment and the standard for these schemes is slightly weaker than originally intended.

## What we propose

75 We propose amending regulation so that:

- employers and actuaries making determinations as to whether a scheme satisfies the test scheme standard in relation to a jobholder can take into account future increases in state pension age rather than having to wait until the changes take effect,
- the test scheme for lump sum schemes not linked to final salary are consistent with regard to the maximum limit on the number of years of pensionable service by which the sum to be made available for the provision of benefits at retirement must be multiplied, and
- lump sum test schemes not linked to final salary that provide for a sum at retirement of 8% of average qualifying earnings for each year of pensionable service must provide for annual increases of 3.5% of qualifying earnings in excess of minimum levels of revaluation linked to inflation both in service and in deferment.

76 The changes are in regulation 4(12) and (13) of the draft regulations attached at **Annex A**.

**Q18** – Does the proposed amendment to the definition of appropriate age have the desired effect?

**Q19** – Does the proposed amendment to maximum service limit for lump sum schemes have the desired effect?

**Q20** – Does the proposed amendment to the revaluation requirement for certain lump sum schemes have the desired effect?

**Q21** – Is there any reason not to bring the changes to the test scheme requirements into force as soon as possible?

# Automatic Enrolment – other changes

## Excluding certain categories of worker from the automatic enrolment duty

### Background

77 At the moment the employer duty to enrol into a workplace pension scheme applies to all jobholders who meet the eligibility criteria set out in section 3 of the Pensions Act. The jobholder has the right to opt out of pension saving.

### The issue

78 Current legislation relies solely on the jobholder to determine whether they should opt out of pension saving. There may, however, be people who are not currently saving in a pension scheme for whom further pension saving is not appropriate, or where further pension saving could result in financial detriment.

79 At the moment there is no general power in the Pensions Act 2008 that allows us to lift the employer duties for specific descriptions or categories of jobholders in regulations.

### Enhanced / fixed tax protection cases

80 There are a number of individuals with existing pension savings who are protected from tax charges under HMRC enhanced or fixed protection provisions. Automatic enrolment puts this status at risk because of the automatic nature of the employer duty, with no involvement, choice or decision from the individual worker. At the moment the only option available is to opt out, but if for any reason the jobholder doesn't do so within the time limit they could face significant tax charges.

### Active members of money purchase schemes who have given notice of retirement

81 The employer duty under the Act is to put an eligible jobholder into active membership of an automatic enrolment scheme and maintain membership unless the individual chooses to opt out of pension saving.



82 However, once a member has given notice of retirement, there seems little benefit in making further contributions to a new pension scheme. The scheme may decide to do nothing more than hold them in a cash account, and the member may have difficulty accessing what may be a relatively small sum of money.

## **People who hand in their notice during a deferral period**

83 An employer can choose to defer automatic enrolment into a money purchase scheme for up to three months and can defer enrolment into an open defined benefit or hybrid scheme until 2017. If the period of their notice spans the deferral date, the legislation currently obliges an employer to automatically enrol someone they know is about to leave their employment. This is an unnecessary administrative burden and automatic enrolment doesn't seem appropriate in this situation.

## **What we propose**

84 We propose to insert a clause in the forthcoming Pensions Bill to provide regulation making powers to exclude workers of a prescribed class or description from the scope of automatic enrolment.

85 The examples above are not final proposals. In some cases an exclusion from automatic enrolment could create additional administrative burdens that could offset any advantages. An employer might not know, for example, whether a worker is covered by enhanced or fixed protection. The Government will consult formally on draft regulations.

**Q22** – Are there categories or descriptions of worker for whom automatic enrolment is inappropriate? If yes, can you say who they are and why?

## **Other possible easements for employers providing good pension schemes**

### **Employer duties**

86 The workplace pension reforms are designed to get people who should be saving for a pension into a pension scheme which meets minimum standards. We do this by requiring employers to automatically enrol workers who are old enough and earning enough into a qualifying workplace pension scheme.

87 Depending on their earnings, workers who are not automatically enrolled either have a right to opt in to a pension scheme which meets the same

minimum standards (non eligible jobholders), or to join a tax registered pension scheme and have contributions deducted from their earnings (entitled workers).

- 88 Some employers have elected to go beyond the strict requirements of the law and enrol all their workers into a pension scheme, regardless of age or earnings, often before they are required to. To do this, employers must obtain the worker's consent to deduct pension contributions, and they often use contractual agreements with their staff (for example the contracts of employment) to obtain this consent. Pension membership cannot be a condition of employment so there must be an option for the worker to cancel membership and receive a refund if they do not want to be a member. The practical outcome is that all of their workers, regardless of age and earnings, will be enrolled into a pension scheme which meets the minimum standards for automatic enrolment.
- 89 These employers are still subject to the duties imposed by the Pensions Act 2008, so they are still required to monitor and assess the workforce against the jobholder eligibility criteria and take any necessary action, including notifying jobholders of their status at the appropriate times.
- 90 If an employer is contractually enrolling all workers into an automatic enrolment qualifying scheme they are arguably doing more than they need to. The Government would like to explore whether there could be a way for these employers to be certified or to self-certify that they are meeting the policy objectives and therefore could possibly be exempt from the explicit employer duties.
- 91 Part of this will involve looking at whether there is anything employers might need to demonstrate, beyond contractual enrolling all workers into an automatic enrolment qualifying scheme, in order to be certified or allowed to self-certify.

**Q23** – Would it be a good idea to allow employers contractually enrolling all workers into an automatic enrolment qualifying scheme to be certified or to self-certify that they are meeting the policy objectives and therefore are exempt from the explicit employer duties?

**Q24** – Is there anything employers might need to demonstrate, beyond contractual enrolment of all workers into an automatic enrolment qualifying scheme, in order to be certified or allowed to self-certify?

## **DB Quality Requirement**

- 92 Employers who use a Defined Benefit (DB) scheme to meet their automatic enrolment duty need to ensure their scheme meets the minimum quality requirements.

- 93 Currently, where an individual is in contracted-out employment, the quality requirement is automatically satisfied. Where this is not the case, employers must ensure that their scheme meets the Test Scheme Standard (TSS) in sections 22-23 of the Pensions Act 2008. In straightforward cases, guidance sets out how employers can certify that their scheme meets the TSS. In more complex cases, the scheme actuary will need to certify the scheme.
- 94 Contracting out will come to an end in April 2016 with the introduction of a single tier state pension, and from that time employers with DB schemes will no longer be able to rely on a contracting out certificate and will need to meet the TSS.
- 95 The Government is keen to explore whether there are simpler ways to determine whether schemes which are not money purchase schemes (including Defined Ambition schemes) are good enough to be automatic enrolment qualifying schemes.
- 96 This could include considering whether there is a need for quality requirements for DB schemes, or whether they always provide good quality pensions.
- 97 It could also include looking at whether there are simpler measures of quality that could be used for automatic enrolment purposes.

**Q25** – For the purpose of automatic enrolment, is a quality requirement needed for DB schemes at all?

**Q26** – Is there a simpler way of determining whether a DB scheme is "good enough" to be used for automatic enrolments?

## Consultation questions

**Q1** – Does the existing approach to Pay reference periods cause you any difficulties? If it does, can you explain how, if possible with specific examples?

**Q2** – Will adding the proposed alternative method of determining a pay reference period to align with tax and NICS periods make assessing jobholder status more straightforward?

**Q3** – Should both the old and the new definitions of a pay reference period remain in force? If so for how long?

**Q4** – If we allow a period where both the old and new definitions of a pay reference period are in force, would it be useful to bring the new requirements as soon as possible.

**Q5** – Does adopting the revised definition of a payroll reference period for assessing scheme quality remove any possible need for annual reconciliation?

**Q6** – Are there any potential difficulties with the proposed change you wish to highlight?

**Q7** – Is there any reason not to bring the revised definition of a payroll reference period for assessing scheme quality into force as soon as possible?

**Q8** – Does extending the deadline for passing over employer contributions make administration easier?

**Q9** – Are there any risks associated with extending the deadline in this way?

**Q10** – Is there any reason not to bring the change to contribution payment deadlines into force as soon as possible?

**Q11** – Should there be a prescribed period under section 3(4) of the Pensions Act 2008 to turn off the automatic enrolment duty? Please set out the reasons for your view.

**Q12** – If so, how long should that period be?

**Q13** – Does the ongoing monitoring requirement limit how useful this would be as an easement?

**Q14** – Do the proposed changes on the form of opt out notices make it easier to design and use?

**Q15** – Is there any reason not to bring the clarification on the form of opt out notices into force as soon as possible?

**Q16** – Do you think extending the deadline from one to six weeks strikes the right balance between the needs of employer and jobholders?

**Q17** – Would the domino effect on, for example, refunds and the proposed disclosure requirements cause administrative difficulties?

**Q18** – Does the proposed amendment to the definition of appropriate age have the desired effect?

**Q19** – Does the proposed amendment to maximum service limit for lump sum schemes have the desired effect?

**Q20** – Does the proposed amendment to the revaluation requirement for certain lump sum schemes have the desired effect?

**Q21** – Is there any reason not to bring the changes to the test scheme requirements into force as soon as possible?

**Q22** – Are there categories or descriptions of worker for whom automatic enrolment is inappropriate? If yes, can you say who they are and why?

**Q23** – Would it be a good idea to allow employers contractually enrolling all workers into an automatic enrolment qualifying scheme to be certified or to self-certify that they are meeting the policy objectives and therefore are exempt from the explicit employer duties?

**Q24** – What would employers need to demonstrate, beyond contractual enrolment of all workers into an automatic enrolment qualifying scheme in order to be certified or allowed to self-certify?

**Q25** – For the purpose of automatic enrolment, is a quality requirement needed for DB schemes at all?

**Q26** – Is there a simpler way of determining whether a DB scheme is "good enough" to be used for automatic enrolments?

# Annex A: Draft regulations

[Draft regulations – The Automatic Enrolment \(Miscellaneous Amendments\) Regulations 2013](#)