Consultation on workplace pension reforms: Qualitative research with small and medium-sized companies

By Andrew Wood, Marisa Robertson and Dominika Wintersgill

This research was designed to consult with employers with 500 employees or less about the draft regulations set out in *Workplace Pension Reform – completing the picture*[1] and the impact they would have on their businesses.

Policy background to the reforms

The Pensions Act 2008 sets out a series of measures aimed at encouraging wider participation in private pension saving. The aims of these reforms are to overcome the decision-making inertia that currently characterises many individuals' attitudes to pension saving and to make it easier for people to save for their retirement.

The measures in the Act include a duty on employers to automatically enrol all eligible jobholders into qualifying workplace pension provision from 2012 and to provide a minimum contribution towards the pension saving for those individuals who participate.

The final details of how the changes will be enacted were set out in regulations that were laid on 12 January 2010. The draft of these regulations was published for consultation on 24 September 2009.

As part of the public consultation the Department for Work and Pensions (DWP) had discussions with a wide range of stakeholders with an interest in the draft regulations. This research consulted with small and medium-sized employers.

[1] Department for Work and Pensions (2009). *Workplace Pension Reform – Completing the Picture: Consultation on Draft Regulations*.

Research scope

The study consisted of focus groups and individual depth interviews with 66 private sector businesses of up to 500 employees:

- 10 focus groups, each lasting two hours, with 55 employers;
- 11 individual depth interviews with employers, each lasting one hour.

The fieldwork took place in October 2009 across five locations – Birmingham, Bristol, Cardiff, Edinburgh and London.

Research findings

Attitudes to the reforms

Employers already knew of the workplace pension reforms' existence before the research, even if their knowledge of the shape of them was limited. Generally, the larger the employer, the higher their level of awareness and knowledge of the broad principles of the reforms.

Many employers recognised that there is a 'pensions crisis' that needs to be addressed. Those employers that were already paying contributions in excess of those required under the reforms were broadly in favour of the reforms. But many other employers, particularly those not currently paying any contributions, often felt resentful that they should be the mechanism for arranging pension provision, rather than the Government or the individual.

More specifically, many employers felt that it was unfair that the administrative and financial burden should fall upon them, as they would then have the administrative task of organising the scheme, or would need to pay someone to do the job for them, as well as having to find the money to provide contributions for their staff.

However, it was typically hard for employers to quantify the total amount of time they felt the regulations would require in terms of administrative effort. This was primarily because processing opt-outs and opt-ins was expected to require the greatest administrative effort, and the number of employees that would opt out was the greatest unknown.

Desire to use NEST (National Employment Savings Trust)

Employers were typically unaware of the existence of NEST and the fact that they could use the scheme as a way of fulfilling their duties. Some of the larger companies had heard of the scheme, but overall, awareness was low.

Employers that currently offered a scheme, whether with or without employer contribution, typically thought that they would continue to use their existing scheme, rather than changing to a different provider such as NEST. The existing schemes already set up were, as far as they were concerned, running smoothly, and making an unnecessary change to a new provider would simply cost more time and paperwork.

The employers with no current pension provision, all of which had one to four employees, were typically unsure what scheme they would choose. Some thought that they might use NEST because it would save them from needing to find a provider themselves. Also, some felt that they lacked knowledge to make an informed decision for their employees and were pleased that NEST seemed to be, as they saw it, ‘endorsed’ by the Government, as it took some decision-making responsibilities away from them.

Staging

The employer duties under the workplace pension reforms will be staged in over a period of four years, from October 2012. The very largest companies will be assigned the earliest months for staging, and smallest companies the last.

Employers with no scheme in place, or with a scheme in place but making no contribution towards it, typically reacted positively to the fact that their date to begin automatic enrolment would be later than expected. For the companies in this research, this was at the time expected to be between 2014 and 2015. The general response from these companies was positive because they saw this as a delay in needing to pay contributions and so an effective financial saving for two to three years.

Generally, smaller companies also felt that having larger companies go through the process of automatic enrolment first would mean that possible teething problems would be ironed out by the time it was the turn for smaller companies to be automatically enrolled.

Some companies that already contributed a minimum of three per cent towards their employees’ pensions also appreciated the fact that they would be able to delay the administrative work associated with automatic enrolment if their staging date was later.

The 12-month notification of the staging date, followed by a three-month reminder, was generally seen as acceptable by most employers, as they felt that this was enough time to plan ahead and implement the reforms, although some of the larger employers did suggest that 18 months would be preferable, as they planned financially more than 12 months ahead.

Phasing

The minimum levels of employer and employee contribution will be phased in from 2012 to 2017.

The smallest employers who did not contribute at all to their employees' pensions were generally in favour of the process of phasing. This was because overall they would prefer to pay as little as possible, for long as possible. There was some concern about the administrative issues of switching levels of contribution twice, but only very occasionally did the smallest employers state that they would start paying the full amount of contributions from the outset, so that they could avoid the administrative work associated with changing contribution levels twice.

Certification of Defined Contribution schemes

The research consulted on a process called 'certification of Defined Contribution schemes' (hereafter referred to as 'certification'). The intent of this process was to allow employers that already offer more than the minimum contribution levels specified under the reforms to certify that they do this for all jobholders.

On close examination of the detail of the process, employers generally felt that some elements of certification were unclear. Most of the concerns were associated with possible unintentional mistakes that might result from lack of clarity in the rules. Choosing a selection of employees' records to check they were not paying less in contributions than they should was seen as the main source of ambiguity. Some employers were worried about how to choose the correct employees and how to avoid making any unintentional mistakes during this sampling process. They posed a number of questions including:

- What constituted a large enough sample?
- How to choose the correct sample?
- How to prevent others from abusing the sampling process?

Postponement

Employers with schemes that provide an employer contribution of at least six per cent and a total contribution of at least 11 per cent (based on qualifying earnings) will be allowed to postpone automatic enrolment into high quality schemes by three months. This research consulted on a proposal that employers would not be able to postpone automatically enrolling any staff who are expected to be employed for less than three months.

These employers generally recognised why there was a requirement to treat short-term workers as an exception and enrol these immediately. None anticipated any difficulties in adhering to this requirement, although most of these small and medium-sized employers also pointed out that they had relatively few employees that fell into this category.

The 19-day rule

Current pension legislation requires that all employee pension contributions must be paid to the pension scheme no later than the 19th day of the month following the end of the month in which they were deducted. The research consulted upon an alternative due date for new members of no later than the 19th day of the second month following the end of the month in which the employee was automatically enrolled into a pension scheme.

Generally, employers currently contributing to employees' pensions understood the 19-day rule, and were familiar with it already, because it was in line with current Pay As You Earn (PAYE) regulations. The option to delay contributions deducted during an initial period was sometimes seen as a minor advantage, because if an employee were to delay opting out of a pension scheme for up to 30 days, employers would be able to avoid processing refunds of contributions from their provider, and the administrative effort that would be involved.

However, most employers said that they would be just as happy to pay all employees' contributions in the first month after deduction. This was essentially because they expected the issue of refunds of contributions to arise only rarely, because many employers expected employees to opt out very quickly, potentially during induction.

Registration and record-keeping

One requirement of the workplace pension reforms is for all employers to register with The Pensions Regulator (TPR) information on how they have met their duties, including what pension arrangements they have put in place and what action they have taken to enrol jobholders into pension saving. Employers will also be required to keep specific records on pensions and pension schemes and will need to be able to produce these for TPR on request.

Generally employers expected the registration process to be simple and easy to complete. Most employers said that the process of registering seemed to be roughly in line with other current requirements, in terms of supplying information to HM Revenue & Customs (HMRC) for their existing PAYE schemes, and thus it posed little extra administrative effort on their part.

Most employers viewed the record-keeping requirement as unproblematic and easy to comply with. Generally employers expected to need to keep copies of relevant documentation as part of running a business anyway.

Compliance regulations

There were three specific areas of draft compliance regulations that were consulted upon in this research:

- **Inducements**: It will be unlawful for employers to seek to influence employees' decisions about whether or not to opt out of a pension scheme. Generally employers felt that the proposed 12-month period allowed for TPR's investigations was acceptable as a time limit, but many employers felt that allowing employees six months in which to launch a complaint was too long. In part, this was because many employers felt that the inducement rules were unclear and ambiguous, and were concerned that the definition of inducement might be left open to interpretation by employers and employees
- **Failure to pay all contributions due**: In the event of an employer failing to comply with their duties it was proposed in the draft regulations that TPR have the ability to consider requiring the employer to pay both the employer and employee contributions outstanding where they remain unpaid beyond a proposed prescribed period of three months. Most employers perceived these rules to be too lenient. They pointed out that, once deducted, the pension contributions belonged to the employee and thus should not be kept by the employer. Some believed that employers holding onto the contributions was fraudulent and felt that it should be treated as such
- **Penalties for non-compliance**: The draft regulations proposed that if an employer is non-compliant with a particular aspect of the regulations, TPR may contact the employer informally. If they continue not to comply, they may issue a statutory compliance notice. After this, the possibility of a flat-rate fixed penalty of £500 for non-compliant employers was proposed. Escalating penalties will also be available to TPR for very serious or persistent non-compliance, although the size and nature of these was not discussed in the research. Generally employers felt that the proposed fixed penalty of £500 for non-compliance with particular aspects of the regulations was too low, particularly given that it would be applied only after repeat warnings.

The full report of these research findings is published by the Department for Work and Pensions (ISBN 978 1 84712 770 9. Research Report 652. June 2010).

You can download the full report free from: http://research.dwp.gov.uk/asd/asd5/rrs-index.asp

Other report summaries in the research series are also available from the website above and from:

Paul Noakes,
Commercial Support and Knowledge Management Team,
3rd Floor, Caxton House,
Tothill Street, London SW1H 9NA.
E-mail: Paul.Noakes@dwp.gsi.gov.uk

If you would like to subscribe to our email list to receive future summaries and alerts as reports are published please contact Paul Noakes at the address above.