

Automatic enrolment into workplace pensions: seafarers and offshore workers

Department for Work and Pensions

RPC rating: fit for purpose

Description of proposal

The government has introduced a range of legislation to tackle widespread under-saving for retirement and enable workers to take greater responsibility for their retirement savings. The Automatic Enrolment (Offshore Employment) Order 2012 extended the scope of the automatic enrolment programme into workplace pensions to include seafarers and offshore workers if they are ordinarily working¹ in the UK.

More than 9.6 million workers have been automatically enrolled into workplace pensions². It is estimated that approximately 27,000 seafarers and offshore workers are ordinarily working in the UK and are eligible for automatic enrolment. The objective is to clarify and legislate for the treatment of seafarers and offshore workers, ensuring they are covered by the programme. Furthermore, those who are ineligible for automatic enrolment will have to be offered the opportunity to join a qualifying workplace pension scheme.

Impacts of proposal

The Department believes that the legislation's objectives have been delivered in the least burdensome way. The PIR tests overarching key principles and assumptions from the original IA to highlight variations from the original estimates. The PIR also presents findings from stakeholder engagement, which inform the review.

The original IA estimated an EANDCB of £19 million and an NPV of £146 million over the 39-year appraisal period. The IA estimated the proportion of individuals choosing to opt out of pension saving within one month of being automatically enrolled (the 'opt-out rate') at 25 per cent. Actual opt-rates for the wider automatic enrolment programme (i.e. as applied to all workers, not just seafarers and offshore workers) have been significantly less than this (9 per cent). Stakeholders were not able to provide any evidence that offshore workers' and seafarers' opt-out rates would differ in a predictable way. However, given the differences (in employment circumstances, etc.) among seafarers, offshore

¹ This is determined by where a worker is based, official guidance is available here:

<http://www.thepensionsregulator.gov.uk/docs/detailed-guidance-3.pdf>

² As of April 2018

workers and other workers, the Department has conducted sensitivity analysis on the original contribution cost estimates, by using both 9 per cent and 25 per cent opt-rates.

For the 9 per cent opt-out rate, estimated employer contributions for 2018 would be £14 million as opposed to £11 million (at 25 per cent); individual contribution costs would be £16 million compared to £12 million; and Government contribution costs would be £5 million instead of £4 million.

The original IA estimated one-off administration costs of £0.6 million for implementing automatic enrolment. Evidence presented in the PIR from the 2015 Employers' Pension Provision Survey shows this to be overestimated. However, this is deemed to have been offset by higher employer costs arising from the IA's underestimate of the number of workers eligible for automatic enrolment³. Furthermore, the IA included costs for administering a waiting notice period. The Survey suggests that about 50% of employers did postpone the wider automatic enrolment programme to some extent – but the PIR is unable to estimate the number of affected employees.

Stakeholder feedback

Given the lack of available data, the Department undertook stakeholder engagement exercises to gather information from the maritime and offshore industries and organisations representing seafarers and offshore workers. These include a call for evidence, a follow-up roundtable discussion and subsequent follow-up emails.

Responses supported the continued inclusion of these two groups of workers in automatic enrolment. The PIR directly addresses several issues raised by industry groups and unions regarding the legislation.

i) Detailed guidance to be available covering circumstances across the maritime industries

The PIR states that the Regulator's compliance experts confirmed that specific queries on interpreting the guidance can be raised through their employer call centre. The Regulator is willing to engage with any employer experiencing difficulties in applying the guidance to complex employment circumstances.

ii) The targeting of coverage

Foreign nationals who may already have pension provisions in their home country may be included within the scope of automatic enrolment. The PIR reiterates that the policy design gives each worker the option to exercise an 'opt-out' from automatic enrolment.

iii) The diversity of seafaring employment and implications for eligibility where employment terms may exclude the worker from the 'ordinarily working test'.

³ An increase of 1,000 eligible offshore workers and seafarers

The PIR presents anecdotal evidence about groups of seafarers falling outside the ‘ordinarily working’ eligibility criteria – specifically younger workers. The Department cites the Regulator’s guidance in detail regarding the need to establish whether the worker ordinarily works in the UK – where the primary factor to be considered is where the worker is based. This is determined by the terms of the worker’s employment contract and how the contract is operated in practice. Stakeholders also highlight an example where UK workers on vessels operated entirely outside the UK but employed by UK based employers would be excluded from the scope of automatic enrolment. However, there is no quantified data to confirm whether this might affect the way such workers are employed or how many workers might be currently employed in these circumstances.

iv) The complexity of the ‘ordinarily working’ test may lead some employers to enrol all staff - regardless of their status as qualifying workers.

The Department highlight the potential risks to the coherence of automatic enrolment. Potentially, deviation from the ordinarily working test for the maritime industries could generate pressure from other sectors of the economy for similar exemptions. The Department believes that allowing sectors with atypical employment patterns to use industry-specific qualifying tests for their workers could jeopardise the policy intention to provide broad and consistent coverage to all UK workers.

v) Making the ‘ordinarily working’ test more specific for seafarers and offshore workers.

The Department indicates that suggestions for an eligibility test based on nationality, residency or country of ship registration risk legal challenge on the grounds of discrimination in favour of UK nationals. Further, a test linked to the country of registration of a ship would create incentives for registering ships outside the UK as a means of avoiding automatic enrolment duties. The Department clarify that the ‘ordinarily working’ test creates a link between the seafarer and the UK unrelated to whether the seafarer’s vessel enters UK waters. Therefore, “*it is possible to apply domestic UK legislation to the seafarer without impinging on the UK’s obligations under international law.*” The Department states that the definition of ‘ordinarily working’ for seafarers has been clarified by the Courts⁴ in 2016. The Department reiterates that the ordinarily working test remains the most appropriate underlying assumption for the scope of this legislation.

vi) Unintended consequences

Evidence from stakeholders suggest that the specific employment circumstances of seafarers meant that workers were often unable to complete the opt-out process within the required time (one month). As a result, some workers may suffer an unwanted transfer of income due to e.g. intermittent and costly internet connections. However, the Department was unable to estimate the number of workers affected. The Department is

⁴ Details on the court ruling is available here: <http://www.thepensionsregulator.gov.uk/press/pn16-02.aspx>

satisfied there is sufficient flexibility for the worker, and enough scope for the employer to take account of individual circumstances.

The Department also comments on specific impacts of the legislation on small firms, competition, gender, race, disability, age, sexual orientation and religion. There is no evidence to suggest that these measures have disproportionately affected firms or individuals in the aforementioned areas.

Quality of submission

Given the small size and specific nature of seafarers and offshore workers⁵ compared to the wider working population eligible for automatic enrolment, the Department has duly used the scant evidence available on these groups to inform the PIR. It has made sufficient attempts to extend this evidence through stakeholder engagement and has also used data on all employers implementing automatic enrolment given the lack of data on the specific experiences of offshore workers and seafarers.

The Department recognises the weakness of using evidence from the wider automatic enrolment programme as a proxy for seafarers and offshore workers. Assumptions from the general population in the wider automatic enrolment programme may not be equally applicable to seafarers and offshore workers. The RPC agrees that it is unlikely to be proportionate or feasible to sample these groups directly. Furthermore, the RPC agrees that it would be disproportionate to revise the detailed modelling that underpinned the estimates in the original impact assessment.

The lower than expected opt-out rate means higher than anticipated employer contribution costs; this could raise the EANDCB estimate. However, the Department regards the lower opt-out rate as a success in meeting objectives of the policy; the greater cost for employers is counterbalanced for policy purposes by greater pension savings. The Department has also appropriately explained and addressed potential unintended consequences caused by the policy.

The stakeholder evidence has identified opportunities for burden reduction for businesses in the maritime industry. The Department highlights that the Pensions Regulator could work with businesses to refine the detailed employer guidance for automatic enrolment to take account of complex employment situations.

Areas for Improvement

1. Missing details of calculations

The PIR could have benefited from providing revised Net Present Value and EANDCB figures. This point is particularly salient because the *“IA and PIR estimates are not completely comparable because we use a more simplistic, but equivalent, methodology*

⁵ These groups combined make up less than 1 per cent of the overall eligible population for automatic enrolment

for the PIR estimates.” Although the Department did conduct sensitivity analysis surrounding opt-out rates, the Department could have also used this analysis to infer how the different opt-out rate scenarios for seafarers and offshore workers could have affected the EANDCB and NPV figures.

2. Justification on reduced level of regulatory burden

The Department states that “*it was clear that any move to weaken the compliance regime would undermine the policy intention to ensure all employers are subject to the automatic enrolment duties if they employ qualifying workers, and would lead to industry specific carve-outs which have already been rejected as damaging to the coherence of the reforms.*” The Department could have provided further explanation of any specific methods considered to achieve the policy objective with a reduced level of regulatory burden for maritime employers. This would also then clarify to what extent proposed moves to reduce regulatory burdens would weaken compliance.

In addition, the PIR could have benefitted from reiterating the reasons for the 39-year appraisal period used in the IA. Given this is a standalone document, this would help audiences understand why this is considered the most appropriate period. For a similar reason, the PIR could have benefitted from further discussion on why seafarers and offshore workers were originally left out of the wider automatic enrolment programme. Further comment about the review of the wider automatic enrolment (aside from opt-out rates) could have also informed this PIR.

The Department has indicated that they envisage more targeted and intensive stakeholder engagement as a means of updating quantitative evidence presented in this review, although the timing of this update is unclear. The PIR has provided sufficient justification as to why specific conclusions cannot be reached regarding the impacts of the legislation on the specific groups analysed in this review. The review has also provided an assessment of the unintended effects and disproportionate effects based on stakeholder engagement. The RPC welcomes the Department’s intent to gather more effective evidence to inform future reviews of this legislation.

Departmental recommendation	Retain
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RPC assessment

Is the evidence in the PIR sufficiently robust to support the departmental recommendation?	Fit for purpose
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