Department
for Work &
Pensions

Technical Changes to Automatic Enrolment

Government response to the consultation on draft regulations and other proposed changes

October 2013

Contents

Introduction

1 A consultation on technical changes to automatic enrolment legislation ran from 25th March 2013 to 7th May 2013. The consultation sought views on proposals to simplify the automatic enrolment process within the existing policy framework and without changes to primary legislation.

2 The proposals are a response to feedback from early live running and are aimed at achieving sensible simplifications to make the process more straightforward, especially as automatic enrolment rolls out to medium and small employers from April 2014.

Executive Summary

3 We received 112 responses and we are grateful to everyone who has given their time and expertise to help us develop the final changes. Responses were considered, comprehensive and constructive, and were instrumental in helping us finalise the regulations.

4 Some of the suggestions and comments relate to provisions or would require amendment to provisions in primary legislation. These are outside the scope of this exercise and will not be taken forward at this time.

5 The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 that were laid before Parliament on 11th October change the existing legislation so that:

- Employers can choose to use alternative definitions of pay reference periods for both assessing jobholder status and determining whether a scheme is a qualifying scheme.
- The automatic enrolment joining window is extended from one month to six weeks.
- The deadline for employers to provide information to individuals on their opt in and joining rights is extended to six weeks.
- The deadlines for registration and postponement notices fit with the extended joining window.
- The extended deadline for passing worker contributions to a pension scheme applies to all new joiners (including contract joiners).
- The opt out notice provisions make clear that schemes can customise notices.
- There is greater clarity and consistency concerning the requirements for defined benefit test schemes in relation to the appropriate age, service limits and revaluation that apply in those schemes.

6 The final changes either give employers more options or extend deadlines for existing processes without changing the processes themselves. The secondary legislation laid before Parliament on 11th October brings the majority of changes into force on 1st November 2013. The only exceptions are the change to the joining window and registration deadlines that will come into force on 1st April 2014.

7 The consultation was not a review of automatic enrolment policy. We did, however, invite views about possible easements to the automatic enrolment duty. This included broader questions in relation to the quality requirement for defined benefit schemes and in relation to employers who meet the objectives of the automatic enrolment policy in another way (e.g. contractual enrolment). We are grateful for all the contributions to the debate, and we will look at these issues in more detail separately. We have, nevertheless, summarised the main themes from the responses and our plans to progress this work.

Automatic Enrolment – changes to regulations

Defining pay reference periods for assessing automatic enrolment duties

What the consultation said

8 Under Part 1 of the Pensions Act 2008 employers have a duty to automatically enrol eligible jobholders into a pension scheme that meets minimum standards. Eligible jobholders are workers aged at least 22, under state pension age and earning more than £9,440 a year.

9 To assess jobholder status the annual earnings trigger is pro-rated in line with an individual's pay reference period. In the case of a person paid by reference to a period of a week, the period is one week; for a person paid by reference to a month the period is monthly and so on.

10 In the consultation paper we recognised the current definition of a pay reference period[1] did not fit easily with payroll systems designed and built for compliance with Pay As You Earn (PAYE) and National Insurance Contributions (NICs). This makes it hard to identify the pay reference period in relation to a payment of earnings. Furthermore, it is also unlikely to be possible to do so using information already captured in existing systems. It can also be a significant challenge for payroll systems when the earnings trigger and qualifying earnings band change on 6th April – which will usually fall part way through a pay reference period.

11 We want to make it easier for employers to use payroll systems to assess jobholder status against earnings with the information that will already be available from recognised periods already established in payroll software.

12 To do this, we proposed to give employers the option to adopt a different approach to determining pay reference periods aligned with established PAYE and NICs periods.

[1] Regulation 4 of The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010

13 For the alternative definition we proposed:

- 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.

Consultation questions

14 We asked four 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.

Responses to the consultation

15 We asked whether the existing approach to pay reference periods caused any difficulties. Respondents told us:

- The existing approach causes significant difficulties precisely because it does not align with any period used in payroll calculations. This makes automatic enrolment overly complex, creating an additional administrative burden for employers.

- The existing approach to pay reference periods causes difficulties for employers who do not have payroll systems flexible enough to allow employers to calculate pay separately in terms of pay reference periods and tax periods.
- The change in the earnings trigger and qualifying earnings band each April adds extra complication when combined with current pay reference period definitions.
- Part-period calculations are a problem where employees reach the eligibility criteria part-way through an existing pay reference period. This is an unnecessary administrative complication and creates complexity from a communication point of view. Many responses said that any changes to pay reference periods must also address part-period calculations.
- Assessment could be simplified for non-standard pay frequencies by using tax weeks and months. The most commonly cited example was 4/4/5 (where jobholders are paid four weeks pay on some paydays, five weeks pay on others), with fortnightly in arrears pay cycles also presenting difficulties.
- The existing definitions are not a problem for everyone. Some have used postponement as an effective tool for addressing the issues, while others have worked with their payroll providers to develop solutions. These options will not, however, work for everyone going forward.

16 We asked whether adding the proposed alternative method of determining a pay reference period to align with tax and NICS periods would make assessing jobholder status more straightforward. Respondents told us:

- Using tax periods would generally make things more straightforward as tax periods are used and understood by the payroll community.
- Using tax periods won't fix all the problems and it may make things worse if done in isolation.
- The changes can lead to more part period contribution calculations if the pay reference period starts on the start of a tax week or month and the automatic enrolment date is the start of the pay reference period.
- It doesn't fully fix variable pay periods, eg 4/4/5, in particular where the pay frequency is monthly.
- As described in the consultation document it may be harder to explain to staff as tax periods are not something staff understand or need to understand.
- For some employers postponement is still the easier option.

- Some employment sectors have ad-hoc payment arrangements with no regular or identifiable pay reference period. The current framework also presents particular challenges for employers with multiple payrolls using different payroll systems on non-standard pay cycles: in some instances with a mix of salaried, ad hoc and zero hours contracts arrangements. The alignment of pay reference periods with tax periods would make the assessment process in these companies significantly more straightforward.
- Both the current and proposed definitions of pay reference period could create problems for an employer assessing short term contract workers.
- The preferred solution is to change the structure of automatic enrolment to allow assessment of status in one period and contributions starting in the next.
- Others opposed any changes. One respondent said that both the existing and the proposed definitions of “pay reference period” create unnecessary complications for a scheme where members are contractually enrolled.
- They were not convinced that a change in the regulations is required or desirable. The flexibility provided by the postponement regulations allows employers to align dates to meet payroll requirements or other dates to fit in with the employer’s requirements.
- They believed that alignment would make the calculation of contributions more complex because, for example, they would be payable in respect of earnings relating to tax periods, which would not align with most payroll periods and would require part-period calculations on an ongoing basis.
- The initial proposals seemed to result in pay reference periods of less than a week.
- It was clear from the consultation that a lot of the challenges in assessing the workforce stem from current employment practices with multi-outsourced functions and data hand-offs dependent upon a data flow to or from payroll. A minority thought the alternative method based on tax periods would not, of itself, make automatic enrolment more straightforward.
- Some employers have made the existing definition of pay reference periods work. Some have addressed the issues arising from the present misalignment with tax and NICS periods through the use of technology. Payroll and software suppliers have devised workable technical solutions, although these have incurred significant costs.
- Despite heavy investment in IT solutions, and the judicious use of postponement, three main issues remain - payrolls with non standard pay reference periods; assessment and deduction of contributions within the same pay period and part period calculations.

- The new definition would be hard to explain to workers to whom the start of a tax period was irrelevant.
- There was still some confusion about how to identify the first day of a pay reference period. Even with alignment some pointed out that automatic enrolment dates (post-staging) are unlikely to fall on the start of a tax period.

17 Nine out of ten respondents welcomed proposals to simplify pay reference periods because workable solutions to meet the regulations as drafted had been challenging.

18 We asked whether both the old and the new definitions of a pay reference period remain in force and if so for how long. There was a broad consensus that the old and new definitions should remain in force indefinitely. There was a strong message from employers who have already staged and introduced systems that work with the existing definitions that they should not be expected to face the cost and difficulty of changing to a new definition.

19 We also asked whether, if we allow a period where both the old and new definitions of a pay reference period are in force, it would be useful to bring the new requirements as soon as possible. Provided both definitions remain in force, the general view is the new definition should be brought into force as soon as possible.

Government Response

20 Although most respondents welcomed the opportunity for simplification offered by permitting alignment with tax periods for assessing jobholder status, there were a number of concerns expressed that we have addressed in the final regulations. The main issues are:

- The proposals didn't recognise the needs of employers operating variable pay patterns (the 4/4/5 pattern for example).
- The original proposals would have increased the need for part period calculation of contributions which is something respondents wanted avoided at all costs.
- Deciding which is the relevant pay reference period where the jobholder is paid for a period which is a multiple of weeks or months.
- Concerns that the examples in the consultation paper suggested different interpretations of which is a relevant pay reference period and which is the automatic enrolment date.
- Concerns that the proposed new definition provided for pay reference periods of less than one week, where the existing definition does not.

21 To address these concerns, we have amended the original proposals to:

- Define the length of a pay reference period by reference to pay frequency rather the period by reference to which the person is paid their regular wage or salary.

- Amend regulation 8 of the Automatic Enrolment regulations so it is clear the calculation and deduction of contributions is determined by the rules of the scheme or plan.

- Ensure that under the new definition there are no pay reference periods of less than one week.

22 The regulations laid before Parliament bring the new definitions into force on 1st November 2013. The regulations leave the old definitions running alongside the new.

Variable pay patterns

23 One particular problem with the proposal to use a period equal in length to the period by reference to which that person is paid their regular wage or salary is that it doesn't cater for variable pay patterns, including the commonly used 4/4/5 pattern where the jobholder is paid monthly, but the amount paid is 4 or 5 weeks pay depending on (for example) how many Saturdays there are in that month. Under the consultation proposal, the pay reference period could be 4 or 5 weeks (which is difficult for payroll to establish if the jobholder is paid monthly), and there could be 4 weeks pay in a 5 week pay reference period and vice versa which would skew the pro-rata calculation.

24 To address this problem, ***we are defining the length of a pay reference period by reference to pay frequency***. In this context pay frequency is the usual interval between regular payments of wages or salary. For most salaried staff pay frequency and pay period are the same so it won't make a material difference when assessing the workforce. But in the case of 4/4/5 pay patterns where the jobholder is paid once a month the pay frequency and pay period will be different. This will, of course, result in both 4 and 5 weeks earnings being assessed against 1/12th of the annual threshold. Our view is that this is not inconsistent with the objective of getting the right people into pension saving.

Part-period calculations

25 One of the issues raised consistently in consultation was that the proposals would create more part period contribution calculations, most notably at staging, which most payroll systems cannot easily calculate.

26 This concern arose mainly as a result of the examples in the consultation paper linking the automatic enrolment date to the start of the pay reference period. We have looked at this again and can confirm the way the automatic enrolment date is determined is not changing. It will remain the first day on which all the conditions for automatic enrolment are satisfied, which will normally be the employers staging date, the jobholder's 22^{nd} birthday or the day the jobholder starts work for the employer.

27 Although this clarification should address some of the concerns, we recognise there is more that can be done to help reduce the number of part period contribution calculations by making other changes. These changes are described in the next section "Defining pay reference periods for assessing scheme quality".

The relevant pay reference period

28 In Example 2 in the consultation document (Samantha), the staging date was 1^{st} April and Samantha was paid monthly on the last day of the month. If the employer opts to align with tax periods the pay reference period will run from the 6^{th} of one month to 5^{th} of the next month. One of the questions raised by consultation is whether the *relevant* pay reference period for assessing eligibility is 6^{th} March to 5^{th} April or 6^{th} April to 5^{th} May. In the consultation document we suggested it was the latter on the grounds that the earnings payable in the pay reference period from 5^{th} March to 6^{th} April are payable on 31^{st} March which falls before the staging date and are therefore not relevant for assessing jobholder status from 1^{st} March onwards.

29 The definition of "relevant" in section 15(3) of Pensions Act 2008 says "A reference in any provision to the relevant pay reference period is a reference to the period determined in accordance with regulations under this section, as they apply for the purposes of that provision in the case concerned.".

30 The Pension Regulator's guidance says at para 48 that "the relevant pay reference period for these purposes is the pay reference period in which the assessment date falls". The list of assessment dates in para 6 includes the events that trigger an employer to consider whether there is a duty to enrol a jobholder including staging.

31 We do not want to do anything to cast doubt on this understanding and have therefore decided not to make any changes to suggest otherwise. The relevant pay reference period should continue to be determined according to the Pensions Regulator's detailed guidance.

32 In the case of example 2 in the original consultation document, the relevant pay reference period will remain the period from 6th March to 5th April.

Pay reference periods where the jobholder is paid a multiple of weeks or months

33 In considering the Government's response, we decided it would be helpful to prescribe, in the case of jobholders paid by reference to a period that is a multiple of weeks or months, that pay reference periods would always align with a cycle starting on 6th April. This would mirror tax and NICS processing where two and four weekly tax periods start on 6th April each year regardless of when the jobholder is paid.

Arrangements for bringing the new definitions into force

34 There was a strong message from consultation that employers who want to continue using the existing definition of a pay reference period for assessing jobholders should be able to continue using it indefinitely. As a result we have drafted the amending regulations to clearly add the new definition for use alongside the old definition. There is no limit on how long this will last.

35 The new definitions will come into force on 1st November, and employers will be free to use either definition for assessing the workforce from that date.

36 The Pensions Regulator is updating their detailed employer guidance and guide for software developers and will publish these shortly.

Defining pay reference periods for assessing scheme quality

What the consultation said

37 A qualifying scheme must meet the quality requirements set out in sections 20 to 28 of the Pensions Act 2008, or certify against alternative quality requirement. Sections 20 and 26 set out the quality requirements for occupational money purchase schemes and personal pension schemes. These relate to the level of contributions under the scheme:

- The employer's contribution, however calculated, must be equal to or more than 3 per cent 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 per cent 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 per cent employer and 2 per cent total).

38 Under the current definition, each pay reference period is one year starting with the anniversary of the employer’s staging date, apart from the first period which depends on when the person first becomes an active member under automatic enrolment. This means the scheme must require contributions in each one year period at least equal to the minimum.

39 Where band earnings are used to calculate minimum contributions 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.

40 While this does not affect the qualifying status of the scheme, it 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 should be able to satisfy the quality requirement simply by requiring the minimum contributions under the scheme each time they pay someone.

41 There is also a mismatch with payroll that would make any annual reconciliation difficult. Standard payroll systems recognise tax years. A twelve month period from the employer’s staging date will never mirror a tax year.

42 We proposed in the consultation paper that the revised definition of pay reference period for the purpose of assessing jobholder status should also be used for assessing scheme quality. This would remove the possibility of a mismatch between contributions calculated on the basis of pay periods and contributions calculated annually.

Consultation questions

43 We asked three consultation questions:

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?

Responses to the consultation

44 We asked whether adopting the revised definition of a pay reference period for assessing scheme quality would remove any possible need for annual reconciliation. Respondents told us:

- Any form of annual reconciliation is an unnecessary cost for employers. Removing the separate annual pay reference period would simplify requirements, reduce the risk of error and omission and remove any need for annual reconciliation.
- There is a general consensus that the need for annual reconciliations and potential shortfalls of contributions would be addressed by the proposed amendment to align the two definitions. Jobholders with fluctuating earnings would know what their contributions are at the point they are paid rather than having adjustments made at the end of the year.

45 We asked whether there are any potential difficulties with the proposed change. Respondents told us:

- There is a small risk the proposal could allow employers to manipulate earnings such that they are spread less evenly thereby artificially reducing qualifying earnings. Workers who have highly fluctuating earnings where contributions are based on (qualifying) banded earnings could receive lower contributions than would otherwise be the case.
- The existing definition should be retained for employers who certify on an annual basis against the “relevant” quality requirement – ie the minimum quality requirement. An employer said for example that an annual test allows the impact of variable elements of pay such as overtime and bonuses to be averaged over the year and avoids the need to carry out checks on a monthly pay reference period basis.

46 We asked whether there is any reason not to bring the revised definition of a payroll reference period for assessing scheme quality into force as soon as possible. Most responses welcomed the alignment of pay reference periods for eligibility and quality, and that this should be done as soon as possible. They felt this particular issue has always been an area of automatic enrolment legislation which seems to be unnecessary and overly complicated.

Government response

47 We accept there is a theoretical possibility that some jobholders will pay less in contributions as a result of these changes. The amounts involved are, however, likely to be small in most cases and the benefits of removing the need for an annual reconciliation outweigh the risks.

48 One of the key messages from consultation was that some employers and pension schemes wish to continue with an annual pay reference period for assessing scheme quality. We are, therefore, leaving the existing annual definition linked to staging dates in place for those employers and schemes who wish to continue using it.

49 As set out in the consultation paper we have provided a second definition based on tax periods. This will make it easier for employers using tax periods for assessment to avoid the need for annual reconciliations. If an employer has put in place processes to assess qualifying earnings payable in a tax based pay reference period for the purpose of assessing eligibility, it will be able to use the same pay reference period for the calculation of minimum contributions. This will be both administratively straightforward and will ensure there is no possibility of a mismatch between contributions paid and contributions due.

50 We have also provided a third definition based on pay periods. This will make it easier for those employers continuing to use pay periods for assessment to avoid the need for annual reconciliation. As before, if an employer has put in place processes to assess qualifying earnings payable in a pay reference period based on pay periods for the purpose of assessing eligibility, it will be able to use the same pay reference period for the calculation of minimum contributions. This will be both administratively straightforward and will ensure there is no possibility of a mismatch between contributions paid and contributions due.

51 This should simplify requirements and make it easier for an employer to be certain, using real time information that each week's (or month's etc) pension contribution has fully discharged their liability. Jobholders with fluctuating earnings would know what their contributions are at the point they are paid rather than having adjustments made at the end of the year.

52 It has always been the Government's view that, subject to the requirements of regulation 8 of the automatic enrolment regulations and the scheme quality requirements, the calculation of contributions is a matter for the scheme rules to determine. This position is reflected in paragraph 47 of the Regulator's detailed guidance number 5 – Automatic Enrolment. Pension schemes and payroll have well established processes for taking on new members – the challenge is to ensure they can continue in the automatic enrolment environment.

53 In order to reinforce the principle that contributions are a matter for the scheme, and in recognition of the fact that employers and payroll providers have existing processes for taking on new joiners that work effectively, we are making two changes to reinforce the message that there is flexibility within the legal framework to allow existing processes to continue working.

54 Firstly, ***we are modifying the scheme quality pay reference period definition to provide more flexibility at the start of automatic enrolment.*** This means the contribution start date will not be so closely driven by the qualifying scheme requirements.

55 The current definition of a pay reference period for scheme quality purposes starts the pay reference period on the first day, on or after the staging date, that a person is both a jobholder and an active member of a qualifying scheme. To provide more flexibility and to help avoid part payment contribution calculations, we are making the first pay reference period under the alternative definitions, the first full pay reference period after the automatic enrolment date.

56 This will make it possible (subject to the requirements of the particular scheme) for employers to start contributions from the start of a pay period. Although many schemes use postponement to achieve the same effect we recognise it isn't a complete solution.

57 Secondly, ***we are amending regulation 8 so it no longer includes any reference to an "applicable pay reference period".*** We believe this is a worthwhile simplification that will retain the original policy objective which is to ensure deduction of contributions starts quickly, but will ensure the operative part of the regulation is that it the deduction is determined solely by reference to whatever is due ***to the scheme***.

58 By removing the reference to pay reference periods in regulation 8 and redefining pay reference periods for qualifying scheme purposes, there is more opportunity for schemes to start deducting contributions from a date other that the automatic enrolment date, which will make it easier to avoid part period contribution calculations.

59 We recognise, however, that schemes are constrained by their rules and that not every scheme will have the flexibility to move the contribution start date.

60 As with the definition of a pay reference period we decided it would be helpful to prescribe, in the case of jobholders paid by reference to a period that is a multiple of weeks or months, that pay reference periods would always align with a cycle starting on 6th April.

Introducing consistency for contribution payment deadlines for all joiners

What the consultation said

61 Employers are required to pass contributions deducted from a jobholder's pay to the pension scheme by the 19th or 22nd day of the month after the month in which the deduction was made (the 22nd day rule 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 19th or 22nd day.

62 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.

Consultation questions

63 We asked three consultation questions:

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?

Responses to the consultation

64 We asked whether extending the deadline for passing over contributions make administration easier. The majority of respondents welcomed the administrative advantages of a common deadline for contributions for the first two months of membership for all new joiners, irrespective of the joining mechanism used. Many said that the deadline should apply to as a general rule to all contributions made by all members to provide a true one-rule-for-all.

65 Some employers choose to retain contributions. Some schemes decline to accept contributions until all possibility of an opt out has passed to minimise investment risk so the decision is in effect made for the employer. Where schemes have the 19/22 day rule locked into their rules or contractual arrangements (usually the case with statutory schemes) there is no flexibility.

66 We also asked whether there are any risks associated with extending the deadline in this way. Concerns focussed on the risk that more new joiners' contributions would be invested later and that the change might be thought to discourage employers from paying contributions over as quickly as possible. A small minority of respondents also questioned whether it is appropriate to have a longer deadline for voluntary joiners who are unlikely to opt out and should therefore have their contributions paid over straight away. Overall, the consultation finding was that the proposed easement would be a useful option for employers who can and do use the extended deadline. Respondents also returned to a common theme – it is good practice to get contributions flowing into schemes promptly.

67 We asked if there is any reason not to bring the change to contribution payment deadlines into force as soon as possible. Most respondents agreed there is no reason to delay commencement, although some pointed out there could be long lead-in times to change IT systems.

Government response

68 The purpose of the extended deadline for contributions deducted during the opt out window was to help employers and schemes minimise the need for refunds and minimise needless money flows.

69 We note that some employers use the easement and welcome an extension to the rule to cover all new joiners and others do not or cannot use it. On the evidence so far larger employers seem to find it less of a burden to pay contributions over together on the traditional timescales than differentiate between new joiners and existing members.

70 Nevertheless the easement is optional. We want to continue to provide flexibility, especially for small and medium sized employers still due to stage where cash flow may be a more significant consideration. We propose to extend the deadline to cover initial contributions from all new joiners irrespective of status or joining mechanism.

71 To ensure an end-to-end process works with a six week joining window we want to make this as simple as possible. So the regulations provide that all contributions deducted during the first three months of membership must reach the scheme by the 19th/22nd day of the fourth month. This deliberately breaks the link with opt out or cancellation periods so that it can apply to contributions from new members irrespective of type of member or the type of joining arrangement. It allows for an extended joining window. It mirrors a long-established time limit (the 19 day rule) for passing contributions to the scheme – a time limit that still applies now to contributions taken after the joining window.

72 This is a limited measure that not all employers can or will use. We agree with the views of most responses that contributions should flow into schemes promptly. We note the views about the risk of investment loss and employer insolvencies but the current legislation already allows for longer payment deadlines for contributions deducted during the first two months of membership. We do not consider that adding an extra month onto the deadline for all new joiners adds a significant extra risk.

73 We do not, however, propose to extend the contribution deadlines for all contributions taken from all members even after the first three months of membership. Issues around potential investment loss and any risk of employer insolvency suggest that it is not fair or acceptable to allow employers to retain contributions for the bulk of their workforce on an ongoing basis beyond the current 19th/22nd day rule.

Jobholders who opted out of pension saving before automatic enrolment

What the consultation said

74 Automatic enrolment into workplace pension saving applies to all eligible jobholders as soon as the employer duty applies. In practice many employees join a workplace pension scheme as part of their contract of employment often in advance of their automatic enrolment date.

75 Contract joining can continue in an automatic enrolment environment, and many employers are choosing to operate this way. Providing the employer is using a qualifying scheme that meets the minimum quality requirements they will meet their automatic enrolment obligation when the duty applies.

76 Any individuals 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.

77 An employer is not required to automatically re-enrol anyone who has opted out within the 12 months before triennial re-enrolment. We have been asked to consider a similar easement to turn off the employer duty at automatic enrolment. There is a power in section 3(4) of the Pensions Act 2008 that allows us to prescribe a period before the automatic enrolment date where the automatic enrolment duty would not apply if an existing member (with eligible jobholder status) had given up active membership during that period.

Consultation questions

78 We asked three consultation questions:

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?

Responses to the consultation

79 Comments on this proposal came largely from the public sector and larger employers who currently use contract joining. Views were finely balanced; 42 opposed the proposal, 38 supported it although there seemed to be some mis-understanding about what the proposal meant.

80 In principle, respondents saw a measure to turn off the employer duty if someone had only just cancelled as a positive practical easement. It could address the double-handling frustrations for employers and workers, especially in organisations using contract joining. On the other hand, it would require employers to keep additional records of the status of all jobholders to ensure they are not incorrectly automatically enrolled when the time comes.

81 Many respondents felt the monitoring burden as a price worth paying, but also saw the limitations of the proposal. Once a period is prescribed then

exclusion cannot be optional. It would only turn off the automatic enrolment duty if a person accepted and then cancelled membership; it would not work if they declined membership. There could also be a problem establishing whether an existing scheme was a qualifying scheme throughout the prescribed period before automatic enrolment.

82 What respondents actually wanted was a provision which turned off the enrolment duty until triennial re-enrolment for every member who gives up active membership irrespective of their status.

Government response

83 On the evidence from the responses we do not propose to use the power in section 3(4) of the Pensions Act 2008. The regulation making power does not allow us to address the issues fully.

84 The Act allows us to prescribe a period before an automatic enrolment date during which, if an eligible jobholder had given up active membership of a qualifying scheme, they would not be automatically enrolled when the time comes. But they must have given up membership of a 'qualifying scheme'. Given the conditions to be a qualifying scheme are about entitlement under the scheme it may be impossible to establish retrospectively if the scheme was a qualifying scheme throughout the relevant period.

85 The constraints of the primary legislation mean that we cannot make the exclusion apply selectively to individual jobholders – it applies to the employer. The employer would not be able to automatically enrol anyone with eligible jobholder status who had previously given up membership so they could run the risk of accidentally enrolling people they should not enrol. But people with jobholder status who had given up membership would have to be automatically enrolled when the time came. This would result in a significant monitoring requirement (and possibly some retrospective checking as well) to record the underlying notional jobholder status of anyone who had given up membership after they had been contract joined. And finally, we could not apply an exception to people who decline membership rather than cease membership.

86 On balance we consider the proposal on which we consulted would not work effectively at the staging date; it would increase the monitoring burden and make the enrolment process more complicated.

87 We propose instead to consider how we might use the power in clause 34 of the Pensions Bill currently before Parliament. We plan to consult on formal proposals for exceptions to the employer duty.

Clarifying the form and content of the opt out notice

What the consultation said

88 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.

89 The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 set out the minimum content of an opt out notice with an example in the schedule. We expected schemes to add branding and supplementary information about pension saving and we also anticipated schemes would need to adapt the form to make it suitable for on-line completion and submission.

90 Some stakeholders have expressed concern that the Regulation as drafted may be more restrictive than we intended and risked the validity of past opt out notices being called into question.

Consultation questions

91 We asked two consultation questions:

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?

Responses to the consultation

92 All 58 responses welcomed a change to the wording of the rules on opt out notices but felt that the wording in the draft regulations was still not quite right. They felt it should link the requirement to the provision of at least minimum information rather than require schemes to stick rigidly to the “form” of the specimen notice.

Government response

93 We propose to change the wording that might be seen to constrain the form of an opt-out notice and redraft the provisions to reflect minimum information requirements. The policy has not changed. We intend that opt out forms must provide the same warnings and information set out in the current schedule to the regulations, but we are amending the regulations to make clear that opt out notices may include other information and allow for different wording.

94 We are less concerned about what an opt-out notice looks like. What matters is that it provides a person with the minimum information necessary to inform an opt out decision. We consider it is acceptable for schemes to add branding and flag additional information about pensions and savings – to use it as an opportunity to encourage further saving for retirement.

The joining window

What the consultation said

95 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 Pensions Act 2008 does not define what must be done to achieve active membership. That is a matter for the employer and the pension scheme.

96 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. In some situations, however, 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 in turn may put the employer in breach of the automatic enrolment duty.

97 We propose to protect the employer from the risk of non-compliance and allow more time to achieve active membership.

98 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 so long that deductions from wages continue when the person who wants to opt out cannot stop them.

Consultation questions

99 We asked two consultation questions:

Q16 - Do you think extending the deadline from one month 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?

Responses to the consultation

100 We received eighty responses to this proposal. Overall, 52 (65%) supported this extension to the joining window as a proportionate approach to the practical difficulties of automatic enrolment and a solution to accidental non-compliance.

101 Some employers do not need an extended joining window. They have processes in place with their scheme and payroll provider to achieve membership within the current one month joining window. Others were unconvinced about the need for any change but felt an extra two weeks would be long enough to complete the process, with a clear understanding that six weeks is a deadline not a target. Some felt that changes to pay reference periods could be equally effective solutions. A minority of respondents thought that the new deadline would still be hard to meet without highly automated systems and there were calls for a deadline of two months, or in one case three months.

102 In particular respondents said an extension would help employers and schemes comply where assessment of status is not possible until payroll is run late in the joining window. It would also be a crucial easement for employers with a high staff turnover, seasonal workers, part-time and zero hours contract staff with fluctuating earnings. A six week joining window would tie in better with the interface between employers and pension administrators and data transfer arrangements.

103 There were no deep-rooted objections on principle although there were balancing views that it could be a step too far and lead to poorer employment practice.

104 The emphasis throughout the responses was that the rules should be made to work and should be designed so that employers, and payroll and pension providers can achieve what they are legally required to do in time. It was generally felt that the change would have no undue effect on workers and it would allow more time for effective communications.

105 Respondents also flagged potential consequential effects on other elements of the automatic enrolment process that may need to be brought into line with an extended joining window.

Government response

106 Some employers can deliver the automatic enrolment requirements within the current timescale and, we presume, will carry on doing so. Others, because of the composition of the workforce, multiple payrolls or a range of out-of-house contractors for payroll and HR will continue to find a one month joining window a challenge and we need to address that issue.

107 As ever this is a question of balance. Pension providers are embracing electronic joining processes because of automatic enrolment and payroll providers have developed systems to address the practical difficulties of automatic enrolment. We recognise that an extended joining window where the employer does not complete the process until late in the day could delay the start of opt out. But employers so far are reporting lower than expected opt out rates. We would regard six weeks as the exception not the norm. The evidence from the consultation does not suggest two extra weeks would cause significant problems for a large number of newly automatically enrolled workers.

108 The regulations extend the joining window to six weeks. This will apply to automatic enrolment, automatic re-enrolment and enrolment following opt in. It will also apply to the deadline for the joining process at the end of the transitional period for defined benefit and hybrid schemes and the deadline for providing information to workers applying to join pension saving. Where employers have systems and processes in place in place that make assessment of status straightforward we would expect active membership to be achieved early in the joining window and pension saving to start promptly.

Consequential changes with an extended joining window

109 We are also making consequential changes that are necessary with a six week joining window. The change has an impact on the deadline for issuing information to postponement process and postponement notices; registration and re-registration deadlines with the Pensions Regulator and annual benefit statements under the Disclosure of Information provisions. An extended joining window also has an impact on the deadline for contributions deducted for new joiners. We consulted on this as a separate question and this is covered in the “Introducing consistency for contribution payment deadlines for all joiners” section of this response.

Postponement

110 Where an employer decides to postpone automatic enrolment, either at staging, or when a person starts work (or becomes eligible for automatic enrolment for the first time) then a postponement notice must be issued within one month.

111 We believe it makes no sense to leave a prescribed deadline in place that is at odds with the other changes to the joining process. We are extending the prescribed time for employers to issue a postponement notice to six weeks.

Registration and re-registration

112 After employers have carried out their initial automatic enrolment process they are required to provide details to The Pensions Regulator. This includes the number of active pension scheme members, the number of people automatically enrolled, the number ineligible and the pension scheme(s) used.

113 There are prescribed time limits to do this and similar requirements for new PAYE schemes that we need to adjust to take account of an extended joining window. We are amending the Employers' Duties (Registration and Compliance) Regulations 2010 to extend the registration deadline from four months to five months and the re-registration deadline from one month to two months. Registration deadlines are linked to staging dates. For simplicity we propose to retain this link.

Disclosure of scheme information to new members and annual benefit statements

114 The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 set out the basic information that schemes must provide for new and prospective members within one month from receipt of the jobholder information. Schemes could receive the jobholder information a little later with a six week joining window but the actual receipt of the jobholder information still triggers the start of that month window to issue information to new members and we believe the processes align without the need for any change here.

115 An annual benefit statement can fall due at a point where the scheme has not received any contributions from, or in respect of a member, so any statement of accrued and projected benefits could be a “nil” statement. The proposal to extend the joining window and the contribution deadline for new joiners has further highlighted the issue of nil statements and this is addressed separately in the Government response to proposals to modernise the scheme disclosure requirements.[2]

[2] Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013: consolidating and harmonising the principal disclosure of information regulations for occupational and personal pension schemes. Consultation published 18 February 2013; Government response published 31 July 2013.

Due date for the purposes of unpaid contribution notices

116 The current regulations prescribe due dates for contributions payable to the scheme against which the Pensions Regulator can consider enforcement action in the case of reported late payments. These deadlines mirror the long established 19th/22nd day rule with a discrete rule for contributions deducted and due but not paid, during the opt out window. The amending regulations (regulations 2 and 3) extend the deadline for contributions due for new joiners, extend the rule to all new joiners and decouple the provision from the opt out window. Regulation 50 of the Occupational and Personal Pension Schemes is also amended to bring the rules on unpaid contributions in line.

Test scheme standard

The appropriate age

What the consultation said

117 A test scheme must 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.

118 The intention is that the appropriate age should mirror the State Pension Age including the planned increases to 66, 67 and 68.

119 The proposed changes to regulation 38 were intended to allow employers and actuaries making determinations as to whether a scheme satisfies the test scheme standard in relation to a jobholder to take into account now future increases in state pension age rather than having to wait until the changes actually take effect.

Consultation questions

120 We asked whether the proposed amendments to the definition of the appropriate age have the desired effect.

Responses to the consultation

121 We received 24 responses to this question. Of those 15 (63%) agreed that the amendments should have the desired effect. 8 (33%) said it would both be simpler for the regulation and 'future proof' it against the need for further changes if a direct link was made between the appropriate age and the State Pension Age in the regulation. Two respondents acknowledged that although this would simplify the regulation it might at the same time make the task of certification more onerous given that the State Pension Age will increase incrementally month by month.

Government response

122 On balance we have decided to link the appropriate age directly to the State Pension Age in the regulation. This simplifies the legislation and removes the need to amend it again in the future if the State Pension Age changes again. And we are satisfied that it will not add significantly to the difficulty involved in testing against the test scheme standard. Actuaries will be able to take a pragmatic approach about the incrementally increasing State Pension Age and use suitable approximations when determining whether the scheme passes the test scheme standard.

The maximum service limit

What the consultation said

123 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.

124 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.

125 We proposed that the test scheme for lump sum schemes not linked to final salary should be consistent with regard to the maximum service limit.

Consultation questions

126 We asked whether the proposed amendment to the maximum service limit for lump sum schemes have the desired effect.

Responses to the consultation

127 We received 24 responses to this question with all bar two agreeing with the proposed changes. One respondent suggested that the regulations needed amendment to ensure that schemes did not fail to qualify because they featured higher levels of benefit accrual than those specified in the test scheme rather than exactly the same level.

128 Another respondent suggested that 40 years for a service limit might soon be outmoded as longer working lives than this may soon become the norm.

Government response

129 Regulation 39A as amended by these regulations simply describes the features of the lump sum test schemes. Those schemes are benchmarks against which a scheme seeking to be a qualifying scheme can be compared. The regulations do not require qualifying schemes to match the test schemes exactly, only that the benefits provided by them are broadly equivalent to, or better than, those which would be provided to a jobholder by a test scheme. It is not the case therefore that schemes will fail to qualify if they feature higher levels of benefit accrual than those specified in the test scheme. Such schemes will rightly satisfy the test scheme standard.

130 The Government believe that the 40 years service limit is for the time being an appropriate length of time but will keep this under review in the future.

131 It is important that the test schemes are consistent with regard to the maximum service limit. The Government has therefore laid amending regulations to achieve this.

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

What the consultation said

132 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 2010 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%.

133 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. 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.

134 We proposed that both lump sum test schemes not linked to final salary should feature the minimum levels of in-service revaluation. And that the lump sum test scheme that provides 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 both in service and in deferment.

Consultation questions

135 We asked whether the proposed amendment to the revaluation requirement for certain lump sum schemes have the desired effect.

Responses to the consultation

136 We received 24 responses to this question. 20 agreed with the proposal, 1 disagreed and others made additional comments. The respondent who disagreed with the proposed amendment argued that it represented a small increase in the requirements for the test scheme and was therefore inconsistent with the policy intention (behind questions 25 and 26) to make the DB quality requirement simpler.

137 The same respondent also felt that the way in which lump sum schemes have been described in the regulations and guidance is unhelpful in that, for example, lump sum schemes that provide average salary benefits may still be ‘linked to final salary’ (because the definition of ‘final pensionable salary’ in the rules takes an average of salaries). They argue that a more useful distinction

would be between lump sum schemes that do and do not provide average salary benefits.

138 Wider points were also made about the requirement (in regulation 37 of the 2010 regulations) that test schemes revalue benefits in deferment by the final salary method. It was felt that this causes potential problems for some average salary schemes which may not qualify despite complying with the current statutory requirements on revaluation.

139 Finally, the requirement (in regulation 36) that career average pension schemes must revalue benefits in service at a minimum level annually was also queried. The concern expressed was that schemes might breach this requirement if administrative practices which are common in such schemes meant that there was a time-lag in revaluing the benefits accruing in the first year of membership and that final part year benefits are not revalued in service.

Government response

140 The lump sum test schemes not linked to final salary are test schemes providing average salary benefits so the lack of minimum level in service revaluation equivalent to that required by regulation 36 was an inconsistency which the proposed amendment puts right. The current wording of the regulation would require higher revaluation in deferment than in active service which would clearly be anomalous.

141 We have amended the way in which the test schemes have been described in the regulations in order to clarify the intention that one test scheme is a final salary scheme and two are schemes providing average salary benefits:

142 On the wider revaluation issues raised in the responses to this question: regulation 37 currently requires the test scheme to revalue benefits in deferment at the statutory minimum rate following the final salary method. We have amended this regulation so that the lump sum test schemes that provide average salary benefits feature revaluation in deferment according to the final salary or average salary methods. The final salary pension test scheme will continue to feature revaluation according to the final salary method. However, this should not prevent employers from being able to certify their career average pension schemes themselves using the simplified test scheme standard set out in section 3 of the guidance for employers on certifying defined benefit and hybrid schemes.

143 Finally in relation to the requirement in regulation 36 for a minimum level of revaluation in service the Government's view is that there is sufficient flexibility provided in that regulation to allow schemes to take a reasonable and practical approach to the timing of that revaluation. This should mean that, for example, time-lags in revaluation of benefits early on in membership and a lack of in service revaluation for any final part-year will not lead to breaches. In the light of continuing concerns on this issue however we propose to clarify matters when that regulation is next amended. In last year's consultation on

career average schemes the Government response mentioned that we would consider further amendments to allow for wider flexibility around the revaluation requirement and we intend to bring forward proposals before the end of this year.

Consultation questions

144 We asked whether there any reasons not to bring the changes to the test scheme requirements into force as soon as possible

Responses to the consultation

145 We received 24 responses to this question. 22 felt that there was no reason to delay bringing in the changes as soon as possible. The remaining two agreed they should be brought in subject to their comments on their substance.

Government response

146 The Government will bring these changes into force as soon as possible to bring certainty and consistency into the test scheme standard legislation.

Automatic Enrolment – other changes

Excluding certain categories of worker from the automatic enrolment duty

What the consultation said

147 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 2008. The jobholder has the right to opt out of pension saving.

148 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 pension saving is not appropriate, or where further pension saving could result in financial detriment or where legal difficulties might make it difficult for an employer to find a scheme to take an individual, putting the employer in breach.

149 At the moment there is no general power in the Pensions Act 2008 that allows the employer duties to be lifted for specific descriptions or categories of jobholders in regulations. Clause 34 in the Pensions Bill currently before Parliament provides regulation making powers to exclude workers of a prescribed class or description from the scope of automatic enrolment.

150 We sought more information on three situations where an exception to the automatic enrolment duty might be appropriate – individuals with enhanced or fixed tax protection for high net wealth pension savings; active members of money purchase schemes who have given notice of retirement and people who hand in their notice during a deferral period. We also asked for views on the practicalities of operating exclusions and whether there are other categories of worker for whose personal or financial circumstances might make automatic enrolment inappropriate.

Government response

151 We are grateful for the substantial number of responses on the use of the proposed power to make exceptions to the duty. They provided a substantial amount of detailed information about the issues, and most importantly possible solutions, because framing an exception to the employer duty is not necessarily straightforward.

152 We are analysing the results from the initial call for evidence and plan to publish the results, with the Government's proposals, in a further consultation.

Other possible easements for employers providing good pension schemes

Employer duties

What the consultation said

153 Some employers have elected to go beyond the strict requirements of automatic enrolment 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. 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.

154 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.

155 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.

Consultation questions

156 We asked two consultation questions:

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?

Responses to the consultation

157 The principle was well received but most responses approached this very cautiously. The general view was that easements for contract joining would be appropriate but also said that contract joining is not necessarily the sign of a quality scheme.

158 An alternative regime for contract joining alongside automatic enrolment was largely welcomed provided it removes the information burden, stops duplicate or successive enrolments and leaves periodic re-enrolment.

159 There was limited appetite for risk. Most responses felt that schemes used for contract joining should meet automatic enrolment requirements with similar processes, similar contribution levels similar member rights and similar record keeping requirements. There was a view overall that employers would be nervous about taking the risk unless the self certification is against the same type of standards that apply now – even down to certifying against one of the established certification tests.

160 The primary concern was that workers should be treated in a similar way, with the same minimum rights irrespective of the joining arrangements used.

161 The few responses that supported a very light touch regime agreed that certifying a scheme meets the policy objectives would be an option, albeit only after a debate about which policy objectives are essential and which ones are exempt. Another suggested that the employer should certify and prove they had paid for and received professional advice from, for example, an actuary or Employee Benefit Consultant. Other suggestions included a light-touch regime for contract joining into schemes using a recognised Quality Mark to promote good behaviours, or a regime to audit the self-certifiers.

Government response

162 We are concerned to reduce the administrative burden on employers and to improve the fit between automatic enrolment and contract joining. Despite the attractions of the principle of a lighter regime, respondents hedged their support with a number of caveats indicating a very limited risk appetite.

163 Nevertheless, responses suggest that there is scope to better align contract joining and automatic enrolment processes. We are keen to work with interested stakeholders to further explore issues including successive enrolments and the information requirements.

DB quality requirements

What the consultation said

164 Employers using a Defined Benefit (DB) scheme to meet their automatic enrolment duty need to ensure their scheme meets the minimum quality requirements.

165 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.

166 This could include considering whether there is a need for quality requirements for DB schemes, or whether they always provide good quality pensions.

167 It could also include looking at whether there are simpler measures of quality that could be used for automatic enrolment purposes.

Consultation questions

168 We asked two consultation questions:

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?

Responses to the consultation

169 Forty six responses were received on the issue of DB quality requirements from providers, consultants, lawyers, actuaries, trustees and employers. Thirty five felt at least some form of requirement was needed with most saying that it would otherwise be easy to design low value DB schemes in the future as avoidance vehicles. Two felt that the requirement was not needed in respect of public sector DB schemes and nine thought no requirement was needed at all and that any risks could be managed through use of a suitable anti-avoidance measure.

170 On the issue of determining whether a DB scheme is good enough to be used for automatic enrolment 34 organisations replied. Five thought the current requirement did not need any change. Twenty seven felt it was unnecessarily complex and/or would need change in response to the abolition of contracting out and/or the introduction of Defined Ambition schemes. Formerly contracted-out schemes should,

from 2016, be deemed to be qualifying unless the benefits provided are changed in some way. And of those suggesting options for simplification of the requirements for contracted-in schemes (including possible DA schemes) 11 thought it should be possible for the schemes to be certified as providing benefits of at least equivalent value to the minimum contribution requirements for DC schemes. Respondents suggested some initial thoughts on the different ways in which this equivalent value test might operate.

Government response

171 The Government is keen to work with those who responded to these questions and all other interested stakeholders to explore further the possible options for simplifying the ways in which the quality requirements for schemes that are not money purchase could be met.

Annex: Organisations that responded to the consultation

Aberdeen City Council
ABI
ADP
Aegon
Alexander Forbes Offshore
Allen & Overy LLP
Altus Ltd
Aon Hewitt
Aquilaheywood
Asda Stores Ltd
Association of Accounting Technician
Association of Consulting Actuaries
Association of Convenience Stores
Association of Pension Lawyers
Association of School and College leaders
Aviva
B&CE Benefit Schemes
BCS
Buck Consultants
CBI
Cambridge Assessment
Capita
Ceridian UK
Cintra
CIPP & IReeN
C M Consulting with Anstar Solutions (joint response)
Coats plc
Compass Group
ContractUmbrella Ltd
Council for the Curriculum, Examinations and Assessment
Debenhams
Department of Health
Devon County Council
DLA Piper
Endemol UK Limited
Eversheds LLP
Fidelity Worldwide Investment
First Actuarial
Friends Life
Greater Manchester Pension Fund
Greggs plc
Hampshire County Council
Hargreaves Lansdown
Herbert Smith Freehills.
Hymans Robertson
ICAEW
Johnson Fleming
JLT Benefit Solutions
Kent County Council

Kingfisher plc
Lafarge Building Materials Ltd
Lane Clark & Peacock
Laura Ashley Ltd
Legal & General
Leicestershire County Council
Lewis Silkin
Liverpool John Moores University
Local Government Association (LGA) and the Local Government Pensions Committee (LGPC)
London Borough of Havering
Lorica Employee Benefits
Marks and Spencer
Mercer
Merseyside Pension Fund
National Association of Pension Funds
Nationwide Building Society
NEST
New College Stamford
NHS employers
NHS Tayside (Payroll Managers Group)
NorthgateArinso
Pact
Pegasus Software
Pensions Management Institute
PricewaterhouseCoopers
R&A Group Services Limited
Renfrewshire Council
Royal Devon and Exeter NHS Foundation Trust
Sackers
Safe Computing Ltd
Sage
St Albans District Council
Scottish Life
Scottish Qualifications Authority
Scottish Water
Software for People Limited
South Lanarkshire Council
Speedy Services
Standard Life
Star Computers
St Helens Council.
Superannuation Arrangements of the University of London
Taunton Deane Borough Council
Tesco
The Association of School and College Leaders
The Pensions Trust
The Society of Pension Consultants
Tax Incentivised Savings Association (TISA)
Towers Watson

Transport for London Pension Fund
TUC
Universities and Colleges Employers Association
Universities Superannuation Scheme Limited
University of Cambridge
Vale of Glamorgan Council
Wakefield College
West Somerset Council
Wragge & Co
Xentrall HR Services
Zurich Insurance

There were two responses from private individuals

ISBN 978-1-78153-608-7