

Workplace pensions automatic enrolment: miscellaneous regulations package 2017

Government response to the consultation on the
draft Statutory Instrument issued on 10 February
2017

March 2017

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1) Introduction

Since October 2012, employers are obliged to enrol all workers who satisfy age and earnings criteria into a qualifying workplace pension arrangement and pay a minimum level of contributions. Automatic enrolment (AE) is designed to target non-savers and under-savers. It obliges employers, irrespective of size or industry, in both public and private sectors, to provide a qualifying workplace pension to their workers and pay into it.

AE has already evolved. There have been changes to the legislation to make AE easier to operate since the original framework was laid down in the Pensions Act 2008. Following an independent review in 2010, the then government introduced postponement, the AE earnings trigger and gave employers more flexibility to choose their re-enrolment dates. The staging timetable was also changed to give small and micro employers until at least 2015 to prepare for AE. Among other changes introduced from November 2013 the enrolment processes were simplified to align better with payroll processes.

In November 2014, government introduced measures in secondary legislation that came into effect from 1 April 2015 to further simplify AE and reduce burdens on employers. These measures introduced an alternative quality requirement for defined benefits (DB) schemes; simplified the information requirements on employers; and created exceptions to the employer duties in certain circumstances.

In April 2016, government again simplified the AE framework to ease the burden on employers, particularly having regard to small and micro businesses enrolling their workers into a workplace pension scheme.

The government is committed to making AE as simple as possible and minimising burdens on employers.

From 10 February to 3 March 2017, the Department for Work and Pensions consulted on a draft Statutory Instrument that makes two changes to the process for newly created employers that will become subject to the AE duties during 2017:

- a change to the AE duties trigger set out in legislation for these employers (known as post-staging employers); and
- extending to these employers the option to defer AE for their new workers; (currently this deregulatory measure is available only to employers within the AE staging profile).

We sought stakeholder views on whether these regulations would work in practice to achieve the policy intent of providing a clear and straightforward compliance

framework for new employers coming into existence during 2017, who would be outside the AE staging profile, and would therefore have near instantaneous AE duties apply to them. We also wanted to know whether the deregulatory measure in our regulations, allowing new employers to defer AE (for up to three months for new workers) would be helpful.

We received 17 formal written responses from: employers; pension providers; payroll specialists; a chartered accounting firm; pensions' lawyers; and pensions' professionals. We are grateful to everyone who replied. A list of organisations that responded to the consultation is at Annex A.

Responses were supportive of the aims of the regulations, and welcomed the deferral of AE for new workers as a helpful deregulatory measure, particularly for small and micro employers. Several respondents offered detailed comments on the drafting of the Statutory Instrument, and three respondents made suggestions on topics that were outside the scope of this consultation.

2) The draft Statutory Instrument

What the consultation asked

Q1. Do you agree with the proposed changes set out in the draft Statutory Instrument?

Q2. Do you have any concerns about the description of the new proposed **AE duties trigger date** set out in the draft Statutory Instrument, and whether this date will be easily understood by employers? If so, please provide details, or propose an alternative description of the duties trigger date.

Q3: Do you have any other comments on the content of the draft Statutory Instrument?

Responses to the consultation

Respondents broadly welcomed the proposed changes to the AE duties trigger date for post-staging employers as a sensible solution to the issue of how best to apply the near instantaneous AE duties to new employers that come into existence during 2017. There was also considerable support for the deregulatory measure that will allow these new (post-staging) employers to defer AE for their new workers by up to three months.

Some respondents set out concerns about the complexity of certain AE processes that had been raised by their employer clients. Other respondents asked about the

possibility of simplifying the terminology used in AE legislation (e.g. use of terms such as 'workers'). However these comments were outside the scope of the consultation on these regulations. We will, therefore, explore matters raised about the technical operation of AE legislation via the 2017 AE Review, recently announced by DWP Ministers¹.

Several legal and payroll operations experts offered minor and technical drafting comments on the Statutory Instrument (SI) which have been helpful in preparing the final version of the SI.

Two stakeholders asked us to consider alternative AE duties triggers for post-staging employers which would give those employers more time to deal with the duties and be more straightforward for payroll software companies and the Pensions Regulator (TPR) to administer.

Government response

The government welcomes the fact that the majority of those who responded support this regulations package to change the AE duties start date for post-staging employers, and the deregulatory measure (now known as the 'deferral period') for post-staging employers taking on new workers.

Two respondents asked us to consider alternative AE duties trigger mechanisms. One respondent wanted employers to have a standard three month grace period, following their AE duties start date, to bring their employees into pensions saving. This proposal would be counter to the policy intention of bringing employees into pensions saving at the earliest possible point in their employment. Over four years after the introduction of AE, the expectation is that complying with AE duties is now part of the normal process of setting up a business in the same way that new employers are expected to deal with tax and national insurance from the outset.

The second respondent agreed that the new duties trigger date would be more straightforward for employers but raised concerns about the operational implications for payroll providers and TPR. We have worked extensively with TPR on the development of the post-staging AE duties trigger. TPR is confident that the regulations will work operationally and TPR will be working with payroll providers and others to provide appropriate operational guidance for the new AE duties trigger date. We have therefore decided against making changes to the new AE duties trigger date.

We will now bring forward the AE regulations which are due to come into force in April 2017.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590220/initial-questions-automatic-enrolment-review.pdf

3) Annex A – Respondents

Aviva

Business Application Software Developers' Association

BC&E, The People's Pension

Burgess Salmon LLP

Chemical Business Association

Disability North

Enable Autoenrol

Hymans Robertson LLP

JC Woodburn Ltd

Mercer Consulting Ltd

The Association of Accounting Technicians

The Association of Pensions Lawyers

The Pensions Management Institute

The Society of Pension Professionals

Tisa

True Potential LLP

Willis Towers Watson