

# Revised implementation proposals for workplace pension reform

Government response to consultation

July 2012

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# 1. Introduction

1. On 23 March 2012 we published the consultation document 'Revised implementation proposals for workplace pension reform'. This included draft regulations and was accompanied by an impact assessment. The consultation closed on 4 May 2012, and 24 formal written responses were received.
2. The consultation covered draft amendment regulations to the Employers' Duties (Implementation) Regulations 2010 which will introduce the Government's proposals to ease regulatory burden for small employers by moving their staging dates into the next Parliament.
3. We consulted formally for a period of six weeks. This is shorter than the usual consultation period and will allow the amending regulations to be laid before Parliament before the summer recess and come into force from 1 October 2012. It will also provide earlier certainty to employers, pensions industry professionals and external suppliers who will be responsible for delivering different elements of the workplace pension reforms.
4. This document summarises the responses to the consultation and the Government's response.
5. It also sets out one minor change to the draft regulations and provides us with the opportunity to give clarification on the issues raised which fall outside the scope of this consultation, but which we recognise are of significant importance to enable wider understanding of the reforms or legislation.
6. We are grateful to all those who put aside time to consider the issues and share views, thoughts and suggestions. A list of organisations and individuals that responded to the consultation is at Section 4.
7. The instrument is subject to the negative resolution procedure and laid before Parliament on 12 July 2012 with a coming into force date of 1 October 2012.
8. This document is available on the DWP website at:  
<http://www.dwp.gov.uk/consultations/2012/wpr-rev-implementation.shtml>
9. A paper copy of this document can be obtained from:

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## 2. Background and summary of changes

1. The Government announced on 28 November 2011 that employers with fewer than 50 workers will not be brought into automatic enrolment until the next Parliament. This replaced earlier proposals in respect of the moratorium on micro business which were subsequently withdrawn.
2. As a consequence, we have re-designed the implementation timetable to ensure that no small employer with fewer than 50 workers in its PAYE scheme will be brought in before May 2015, and amended the staging timetable in the Employers' Duties (Implementation) Regulations accordingly. These changes mean that there is no effect on any employer's existing staging date before March 2014. The staging dates in the period April 2014 to April 2015 have been re-profiled to accommodate employers with 50 to 249 persons in their PAYE scheme.
3. We have also made other changes as a consequence of the timetable re-design and responses to the consultation. In particular, a key concern of respondents was that the definition of 'small employer', which included a full time equivalent provision, was overly complex and burdensome. We have, therefore, made a minor change to the description of small employers and removed the full time equivalent provision. These employers will now, instead, be required to establish the number of workers in their PAYE scheme as at 1 April 2012 rather than the number of full time equivalent workers they employ at that time. This will continue to allow genuine small employers who share a PAYE scheme with a larger employer, and who cannot be separately identified in PAYE data, to move their staging date to another designated staging date in the next Parliament. It will also allow any employer whose PAYE scheme contains 50 or more persons, rather than workers, to similarly move their staging date. This will particularly benefit those small employers who pay a company pension to past employees through the payroll.
4. We have also extended the first transitional period for defined contribution schemes to ensure that all existing employers are staged in before the minimum one per cent employer contribution increases to two per cent. To provide parity for employers using defined benefit or hybrid schemes, the transitional period for defined benefit or hybrid schemes has also been extended and aligned.
5. These, and other minor drafting amendments, will allow us to ensure that our revised implementation plan continues to provide the correct balance between easing the burden on smaller businesses and ensuring that our delivery partners continue to be able to take on and process large volumes of employers gradually, without risk to the overall implementation of the reforms.

# 3. Stakeholders' responses to the consultation and the Government's response

## What the draft regulations said

### **Employers with fewer than 50 persons in their PAYE scheme**

1. The primary purpose of the draft regulations is to delay the commencement of the employer duties for employers with fewer than 50 workers to June 2015 at the earliest. For those 'small employers' that can be identified through PAYE data, we have amended the table at regulation 4 of the Employers' Duties (Implementation) Regulations 2010. In re-designing the staging timetable it was also important to observe a number of key underlying principles, for example, ensuring that the reforms are introduced smoothly by providing a manageable and gradual ramp up of employer and employee numbers, considering the impact on other employers and existing staging arrangements.

### **All Employers with a current staging date of 1 April 2014 or later**

2. The staging profile is extended to February 2018. The staging period from March 2014 to May 2015 will contain only employers with 50 to 249 persons in their PAYE scheme. Employers with 40 to 49 workers and 30 to 39 workers in their PAYE scheme will be re-distributed to August 2015 and October 2015 respectively.

### **Test tranche for small employers**

3. This will now be positioned at June 2015 and will test and evaluate the compliance levels of employers with fewer than 30 persons in their PAYE scheme.

### **Definition of 'small employer'**

4. The definition of 'small employer' will:
  - provide employers who share a PAYE scheme with other employers and who have fewer than 50 workers on their workforce as at 1 April 2012 to move their

staging date to a new prescribed pre-designated staging date between 1 August 2015 and 1 April 2017;

- allow employers whose PAYE scheme contains 50 or more persons, rather than workers, to similarly move their staging date; and
- provide 'small employers' as described above with the choice of whether or not they move their staging date.

## **New PAYE schemes created from 1 April 2012 to 31 March 2016**

5. New PAYE schemes created from 1 April 2012 up to and including 30 September 2017 will be assigned staging dates from 1 May 2017 to 1 February 2018. New PAYE schemes born from 1 October 2017 onwards will have an immediate staging date where the employer is paying PAYE income in respect of any worker.

## **Employers of any other description**

6. The staging date of these employers, for example, those without a PAYE scheme, will now be positioned at 1 April 2017. New employers without a PAYE scheme born after 1 April 2017 will have an immediate employer duty where they pay qualifying earnings to a worker.

## **The first and second transitional periods for employers using money purchase and personal pension schemes (phasing of minimum contributions)**

7. The first transitional period, during which the minimum employer contribution is 1 per cent for money purchase and personal pension schemes will be extended to 30 September 2017. The second transitional period, during which the minimum employer contribution is 2 per cent, will then commence on 1 October 2017 and finish on 30 September 2018, from when the minimum employer contribution will be 3 per cent.

New employers with staging dates of 1 October 2017 to 1 February 2018 will be required to start paying employer contributions at 2 per cent out of the required total of 5 per cent from the outset.

## **The transitional period for employers using defined benefit and hybrid schemes**

8. The transitional period for defined benefit and hybrid schemes will be extended to 30 September 2017.

## What stakeholders said

9. Many of the responses demonstrated that there is still strong support for automatic enrolment amongst stakeholders. However, the vast majority of respondents called for certainty and for the legislative framework to be finalised as soon as possible without further change. Very few respondents were in outright favour of the changes. Whilst some respondents recognised the benefits of the longer staging timetable for small and micro employers they, and many others, did not necessarily agree with other aspects of the proposals. For example, around one third of respondents thought that the delays to staging and phasing would be detrimental to individuals' savings. However, only one of these offered an estimate of the scale of the impacts in this area, and this was broadly in line with our assessment of the impact. There were several suggestions to revert back to the original phasing timetable and one for the link between staging and phasing to be broken. One respondent suggested that the early automatic enrolment provisions would need to be modified in respect of those small employers whose staging date is moved to the next Parliament.
10. Around one quarter thought that using a full time equivalent formula (FTE) in the definition of small employer which allows those employers with fewer than 50 FTE workers in their PAYE scheme to move their staging date increases complexity and administrative burden. In particular, they thought that it would be difficult to operate for employers with workers on zero hours contracts and those on other types of non-standard contracts such as annualised hours and variable hours. One respondent thought that an employer should, instead, be able to provide the Pensions Regulator with evidence about the number of workers in their PAYE scheme as at 1 April 2012 and have their staging date adjusted accordingly.
11. Five of the respondents who commented on the new process for employers with fewer than 50 FTE workers thought that the provision should be applied consistently to all employers. This would allow all of those employers whose PAYE scheme contains 50 or more persons, rather than workers, to base their staging date on the actual number of workers in their PAYE scheme. This would be of most benefit to those employers who pay a company pension to past employees through the payroll. A variant of this was a comment that only permanent members of staff should count towards the size of a PAYE scheme.
12. Other comments ranged from a view that the extended staging timetable would exacerbate the period of market distortion already created by staging by employer size rather than sector, through to the suggestion that the Government had failed to consider the longer-term wider effects on the economy and a suggestion that the start date of the reforms should be delayed. There were also suggestions that extending staging could undermine confidence in and the success of the reforms, does not help with the aspiration to get individuals into pension saving as quickly as possible and will encourage opt-out. One respondent also thought that the new timetable creates an anomaly for employers with 30 to 49 persons in their PAYE scheme, some of whom will be staged up to six months earlier than under the previous arrangements. There was also concern that the impact assessment does not reflect the true costs to business and a suggestion that micro businesses should be exempt from the reforms. One respondent asked whether



employers would be able to challenge their staging date identified by the Pensions Regulator.

13. There was general support for the proposal to align the first transitional period for phasing of minimum contributions at one per cent for defined contribution schemes with the transitional period for employers using DB and hybrid schemes. A few respondents were concerned about the effect on Providers' revenue streams and one respondent was totally opposed to the changes.
14. Some very minor technical drafting points drawn to our attention have also been addressed but are omitted here for brevity.

## The Government's response to stakeholders

15. The Government appreciates the detailed and constructive responses received to this consultation and is very aware of the need to provide certainty to all who are involved with automatic enrolment, whether it is employers, the pensions industry or other support sectors. However, getting the detail of implementation right is fundamental to the success of the workplace pension reforms. Whilst getting more people into pension saving as soon as possible and changing the saving culture remain our primary objectives, it is essential to ensure that smaller employers remain engaged with the reforms and have the capability to discharge their duties with minimal administrative burden. We believe that the primary change set out in the consultation document achieves this outcome.
16. The implementation strategy was designed with employers in mind, so is intended to be simple to understand and to operate. Basing employers' staging dates on the number of persons in their PAYE scheme as at 1 April 2012 ensures that all employers are treated equally and fairly. Providing employers with the opportunity to challenge their staging dates would undermine this fundamental principle.
17. It is also important to ensure that we do not introduce any unnecessary competition issues by requiring different employers to pay different levels of contributions at the same time during the staging period. Therefore, the staging and phasing periods were aligned wherever possible, for example, the first transitional period (one per cent employer contributions) for defined contribution phasing was aligned with the overall staging period so that all existing employers would be staged in before employer contributions were increased to two per cent. These underlying principles still stand and we, therefore, believe that it is right for the first transitional period to be extended to September 2017 to maintain as much alignment as possible with the staging period. We recognise that some new employers will be staged in immediately at a level of two per cent contributions, but they would have had a minimum of 14 months longer paying zero contributions than under the previous arrangements.
18. We also recognise that some employers with 30 to 49 persons in their PAYE scheme will have earlier staging dates than under the previous arrangements. The revised staging timetable benefits around 1.1 million employers who will have a later staging date of around one year. A small proportion of the 36,000 employers in the 30 to 49 employer size band who may have had a later staging

date of up to six months under the old timetable. However, it is also the case that some of these employers may actually have had an earlier staging date - as early as August 2014 - under the old timetable. All employers will benefit from the delay to phasing, saving one per cent contributions for 24 months. So, if a firm is staged six months earlier, they have to start contributing earlier, but only at one per cent. The net effect is 18 months with one per cent lower contribution costs.

19. The Government welcomes the general support to align the transitional period for employers using defined benefit or hybrid schemes with the extended first transitional period for employers using defined contribution schemes. This will provide parity and a structure which is easy to understand and operate.
20. We have made a minor change to the description of small and micro employers, defined in the draft regulations as 'small employer' in order to reflect the views and suggestions of respondents. A key concern was that the definition of 'small employer' was overly complex and burdensome. We have, therefore, removed the full time equivalent provision and replaced it with a simpler test which will require employers who meet the description to establish the number of workers in their PAYE scheme as at 1 April 2012.
21. The employer will not now be required to have regard to the number of full time equivalent workers they employ or, for example, refer back the number of hours worked by an individual employee. This will continue to allow genuine small employers who share a PAYE scheme with a larger employer, and who cannot be separately identified in PAYE data, to move their staging date. It will also allow any small employer whose PAYE scheme contains 50 or more persons, rather than workers, to similarly move their staging date. This will particularly benefit those employers who pay a company pension to past employees through the payroll. In both instances, employers will not be required to notify the Pensions Regulator that they are moving their staging date, but may do so on a voluntary basis. This will be set out in communications to employers.
22. We will also provide those employers who fall within the new description with a choice of whether or not they move their staging date. In keeping with the spirit of reducing burden on business these small employers will not be required to notify the Pensions Regulator where they wish to keep their date. We do not believe it is appropriate to modify the early automatic enrolment provisions in respect of those small employers whose staging date is moved to the next Parliament. Such a provision would make the regulations overly complex and burdensome for the benefit of a small number of employers who would actually wish to move their staging date forward again. Providing employers with a choice allows them to keep their original staging date rather than delaying to the next Parliament. Those employers who decide to keep their original staging date will be able to move their staging date forward to an earlier date under the early automatic provisions in the usual way.
23. We do not agree that the start of the reforms should be delayed or that micro businesses should be exempt from the reforms. The exemption of micro business was considered by the independent Making Automatic Enrolment Work Review and rejected. Many employers and the pensions industry have already invested

large amounts of time and money preparing for the implementation of the reforms, and they must now be implemented without further delay. Everyone should have the opportunity to save for their retirement. We are committed to building a successful and inclusive savings culture and that means that automatic enrolment should apply to all employers.

24. Turning to the costs to business reflected in the impact assessment, the Government is aware of the challenges faced by small employers and is keen that they are not disadvantaged by the reforms and are able to fulfil their duties in the same way as larger firms. Minimising the costs to business, particularly small firms, has always been an underlying principle for the reforms. Our estimates for employers' administrative costs for automatic enrolment, using the Standard Cost Model approach, are based on the specific requirements as set out in the automatic enrolment regulations.
25. Early insight into employer burden and costs forms a key part of the Department's evaluation plans. Annual reports based on these plans will monitor outcomes at different stages, and by a range of employer characteristics, including analysis by employer size. It will be captured using the Department's qualitative research with employers, quantitative Employer Pension Provision Surveys, the Pension Regulator's quarterly employer research and the ONS the Annual Business Survey. Any learning from employers in the early stages could then be passed on to later starters to make best use of the evidence in practice.
26. Overall, we believe that these new arrangements will strike the correct balance between getting more individuals into pension saving as quickly as possible and minimising employer burden without impacting on specific sectors or the economy longer-term. We acknowledge that it is now time to finalise these regulations to ensure that confidence is not lost and that the reforms are a success.

## 4. List of respondents

Aegon

Alexander Forbes

Association of British Insurers

Bluefin Group

Ceridian

Chartered Institute of Payroll Professionals

Federation of Small Businesses

Institute of Payroll Professionals

Jardine Lloyd Thompson

JSA Group

Law Society of Scotland

Legal and General

Mayer Brown

Mel Dixon

Mercer

National Association of Pension Funds

Now Pensions

Recruitment and Employment Confederation

Royal Bank of Scotland

Society of Pension Consultants

Standard Life

Towers Watson

Trades Union Congress

Trevor Durham