

Pensions Bill 2013-14 Briefing Paper

Clause 34 Automatic enrolment: powers to create general exceptions

Background

The employer duty to enrol workers 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.

The Government remains firmly committed to the policy of automatically enrolling 11 million people who are not currently saving in a qualifying workplace pension scheme, irrespective of employer size.

However, there is growing evidence of some specific circumstances in which the benefits of being automatically enrolled are outweighed by either the practical, financial or legal consequences. In particular, we have been presented with evidence about situations in which being automatically enrolled is likely to cause detriment to some jobholders. Those employers that have already reached their staging dates have shared with us their concerns about being forced to automatically enrol some individuals whose circumstances mean that this is undesirable for the jobholder or is impractical for the employer or pension scheme.

Currently, the legislation relies solely on the jobholder to determine whether they should opt out of pension saving. The Pensions Act 2008 doesn't have a general provision to provide for exceptions to the employer duty. Clause 34 of this Bill would provide a power to lift the employer duties for specific descriptions or categories of jobholders in regulations. This flexibility will allow this and future Governments to respond to feedback and ensure that the policy is deliverable for employers and is effectively targeted for individuals.

Exceptions on which we canvassed views

The Government invited views on its current thinking in the recent public consultation¹ *Technical Changes to Automatic Enrolment* and sought further information about our initial assessment of circumstances in which automatic enrolment might not be appropriate for certain workers.

¹ *Technical Changes to Automatic Enrolment* ran from 25th March 2013 to 7th May 2013 and the Government is currently considering its response.

The initial evidence suggested that there is a case to re-examine the appropriateness of the employer duty in some, very carefully specified, circumstances. Views were sought on these, including where opt out may not be a fully suitable solution, or the scale of the employer's administration in order to achieve automatic enrolment for certain individuals might be out of all proportion to the benefits.

Examples

There are a number of categories of individuals with existing pension savings who are protected from tax charges under HMRC enhanced or fixed protection provisions. New arrangements have been announced for 2014. Automatic enrolment puts this status at risk because of the automatic nature of the employer duty, with no involvement, choice or decision from the individual worker. At the moment the only option available to those individuals who have this protection and wish to retain it is to opt out after they have been automatically enrolled. If for any reason the jobholder doesn't do so within the time limit they could face significant tax charges.

Where someone hands in their notice and their period of notice spans their automatic enrolment date, the legislation currently obliges an employer to automatically enrol this person even though they know that they are about to leave their employment. Automatic enrolment doesn't seem appropriate in this situation.

Where an active member of a money purchase scheme gives notice of retirement and stops making contributions before the purchase of an annuity, it seems perverse to oblige an employer to enrol them again if the employer's staging date falls within the notice period. There is unlikely to be any real benefit in their making further contributions to a new pension scheme. In some cases, the scheme may decide to do nothing more than hold any contributions in this scenario in a cash account, and the member may have difficulty accessing what may be a relatively small sum of money.

Next steps

To assess the evidence so far and balance the relevant factors when considering proposed uses for the power in Clause 34, we propose to test all the suggested exclusions against the following core policy principles:

- Is pension saving likely to put the individuals at financial or legal risk?
- Are the individuals unlikely to benefit from pension saving?
- Are employers able to identify the individuals with minimal burden?
- Is the employer able to arrange membership of a scheme without unreasonable financial or legal risk?

A summary of the findings from the consultation will be published as part of the Government's response in due course. We then propose to hold a further formal consultation on draft proposals in the autumn.

Repeals

The repeal provisions in this clause are technical drafting changes to marshal two existing exceptions under this one general power.

Qualifying persons under the cross-border provisions are currently exempt from automatic enrolment. Anyone who cancelled their membership in the year preceding triennial re-enrolment is exempt from automatic re-enrolment.

The policy on these is unchanged and the exceptions remain in force.

Policy contact:

Jane Stewart
Department for Work and Pensions
Private Pensions Policy
Tel: 0207 449 7230
e-mail: jane.stewart4@dwp.gsi.gov.uk