

Workplace Pension Reform – Completing the legislative framework for Automatic Enrolment

Consultation on draft regulations

July 2011

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1. Consultation arrangements

Who this consultation is aimed at

This consultation is aimed at employers, employee representatives and pension industry professionals, including occupational pension and workplace personal pension scheme administrators, payroll administrators, accountants, payroll bureaux, Independent Financial Advisors and employee benefit consultants. Comments from workers and the general public are also welcome.

Subject of consultation

This document sets out proposed amendments to regulations previously made in exercise of powers contained in the Pensions Act 2008 and proposed regulations to be made under powers in the Pensions Bill 2011. The amendments are primarily intended to put into effect the recommendations of the independent Making Automatic Enrolment Work (MAEW) Review, which was conducted during 2010. In addition to the recommendations of the Review, we are proposing to make a series of minor technical regulatory amendments in order to ensure that the policy intention is fully and accurately expressed in legislation. This consultation concerns:

- amendments to existing legislation to reflect policy changes arising from the MAEW Review, including measures to manage the burdens on business, such as allowing employers to apply waiting periods in respect of eligible jobholders;
- a series of minor amendments intended to clarify the policy and remove legislative obstacles;
- new regulations and draft guidance for persons certifying money purchase, personal pension and certain hybrid schemes; and
- new statutory instruments on special occupations not currently covered by automatic enrolment (seafarers, police not under a contract of employment and offshore workers).

It is proposed that these regulations will come into force in early 2012.

Purpose of the consultation

This document seeks views on the following:

- The draft Automatic Enrolment (Miscellaneous Amendments) Regulations 2011;
- The draft Automatic Enrolment (Miscellaneous Amendments) (No. 2) Regulations 2011, which include new regulations on certification and special occupations;
- Draft guidance for persons certifying money purchase, personal pension and certain hybrid schemes;
- The draft Automatic Enrolment (Offshore Employment) Order 2011; and
- The draft Compromise Agreements (Pensions Act 2008) (Description of Person) Order 2011.

Scope of consultation

This consultation applies to England, Wales and Scotland apart from the proposals relating to seafarers and offshore workers which would also apply to Northern Ireland. Northern Ireland has its own body of pensions law and references to Great Britain legislation are to be taken, where necessary, as including references to the corresponding Northern Ireland legislation. It is anticipated that Northern Ireland will make corresponding regulations.

Duration of the consultation

The consultation period begins on 19 July and runs until **11 October 2011**.

How can you respond to this consultation?

This document is available on the Department's website at:

<http://dwp.gov.uk/consultations/2011/workplace-pension-reform-2011.shtml>

Please send your response, preferably by e-mail to:

workplacepensionreform.consultation@dwp.gsi.gov.uk

Or by post to:

Adrian Mallen
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NE98 1YX

Please ensure your response reaches us by **11 October 2011**.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

Any queries about the subject matter of this consultation should be made to Adrian Mallen at the above email address.

We have sent this consultation document to a large number of people and organisations who have already been involved in this work or who have expressed an interest. Please do share this document with, or tell us about, anyone you think will want to be involved in this consultation.

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purpose of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information which is provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this. We cannot guarantee confidentiality of electronic responses even if your IT system claims it automatically.

If you want to find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Central Freedom of Information Team
Department for Work and Pensions,
The Adelphi
1-11 John Adam Street,
London,
WC2N 6HT

Email: freedom-of-information-request@dwp.gsi.gov.uk

More information about the Freedom of Information Act can be found on the website of the Ministry of Justice, Freedom of Information pages.
Feedback on this consultation

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

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Please also make any suggestions as to how the process of consultation could be improved further.

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If you have any requirements that we need to meet to enable you to comment, please let us know.

The responses to the consultation will be published in a report on the DWP website that will summarise the responses and the action that we will take as a result of them.

Impact Assessment: Workplace pension reform secondary legislation

These regulations have an impact on business and the pensions industry. An impact assessment is published alongside these regulations. That document should be read in conjunction with this consultation document and contains further details on the options appraisal that was carried out.

2. Introduction

The independent Making Automatic Enrolment Work (MAEW) Review was carried out during Summer 2010 to consider the proposed scope for automatic enrolment and the policy of establishing the National Employment Savings Trust (NEST). Specifically, the Review considered whether the scope for automatic enrolment struck the right balance between the costs and benefits to both individuals and employers. It made a number of recommendations to Government intended to reduce the burdens of automatic enrolment on business. These recommendations were welcomed by Government and in response a number of changes are being introduced through the Pensions Bill 2011. The key ones are:

- introducing a new earnings trigger for automatic enrolment and re-enrolment;
- allowing employers greater flexibility on their re-enrolment date (so that it can be up to three months before or after the third anniversary of the staging date or last re-enrolment date);
- the introduction of an optional waiting period of up to three months before the automatic enrolment duty commences;
- allowing an employer to certify that their pension scheme will meet a specified requirement based on earnings from “pound one” rather than a requirement based on qualifying earnings.

Next steps

The purpose of this document is to set out the further additions and amendments to the legislative framework for automatic enrolment that the Government proposes to introduce through regulations before the reforms are introduced from 2012. These changes include the secondary legislation that is required to complete implementation of the MAEW Review recommendations and some technical amendments needed to complete the policy framework.

A short informal consultation on some of the key measures included in this consultation document was carried out in April and May 2011. The feedback that we received from a number of organisations¹ in response to this was very valuable and has been taken into account wherever possible in refining the draft regulations and proposals set out in this consultation document. In particular, we have welcomed the opportunity to engage with some of the organisations that are already actively preparing for the commencement of automatic enrolment from 2012 and look forward to continuing this during the consultation period.

¹ Responses were received from: Aviva; the Association of British Insurers; the Association of Consulting Actuaries; the Association of Pension Lawyers; the National Association of Pension Funds; the Engineering Employers’ Federation; Fullcircuit; Heath Lambert EB; Mercer; the Royal Bank of Scotland; the Society of Pension Consultants; Tesco PLC; Zurich; and the National Employment Savings Trust (NEST).

Our priority now is to provide as much certainty as possible about the entirety of the framework for automatic enrolment for the many organisations engaged in active preparation for go-live. We have therefore included as part of this consultation document all the further draft regulations that we expect to bring forward and explanations of:

- what these will require
- why they are necessary, or in some cases, why we no longer consider that legislation is necessary;
- how the changes proposed will be achieved, which legislation is affected, and where the changes will be made.

Some of the regulations included in this consultation will be made using powers included in the current Pensions Bill. These are subject to the completion of the Bill's passage through Parliament **and** are being consulted on on this basis. The Government Response to the consultation will provide an update on any changes that flow from changes introduced during the legislative process.

Developments since the conclusion of the Making Automatic Enrolment Work Review

The MAEW review proposed a package of recommendations which the Government welcomed. Many of these are being taken forward through measures included in the Pensions Bill 2011 and the draft regulations proposed in this consultation. Other recommendations have been taken forward through non-legislative means.

Moratorium on regulations for small businesses

At the Budget 2011, the Government announced a moratorium on regulation on businesses with fewer than ten employees. This runs from April 2011 to April 2014. The existing implementation arrangements would have brought the vast majority of small businesses under the automatic enrolment duties from summer 2014, after the moratorium ends. However, we are amending the staging provisions of the Employers' Duties (Implementation) Regulations to ensure that no business with fewer than ten employees is brought into automatic enrolment before April 2014. The changes are set out at Part two of the draft Automatic Enrolment (Miscellaneous Amendments) Regulations 2011.

'Double deeming'

In our informal consultation document we highlighted our intention to ensure that a second pensions contract was not created where a worker voluntarily joins a workplace personal pension (WPP) and then becomes an eligible jobholder while working for that employer. Our intention was to ensure that employers could use the existing pension scheme to meet automatic enrolment requirements and not need to set up a separate pension scheme for that worker in order to fulfil the new employer duty.

Following further consideration, we have come to the view that as long as the employer makes the necessary changes to the WPP scheme when that worker becomes eligible, the employer can use this scheme to discharge the automatic enrolment duty without creating a new contract or needing to take separate automatic enrolment action. Therefore, we no longer need to legislate for this eventuality.

Disclosure

DWP is also undertaking a re-assessment of the existing disclosure regulations which require private pension schemes to provide information to individuals².

As part of this we are intending to:

- Consolidate the main “disclosure of information” requirements into one statutory instrument – streamlining the provisions to achieve consistency, where possible.
- Review the fit of the Statutory Money Purchase Illustrations’ provisions with the new pension landscape post 2012; and
- Extend the provisions introduced in December 2010 which allow schemes to communicate with members electronically. The aim is to allow electronic communication for all communications between schemes and members.

We are intending to consult separately on these issues.

² Following previous consultation on Disclosure of Information and the Call for Evidence on Regulatory Differences (which included disclosure):

- [Review of Disclosure of Information Requirements applying to Occupational, Personal & Stakeholder Pension Schemes](#), March 2009. Response published 20 July 2009.
- [Preparing for automatic enrolment – Regulatory differences between occupational and workplace personal pensions](#) January 2011. Response published 27 June 2011

3. Commentary on the draft Automatic Enrolment (Miscellaneous Amendments) Regulations 2011

These Regulations amend the Employers' Duties (Implementation) Regulations 2010, the Employers' Duties (Registration and Compliance) Regulations 2010, the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010, the Occupational Pensions Schemes (Scheme Administration) Regulations 1996 and the Personal Pension Schemes (Payments by Employers) Regulations 2000.

Part 2 – Implementation

Part 2 of the Regulations amends the Employers' Duties (Implementation) Regulations 2010.

Part 2 – implementation – policy background

Moratorium on micro business

The Budget announcement of a moratorium on regulation affecting micro business until 31 March 2014 impacts on three areas of implementation:

- the test tranche of small and micro employers located at March 2014;
- multiple employer PAYE schemes; and
- PAYE schemes containing non employees (some employers use their PAYE scheme as a vehicle to pay company pensions to ex-employees).

Test tranche of small and micro employers

The test tranche, currently located at the March 2014 tranche, contains micro employers. Therefore, the implementation regulations have been amended to switch the position of the test tranche with the current April 2014 tranche in order to remove it from the moratorium period.

Consequently, this shortens the length of time afforded to the Pensions Regulator to evaluate the test tranche and make any adjustments to processes before the first 'real' tranche of small and micro employers at September 2014. To address this, the implementation regulations have been further amended to move the August 2014 tranche to the position of the September 2014 tranche and a range of PAYE reference numbers re-allocated to tranches October 2014 through to October 2015. This approach offers the least amount of disruption to the staging profile already familiar to employers.

Employers using multiple employer PAYE schemes

The Pensions Regulator cannot separately identify employers who are part of a multiple employer PAYE scheme and is, therefore, unable to identify in advance any micro employer using such a scheme and contact them with their own individual staging date. This means that when a large employer is

staged in (between October 2012 and March 2014) any micro employers using the same PAYE scheme will be staged in at the same time.

Therefore, the implementation regulations have been amended to:

- provide a definition of “micro” employer – prescribing that these employers are those with fewer than 10 full-time equivalent employees immediately before 1 April 2011, but who are part of a PAYE scheme with more than 239 persons within that scheme (this provides an end point to the moratorium period and its effect on micro employers, as all PAYE schemes containing 239 persons or fewer are excluded from the moratorium period);
- re-define “staging date” to exclude micro employers from the main staging timetable for the period of the moratorium, and to provide them with a later staging date; and
- ensure that the definitions of “employer” and “PAYE scheme” include employers who are part of a multiple employer PAYE scheme.

Micro employers falling within the definition for the purposes of these regulations will not be required to contact the Pensions Regulator for a new staging date. They will be prescribed a new staging date between October 2014 and January 2016 as follows:

- employers with current staging dates from October 2012 to February 2013 will be staged Jan 2015;
- employers with current staging dates from March 2013 to June 2013 will be staged Apr 2015;
- employers with current staging dates from July 2013 to October 2013 will be staged Oct 2015; and
- employers with current staging dates from November 2013 to March 2014 will be staged Jan 2016.

Micro employers wishing to move their staging date forward will be able to make use of the early automatic enrolment provisions in the normal way.

PAYE schemes containing non-employees

Some employers pay company pensions to ex-employees through the employer's payroll. Because the size of an employer's PAYE scheme is defined by the number of ‘persons’ within that scheme (rather than employees), these pensioners will be included and counted when determining the size of an employer's PAYE scheme for the purpose of allocating a staging date.

The amendments described above to address multiple employer PAYE schemes will address this issue for micro employers. We cannot extend this amendment to all employers as it is not possible to accurately identify ‘employees’, ‘pensioners’ or any other groups within an employer's PAYE scheme and provide a staging date accordingly.

Early auto enrolment for the largest employers

The reforms will be implemented gradually for employers, who will be staged in over a period of four years. This will ensure that the reforms are introduced smoothly, allowing a predictable ramp up of employer and employee numbers over time.

To support the Government's aim of getting more people into pension saving, all employers will be able to bring forward their automatic enrolment date to an alternative specified date, up to October 2012. This is known as early automatic enrolment.

The use of early automatic enrolment is conditional on an employer having:

- contacted a pension scheme which it considers could be used to comply with the employers' duties;
- secured agreement from the scheme that it can be used to discharge those duties from that early auto enrolment date; and
- notified The Pensions Regulator (TPR) in writing of their intention to bring forward their duty date at any time, but at least one month, before their new proposed date.

A number of service breaks have been built into the staging profile. These are 'blank' months which are added before the next duty date to give NEST and other providers an opportunity to clear any backlog. These breaks mean that a duty date will not apply to employers in December, thereby avoiding particularly busy periods for business. April and July 2016 will also be service breaks.

The exception to this rule is 1 December 2012 which has been prescribed separately in the implementation regulations as an automatic enrolment date and will, therefore, be allowed for early auto enrolment. This exception was made in order to allow the maximum possible flexibility for, in particular, larger employers at the start of the staging profile, without forcing employers to automatically enrol during December.

The MAEW Review identified that the additional burden of implementing these reforms, particularly at certain times of the year, was a significant concern for employers.

The Review recommended that the largest employers who are due to be brought into the reforms on 1 October 2012 and 1 November 2012 should be able to move their staging date forward up to 1 July 2012 so that they have similar flexibility around bringing forward their staging date as other employers. All other employers will continue to be restricted to an earliest staging date of October 2012.

To accommodate those largest employers who move their staging date forward up to 1 July 2012 the first transitional period for money purchase and personal pension schemes and the transitional period for defined benefit and

hybrid schemes need to be extended by three months so that they both last from 1 July 2012 to 30 September 2016.

Part 2 – implementation – commentary on changes

Regulation 3 amends regulation 1 (**Citation, commencement and interpretation**) of the Employers' Duties (Implementation) Regulations 2010. .

Paragraph 3(a) amends the coming into force date to 1 June 2012.

Paragraph 3(b) provides a definition of the term “micro employer”, substitutes “applicable” for “allocated” in the definition of “PAYE scheme”, making it clear that an employer’s “PAYE scheme” is the HMRC record applicable to that employer, and substitutes the definition of “staging date” with a new definition covering micro employers.

Paragraph 3(c) inserts a formula for the calculation of full time equivalent employees, applicable in the case of micro employers.

Regulation 4 amends regulation 2 (**Application of the employers' duties to employers**) and sets revised automatic enrolment dates in certain circumstances.

Paragraph 4(a) amends paragraph 2(1) by substituting a new paragraph (1) which provides the new definition of “staging date”.

New sub-paragraph (1)(a) of the amended regulation 2 provides for the existing staging date arrangements for employers not affected by the moratorium.

New sub-paragraph (1)(b) of regulation 2 provides the staging dates for micro employers.

Paragraph 4(b) inserts the words “or is part of” into paragraph (2) of regulation 2 to ensure that employers who are part of a multiple employer PAYE scheme fall within the definition of ‘employer’.

Regulation 5 amends regulation 3 (**Early automatic enrolment**) to set revised arrangements for early automatic enrolment for the largest employers.

Paragraph 5(a) amends paragraph 3(1) by substituting a new paragraph (1) which provides that where the conditions for early automatic enrolment are satisfied, the employers' duties apply to an employer from one of the relevant dates set out in new paragraph (5).

Paragraph 5(b) amends paragraph 3(2) by substituting a new paragraph (2) to make clear that where an employer does not meet the conditions in paragraph (4) their staging date remains as the original staging date.

Paragraph 5(c) amends sub-paragraph 3(4)(c) by substituting new sub-paragraphs (c)(i) to (iii), which provide the dates by which an employer is required to notify the Pensions Regulator in writing where they wish to move their automatic enrolment date forward.

New paragraph (c)(i) provides that an employer who chooses a staging date in the final column of the table in regulation 4 which is earlier than the date corresponding to that employers' description, is required to notify the Pensions Regulator before the date specified in the second column of the table in regulation 4 corresponding to that earlier date.

New paragraph (c)(ii) provides that an employer, who chooses 1st December 2012 as an early automatic enrolment date, is required to notify the Pensions Regulator before 1st November 2012.

New paragraph (c)(iii) provides that an employer, of 50,000 or more employees by PAYE size or any other description who chooses an earlier date of 1st July 2012, 1st August 2012 or 1st September 2012, is required to notify the Regulator no later than one month before the date chosen.

Paragraph 5(d) amends regulation 3 by inserting a new paragraph (5) which provides the relevant dates from which early automatic enrolment can apply to an employer.

New sub-paragraph (5)(a) provides that the relevant date is any date in the final column of the table in regulation 4 which is earlier than the date corresponding to that employers' description.

New sub-paragraph (5)(b) provides that the relevant date is 1st December 2012.

New sub-paragraph (5)(c) provides that the relevant date, for an employer of 50,000 or more employees by PAYE size or any other description, is 1st July, 2012, 1st August 2012 or 1st September 2012.

Regulation 6 amends regulation 4 (**Staging of the employers' duties**). The regulation amends the table in regulation 4 to move the test tranche to April 2014 (and the April 2014 tranche to March 2014), move the August 2014 tranche to September 2014 and to take account of the range of PAYE reference numbers re-allocated to tranches October 2014 through to October 2015.

Regulation 7 inserts new regulation 4A (**Staging date for micro employers**) prescribing the new staging dates for micro employers.

Regulation 8 amends paragraph (a) of regulation 5 (**Transitional period for money purchase and personal pension schemes**) to extend the first transitional period for money purchase and personal pension schemes by three months so that it lasts from 1st July 2012 to 30th September 2016.

Regulation 9 amends regulation 6 (**Transitional period for defined benefits and hybrid schemes**) to extend the transitional period for defined benefits and hybrid schemes by three months so that it lasts from 1st July 2012 to 30th September 2016.

Part 3 – Registration and compliance

Part 3 of the Regulations amends the Employers' Duties (Registration and Compliance) Regulations 2010.

Part 3 – registration and compliance – policy background

The Employers' Duties (Registration and Compliance) Regulations 2010 set out the steps that employers will have to take in order to register with the Pensions Regulator and declare how they have complied with the employer duty. The regulations specify the records that employers, trustees, managers and providers of pension schemes must retain.

The regulations also set out the levels and structure of fixed, escalating and prohibited recruitment conduct penalty notices and prescribed time limits in relation to the review of notices and compliance activity around inducements. Provision was also made for estimating the amount of unpaid contributions due, calculating interest and prescribing the period after which an employer may be required to pay on their own account all of the unpaid contributions.

The 2010 Regulations have been reviewed in the light of the recommendations of the Making Automatic Enrolment Work Review.

We now propose to amend the registration requirements in order to allow for the use of waiting periods by employers and in order to assist the Pensions Regulator to identify individual employers faster and more accurately. We propose also to change the regulations that determine how the scaled escalating and 'Prohibited Recruitment Conduct' penalties are calculated. This will mean that all the relevant information that has been brought to the attention of the Pensions Regulator can be taken into account.

Part 3 – registration and compliance – commentary on changes

Regulation 11 amends the regulation 1 (**Citation, commencement and interpretation**), amending the definition of "PAYE scheme", substituting "applicable" for "allocated". This makes it clear that an employer's "PAYE scheme" is the HMRC record applicable to that employer.

It also requires an employer who uses a multi-employer occupational scheme to tell TPR the Pension Scheme Registry number of the scheme and the unique reference number or description used by the scheme to identify that employer, where such a unique reference exists.

Regulation 12 amends regulation 3 (**Registration: after staging date and PAYE schemes**).

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Paragraph 12(2) amends the registration requirement to allow for the use of waiting periods by employers. Employers will be allowed to defer automatically enrolling their eligible jobholders for a period not exceeding three months beginning on their staging dates, or, where the staging period has ended, from the date on which PAYE income is payable in respect of any worker. In both cases it is appropriate to allow the employer up to three months to complete the automatic enrolment process and a further month to carry out associated administrative tasks and complete the registration process.

Paragraph 12(3) requires an employer, at registration, to provide additional information which will help the Pensions Regulator to accurately identify the employer for data checking and compliance purposes.

Paragraph 12(3)(a)(i) requires the employer to provide the name of the company.

Paragraph 12(3)(a)(ii) removes the existing requirement, at paragraph 3(2)(a)(ii), to provide the company's registered Companies House number, where available, and replaces it with a requirement to provide at most one of a series of unique identifying numbers. The amendment reflects the fact that many companies are not required to register at Companies House. Where the company is not registered, the employer must provide the Industrial and provident Society number; where that is no available, the registered charity number; and where that is not available, the VAT registration number, again where available.

Sub-paragraph 12(3)(b) amends the registration requirement to allow for the use of waiting periods, by introducing the "deferral date" to the existing "staging date" and "day on which the employers' duties apply to the employer". In case an employer wishes to use two or more deferral dates in order to stagger automatic enrolment across the workforce, the amended paragraph 3(2)(d)(i) specifies that the latest deferral date will be the "with effect from" date. This allows employers a period of one month between the latest possible deferral date and the registration deadline.

Sub-paragraph 12(3)(c) amends sub-paragraph 3(2)(e) of the Employers' Duties (Registration and Compliance) Regulations 2010 to reflect the Government's proposed changes to the postponement provisions in clause 6 of the Pensions Bill 2011.

Sub-paragraph 12(3)(d) and sub-paragraph 13(b)(ii) substitute the term "a qualifying scheme" for the term "an automatic enrolment scheme" in sub-paragraphs 3(2)(f) and 4(3)(e) of the Employers' Duties (Registration and Compliance) Regulations 2010. This is to ensure that any scheme that is a qualifying scheme but not an automatic enrolment scheme is brought within the scope of the regulations.

Regulation 13 amends regulation 4 (**Registration: Re-registration**)

Paragraph 13(a) amends the re-registration requirements at sub-paragraph 4(1)(a) of the Employers' Duties (Registration and Compliance) Regulations 2010. An employer who is obliged to re-enrol eligible jobholders will be required to complete the re-enrolment process and register with the Regulator no later than one month from the re-enrolment date.

Sub-paragraph 13(b)(i) makes clear that re-enrolment, rather than initial automatic enrolment, is the subject of paragraphs 4(3)(c)(i) and (ii).

Sub-paragraph 13(b)(ii) requires an employer to tell TPR the date they have chosen as their automatic re-enrolment date.

Regulation 14 amends regulation 6 (**Records: employers**) to impose an additional record-keeping requirement on employers who choose to use waiting periods. In respect of each person to whom an employer issues a notice under section 4 of the Pensions Act 2008 (as amended) records of the person's full name, National Insurance number (where available) and the date the notice was given must be retained.

Regulation 15 amends regulation 13 (**Escalating penalty notices**) and **regulation 16** amends regulation 14 (**Penalty notices: Prohibited recruitment conduct**).

Regulation 15 prescribes that when determining the daily rate of an escalating penalty the number of persons within an employer's PAYE scheme, by which the penalty is scaled, is the number of persons within the PAYE scheme actually employed by that employer. This is only the case however where the Regulator knows (a) that the PAYE scheme includes some persons not employed by that employer and (b) the number of persons in the scheme who are actually employed by the employer.

Regulation 16 similarly prescribes that when determining the rate of 'Prohibited recruitment conduct' penalties the number of persons within an employer's PAYE scheme, by which the penalty is scaled, is the number of persons within the PAYE scheme actually employed by that employer. Again this is only the case where the Regulator knows (a) that the PAYE scheme includes some persons not employed by that employer and (b) the number of persons in the scheme who are actually employed by the employer.

Paragraphs 15(6) and 16(4) make changes to ensure that the information the Regulator is able to use when determining these penalties includes, but is not limited to, information from HMRC, late payment reports and "whistleblowing" reports under s70 of the Pensions Act 2004.

Part 4 – automatic enrolment

Part 4 amends the Occupational and Personal Pensions (Automatic Enrolment) Regulations 2010

Part 4 – automatic enrolment – policy background

Continuity of scheme membership

Regulation 2 of The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 is a list of information about the jobholder's rights and the employer's responsibilities provided by the employer as part of the automatic enrolment and re-enrolment processes.³

Eligible jobholders and jobholders who opt in must be told that their employer may not close or change a scheme, if this means that the person loses their membership, without the person becoming a member of another scheme. Clause 4 of the Pensions Bill amends the voluntary arrangements by which the person becomes a member of a replacement scheme with an immediate automatic re-enrolment duty. This is a more formal jobholder right underpinned with a formal employer duty and needs to be reflected in the enrolment information.

We propose to amend Regulation 2 accordingly.

Regulation 33 (Information: Existing members of qualifying schemes) is a list of information about the jobholder's rights and the employer's responsibilities provided to existing members of a qualifying scheme at the automatic enrolment date. These members need to be told about the new obligation on their employer to put them into another scheme if their current scheme closes. This needs an amendment similar to the amendment to regulation 2 and we propose to amend regulation 33 accordingly.

Regulation 34 (Continuity of scheme membership) is redundant following the proposed changes to sections 2, 5 and 6 of the Act and we propose to revoke it.

Pay reference periods for the jobholder test

Regulation 4 (Pay reference periods for the purposes of section 1(1)(c) of the Pensions Act 2008) prescribes pay reference periods for the purposes of defining a jobholder and the Person A provision.

Person A was an income smoothing measure in the automatic enrolment regulations to address the problem of accidental jobholders. It was put in place so that workers with a contracted annual salary paid at regular intervals that was just under the qualifying earnings threshold (that is earnings under £5,035) were not auto-enrolled just because of an isolated pay spike.

The Person A provisions were not relevant to a worker without a contracted annual salary, that is zero hours contracts workers and to "paid to contract" arrangements.

³ The enrolment information can be provided at any time before the automatic enrolment date and up to one month thereafter. The one month date is a deadline not a window

However, the Person A rules required employers to monitor earnings for all workers without qualifying earnings continuously over 12 months, starting with the staging date, just in case they spiked and then to aggregate spikes as they occur. Not all payroll software packages retain data before the start of the tax year and the monitoring would have had to be done manually.

Although designed as an easement for employers it has become apparent that the provision would have placed a monitoring burden on employers and is seen as over-complex.

However, the regulation was designed when automatic enrolment was triggered when a worker's earnings reached the lower level of the qualifying earnings band. The proposed automatic enrolment earnings trigger in the Pensions Bill 2011 introduces a new, higher earnings trigger (de-coupled from the qualifying earnings threshold). This reduces the possibility of a pay spike causing someone to acquire accidental jobholder status. The bigger the gap between the trigger and the qualifying earnings threshold the less need there is for Person A.

We propose to amend the pay reference period regulation to remove the Person A rule. This would remove a complex requirement that we now believe has no practical application. A step by step explanation of how Person A works as the current legislation is drafted is at Annex D.

As a result there is no longer a requirement for two technical changes flagged in Workplace Pension Reform – Completing the Legislative Framework issued on 28 April 2011:

- 2.9 Ensuring that jobholders with qualifying earnings who start work late in the year are automatically enrolled
- 4.10 Pay reference period: workers without qualifying earnings and the automatic enrolment trigger

Consultation questions

Q1. We seek views on whether abolition of the Person A rule is a sensible approach.

Q2. Are there any specific examples of where and how the Person A rule would otherwise be used?

Pay reference periods for the quality test

Regulation 5 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 prescribes pay reference periods for the purposes of section 20(1)(b) and (c) and section 26(4)(b) and (5)(b) of the Act (Money Purchase Schemes).

The Pensions Act 2008 (as amended) requires employers to auto-enrol jobholders aged at least 22, under State Pension age and earning more than £7,475 a year into a qualifying automatic enrolment workplace pension scheme.

The minimum overall contribution over a 12 month period must be at least equal to 8 per cent of qualifying earnings over £5,035 up to and including £33,540, of which at least 3 per cent must be the employer's contribution⁴.

Employers may only automatically enrol or retain jobholders in schemes where the scheme rules require employers to meet this 8 per cent quality requirement over a 12 month period⁵.

Paragraph 5(2) of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 sets the start of the 12 months for the quality requirement for jobholders who are automatically enrolled at the staging date (and remain in pension saving with that employer) as the employer's staging date and every anniversary thereafter.

There are a range of circumstances where an individual may gain, or lose jobholder status or active membership of a qualifying scheme during the 12 month period. An individual can acquire jobholder status at the point of automatic enrolment, or automatic re-enrolment, or by opting in. They can lose jobholder status with that employer when they leave the employment, opt out, or for periods when their earnings fluctuate below the threshold of the qualifying earnings band.

If an individual chooses to continue active membership,⁶ but arranges to pay less than the required minimum,⁷ then the 8 per cent qualifying scheme quality test does not apply. An individual may choose to do this if, under the rules of the scheme, the scheme is 'sectionalised' to allow for individual membership at an amount lower than an equivalent to the minimum contribution requirement.

The regulations as drafted only cater for late starters with the employer and early leavers. They do not cater for opt-in, re-enrolment or waiting period situations. We propose to amend regulation 5 so that the quality requirement for money purchase schemes applies in all circumstances, as originally intended, from the automatic enrolment, automatic re-enrolment and enrolment dates and following resumption of jobholder status or active membership of a qualifying scheme. The revised drafting also covers the new

⁴ These figures for the automatic enrolment earnings trigger and the lower and upper limits of the qualifying earnings band will be updated by Order in January 2012 ready for the first year of live running.

⁵ The full 8% quality requirement is phased in over 5 years. Employers' Duties (Implementation) Regulations 2010, regulation 5.

⁶ Depending on the scheme this may be defined as "membership" or "pensionable service".

⁷ This is perfectly acceptable provided that the scheme has a rule which accepts these people into a different (non-qualifying) section of the scheme.

situation proposed in the Pensions Bill 2011 where the employer chooses to use a waiting period.

Automatic re-enrolment

Sections 5 and 6 of the Pensions Act 2008 place a duty on employers to periodically re-enrol eligible jobholders who have opted out or left pension saving. While pension saving may not have been the right choice at the time of automatic enrolment, going forward, a jobholder's financial situation or priorities may change. Re-enrolment is a prompt for jobholders to reconsider their saving arrangements, and to harness decision-making inertia to take advantage of changes in circumstances.

After the formal consultation in September 2009,⁸ we proposed that re-enrolment should take place every third anniversary of the employer's staging date. This means that employers will only have to carry out re-enrolment once every three years for those members of their workforce who are eligible.

We were also able to provide some flexibility around the original proposal in respect of the re-enrolment date to allow employers to align with payroll cycles. We proposed to allow employers the discretion to choose a date within a one month window, beginning with the three year anniversary of the employer's staging date. Subsequent three-yearly anniversaries would start with the employer's chosen date where they had decided to use the one month flexibility.

Allowing employer more flexibility to choose re-enrolment date

The deregulatory measures recommended by the MAEW Review included allowing employers increased flexibility around the date on which they re-enrolled jobholders who had previously opted out of, or left pension saving. The review recommended that employers should be allowed three months' flexibility either side of their scheduled re-enrolment date.

In order to implement this change, clause 7 of the Pensions Bill 2011 amends section 6(1)(b) of the Pensions Act 2008 to change the maximum frequency which may be prescribed for re-enrolment from once in every three year period to once in every two years and nine months.

Regulation 12 of the Automatic Enrolment Regulations currently prescribes that the re-enrolment date is a date chosen at the discretion of the employer within one month of the three year anniversary of the employer's staging date. Thereafter the re-enrolment date is within a period of one month of the third anniversary of the previous re-enrolment date.

We propose to amend regulation 12 so that an employer must carry out the re-enrolment exercise three years after the employer's staging date or the previous re-enrolment date, with the option to choose a re-enrolment date up to three months on either side of the three year anniversary.

⁸ The Occupational and Personal Pensions Schemes (Automatic Enrolment) Regulations 2010, S.I 2010/ 772

Immediate re-enrolment – continuity of scheme membership

The proposed amendments to regulation 14 are a consequence of the changes⁹ to the Continuity of scheme membership and Automatic re-enrolment provisions in the Pensions Act 2008 proposed in the Pensions Bill 2011.

The policy underpinning automatic enrolment is to provide for a continuing employer duty – employers are obliged to put a person into a qualifying scheme and keep them in unless the person himself chooses to leave.

To achieve this section 2(1), as originally drafted, prohibited an employer from doing anything (or not doing something they should have done) which caused a person to lose active membership, or caused the scheme to cease to qualify without the person becoming an active member of another qualifying scheme.

Nothing in the Pensions Act 2008 restricts an employer's right to make pension arrangements to suit the circumstances of the company post-2012, as long as the arrangements provide a scheme for automatic enrolment purposes which satisfies the minimum quality requirements.

Section 2 of the Pensions Act 2008, as originally drafted, had an unintended outcome. If an employer chose to change or switch scheme for some or all of their workforce, ongoing membership of the replacement scheme was predicated on jobholder consent. If this consent was delayed or withheld the employer would be in breach of the Act for not achieving active membership of the replacement scheme within the prescribed time. To solve this problem the changes in the Pensions Bill 2011 replace the voluntary arrangements with an overt automatic re-enrolment obligation to restore the policy intention.

The change being made through clause 4 of the Pensions Bill 2011 gives rise to secondary amendments. Automatic enrolment is compulsory: pension saving is not. A person can opt out, or cancel membership. Every three years¹⁰ the employer is obliged to automatically re-enrol anyone who has done this and as a result is not an active member of a qualifying scheme. To avoid badgering people who had only recently decided to stop saving the Act exempted employers from the obligation to re-enrol those who had opted out or cancelled membership within the 12 months before the employer's cyclical re-enrolment exercise.

These provisions are in the original section 5 of the Pensions Act 2008. As drafted section 5 would have simultaneously prohibited the new re-enrolment obligation that the amendment to sections 2 and 5 proposed in the Pensions Bill 2011 creates.

To resolve this, we have moved the exemption from the re-enrolment obligation from the Act to regulations to be able more accurately to prescribe

⁹ Clause 4 Pensions Bill 2011

¹⁰ We propose that the employer will have the right to move the date forward or back by three months.

when it applies. The proposed changes to regulation 14 set out that the employer is not obliged to automatically re-enrol eligible jobholders who, within 12 months before the cyclical three-yearly automatic re-enrolment date, had done something themselves to cancel their membership or had opted out. The crux is that the person himself must have taken action to leave pension saving and we do not want to force the person to re-visit that decision for at least 12 months.

If a second party (that is, employer, scheme manager) does anything to cause the jobholder to lose active membership of a qualifying scheme then the employer will now be obliged to automatically re-enrol the individual with immediate effect. There is, obviously, no 12 month exemption in these situations because the jobholder had no say in the circumstances which lost them scheme membership.

However, if the employer does anything to cause the jobholder to lose active membership of a qualifying scheme but this was at the jobholder's request then the automatic re-enrolment obligation does not apply. The proposed paragraph 14(3) turns off the immediate re-enrolment obligation. This situation may be uncommon but the regulation is designed to prevent a catch-22 for the employer.

For example: If a qualifying scheme has a rule to allow membership in another section of the scheme on less than the required minimum contributions then a jobholder can ask to pay less and ask the employer to move them. The employer is not then under a re-enrolment obligation because the loss of active membership of a qualifying scheme was at the jobholder's request. It is important to remember, however, that if the request from the jobholder to pay less than the required minimum contributions was induced by the employer then this may constitute a breach of the prohibition on inducements in section 54 which could lead to compliance action against the employer by the Regulator.

Postponement or disapplication of automatic enrolment (waiting periods)

The MAEW Review looked at whether the proposed scope for automatic enrolment struck the right balance between the costs and benefits to both individuals and employers, including whether employers should automatically enrol jobholders on their first day of work, or another date.

The Review recommended:

- introducing an optional waiting period of up to three months before an employer has to automatically enrol a jobholder;
- that individuals who are subject to a waiting period should be allowed to opt in during the waiting period if they so wish; and
- repeal of the existing arrangements for Postponement.

A waiting period will allow employers to:

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- avoid continuously automatically enrolling short term workers who leave soon after starting work;
- to stagger automatic enrolment of a large workforce; and
- align the automatic enrolment process with existing processes, such as payroll timings in order to avoid part-period calculations of contributions.

An employer will be able to apply a waiting period from one of three points, or starting days. These are:

- the employer's staging date;
- the date on which a new employee is employed by an employer; or
- the date on which an existing employee becomes eligible for automatic enrolment, if an employer wishes to use a further waiting period.

To use a waiting period, an employer will be required to provide a worker with a notice setting out this intent, together with their new automatic enrolment date, within a prescribed deadline. The notice will also have to provide a worker with information about the right to opt in during the waiting period. Opt in during a waiting period is particularly important for short-term workers and those who change jobs frequently.

Waiting period notice

Waiting periods are designed in order to minimise administrative burden for employers. Therefore, we think it is important to provide employers with flexibility around the quantity and detail of information they can give a worker in a notice. This also balances the needs of individuals to ensure that the information provided to them is not confusing. The level of detail will range from a minimal amount of generic information to information tailored to the individual, with the employer deciding upon one of the following approaches to suit their particular business needs:

(i) Generic notice - this does not require an employer to identify, in advance of providing a waiting period notice, which members of their workforce are jobholders to whom section 3(2) of the Act applies, jobholders to whom section 3(2) does not apply or workers to whom section 9 applies. Instead, employers will be able to provide all workers with information about the waiting period, a minimum amount of information about their right to opt in, and where to obtain further information about this. An employer could also use this generic notice to meet the obligation under regulation 33 to provide information to existing members of a qualifying scheme; or

(ii) Generic notice as in (i) above, but only to non-members of a pension scheme, providing information to existing scheme members in a separate notice – employers using this approach will segregate their workforce into non-members and existing members. This will help alleviate complaints from existing members that they have been sent information not relevant to them; or

(iii) Tailored notice to individuals – employers using this approach will segregate their workforce and provide an individual tailored notice to each

member of the workforce, depending on whether they are jobholders to whom section 3(2) applies, jobholders to whom section 3(2) does not apply, workers to whom section 9 applies or who are existing members of a qualifying scheme.

At the end of the waiting period, an employer will be required to check automatic enrolment eligibility of all workers to whom a waiting period was applied. Those jobholders to whom section 3(2) of the Act applies will be automatically enrolled and provided with enrolment information prescribed under regulation 2 of the automatic enrolment regulations, within the timescale prescribed at regulation 7 of those regulations.

Employers may, if they wish, provide the enrolment information with the waiting period notice in one information pulse. This may be particularly helpful where an employer uses a very short waiting period. (There is no provision in the legislation which prevents the employer from providing enrolment information under section 10 of the Act prior to the automatic enrolment date).

However, employers may wish to take a view on whether providing enrolment information with a generic waiting period notice would confuse their workforce and generate a high volume of enquiries, given that not all workers will be automatically enrolled at the end of a waiting period.

If, at the end of a waiting period, an individual is not a jobholder to whom section 3(2) applies, the employer will not be required to take any further action (apart from tracking jobholder status) until the individual does become a jobholder to whom section 3(2) applies, or if the individual makes a request to opt in.

Prescribed deadline for waiting period notice

The prescribed deadline we are suggesting is a period of one week from the day following the starting day. Employers will be able to provide the notice at any time before the starting day and at any point within the one week period. For example, an employer may wish to notify existing employees two months before their staging date or notify new employees one month before they start work.

The period of one week was chosen in order to allow jobholders to take full advantage of the right to opt in and start saving as soon as possible. Opt in is effective from the first day of the next pay reference period following the date an employer receives a completed opt in form from an employee. Opt in cannot be backdated, as this would require an employer to re-open payroll for a past period, so it is important that an individual is made aware of their rights as soon as possible.

Consultation question

Q3. Is a period of one week from the day following the starting day sufficient time for all employers to issue a notice?

Second waiting period

Where an employee becomes a jobholder to whom section 3(2) applies after the initial waiting period has been applied following the employer's staging date or after their first day of employment, the employer may use an additional waiting period of up to three months. This will allow the employer to align automatic enrolment with existing processes if this has not already been achieved through the first waiting period.

Where an employer chooses to use a second waiting period, the employer must provide an additional notice to the newly eligible jobholder. However, this notice must be tailored to the individual's jobholder status.

Consultation questions

Q4. Will employers use a second waiting period?

Q5. For employers using a second waiting period, is a period of one week from the day following the starting day sufficient time for these employers to issue a notice, given that weekly paid employees are generally paid one week in arrears and automatic enrolment should occur from the beginning of the relevant pay reference period? Any extension to this period would have to be balanced with not eating too far into the opt-in window as described above.

Post waiting period processes

The processes following the automatic enrolment date, for example, the arrangements to achieve active membership, remain the same.

Employer chooses not to use a waiting period

Where an employer chooses not to use a waiting period the existing information provisions flowing out of sections 7 and 10 of the Act and the associated regulations will apply as normal. There are no changes to the content of regulations 2, 7, 17, 21 and 33 of the Regulations in respect of the following:

- jobholders eligible for automatic enrolment must be provided with enrolment information before the end of a period of one month beginning with the automatic enrolment date;

- jobholders with qualifying earnings must be provided with information about their right to opt in with an employer contribution before the end of a period of one month beginning with the date their right to opt in applies;
- workers without qualifying earnings must be provided with information about their right to opt in, without an employer contribution, before the end of a period of one month beginning with the date that right applies;
- Jobholders who are existing active members of a qualifying scheme must be provided with information about that scheme before the end of a period of two months beginning with the automatic enrolment date.

Automatic enrolment following the transitional period for defined benefit and hybrid schemes

Regulation 27 of The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 covers the notice to be given under section 30 of the Pensions Act 2008.

Section 30 allows employers using defined benefits (DB) and hybrid schemes to adjust gradually to the additional costs of the reforms. It allows them to delay auto-enrolment of relevant jobholders into such a scheme until the end of a transitional period where certain conditions are met.

There is a flaw in section 30 of the Pensions Act 2008 which, if left uncorrected, would compel employers who use DB or hybrid schemes to defer automatic enrolment of relevant jobholders into such schemes until the end of the transitional period, rather than providing them with the choice as to whether they defer or not. We are correcting this defect in the current Pensions Bill by requiring an employer, who intends to defer the automatic enrolment date of a relevant jobholder, to provide that person with a notice of that intention by the end of a prescribed period. We are proposing that this is by the end of the period of one week beginning from the day after the employer's first enrolment date. Provision of the notice will, in effect, activate the transitional period.

An employer will also be required to provide a jobholder with the prescribed information set out at paragraph 27(3) of the automatic enrolment regulations. This can be provided with the notice, or an employer may choose to provide this information within the existing two month deadline.

Employers who defer automatic enrolment of eligible jobholders will be required to automatically enrol those jobholders in the usual way at the end of the transitional period. Employers who do not provide a notice will be required to automatically enrol in the usual way.

There is no effect on new employees, who will continue to be automatically enrolled from the employer's first automatic enrolment date.

Part 4 – automatic enrolment – commentary on changes

This section describes proposed changes to the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.

Regulation 18 amends regulation 2 (**Enrolment information**), inserting a new item into the list of enrolment information to oblige the employer to tell the jobholder that the employer must make immediate arrangements to achieve active membership of a qualifying scheme if active membership is lost other than at the jobholder's own request.

Regulation 19 amends regulation 4 (**Pay reference periods for the purposes of section 1(1)(c) of the Act**).

Paragraphs 19(a) and (b) insert a pay reference period for the purpose of the new sections 3(1)(c) and 5(1)(c) of the Act. This enables the employer to apply the automatic enrolment earnings trigger on a weekly or monthly basis (or as appropriate) depending on the employer's normal pay cycle.

Paragraph 19(c) removes the Person A provisions

Regulation 20 substitutes for the existing regulation 5 (**Pay reference periods for the purposes of section 20(1)(b) and (c) and section 26(4)(b) and (5)(b) of the Act**) a new regulation 5 in which paragraph 5(2) defines the start date of the first and subsequent pay reference periods for the quality test, and the new paragraph 5(3) defines the end date of the pay reference periods.

Regulation 21 amends regulation 12 (**Automatic re-enrolment dates**) to prescribe the re-enrolment date as within a period of three months either side of the third anniversary of the staging date (or previous re-enrolment date).

Regulation 22 amends regulation 14 (**Jobholders excluded from automatic re-enrolment**) by substituting a new regulation 14 in the principal regulations, prescribing when the employer obligation to make arrangements to automatically re-enrol a jobholder into a qualifying scheme does not apply.

Regulation 23 prescribes that Part 6 of the automatic enrolment regulations is substituted with the following provisions.

New paragraph 24(1) sets out that the provisions in relation to an employer providing a waiting period notice are subject to prescribed requirements.

New sub-paragraph 24(2)(a) prescribes that where an employer provides a notice under sections 4(1) or (2) it can be either a generic notice under paragraph (i) or a tailored notice appropriate to the worker's circumstances under paragraph (ii).

New sub-paragraph 24(2)(b) prescribes that where an employer provides a notice under section 4(3) it must be a tailored notice appropriate to the worker's circumstances.

New paragraph 24(3) prescribes the worker's circumstances in which an employer can issue a notice to a worker.

New paragraph 24(4) prescribes that the period in which an employer must provide a notice to a worker (if provided after the starting day) is a period of one week beginning with the day after the starting day.

New sub-paragraphs 25(1)(a) to (f) prescribe the information which must be provided in a generic notice (as provided under sections 4(1) or (2)) to workers in all circumstances.

New paragraph 25(2) prescribes that an employer who provides a generic notice under paragraph 25(1) is not required to provide a notice in accordance with the requirements prescribed at regulations 17, 21 or 33 of the principal regulations.

New paragraph 25(3) prescribes that an employer intending to provide a separate information notice in accordance with regulation 33 of the principal regulations need not include the information specified in sub-paragraph 25(1)(e).

New paragraphs 26(a) to (d) prescribe the information which must be provided in a tailored notice (provided under sections 4(1), (2) or (3)) to a worker who is a jobholder to whom section 3(2) applies.

Paragraphs 26A(a) to (c) prescribe the information which must be provided in a tailored notice (provided under sections 4(1), (2) or (3)) to a worker who is a jobholder to whom section 3(2) does not apply.

Paragraphs 26B(a) to (c) prescribe the information which must be provided in a tailored notice (provided under sections 4(1), (2) or (3)) to a worker to whom qualifying earnings are not payable.

Regulation 24 amends regulation 27 (**Automatic enrolment following the transitional period for defined benefit and hybrid schemes: Information**), and sets out the information requirements as a consequence of the new notice to defer automatic enrolment for defined benefit and hybrid schemes.

Paragraph 24(2) substitutes a new heading for regulation 27: “Notice to be given under section 30(3) of the Act”.

Paragraph 24(3) amends paragraph 27(1) by substituting a new paragraph (1) and inserting new paragraph (1A).

New paragraph (1) sets out the conditions for an employer providing a notice.

New sub-paragraph (1)(a) provides that the notice must be in writing.

New sub-paragraph (1)(b) provides that the notice must include a statement that the employer intends to defer the automatic enrolment date in respect of a jobholder until the end of the transitional period.

New sub-paragraph (1)(c) provides that the notice must be given to the jobholder by the end of the period of one week beginning with the day after the employer's first enrolment date.

New sub-paragraph (1)(d) provides that the notice may also provide the information specified at paragraph 27(3).

New paragraph (1A) provides that where the information specified at paragraph 27(3) has been provided with the notice, the employer has satisfied the requirement at paragraph 27(2).

New paragraph (4) inserts an exception to clarify that where the information specified at paragraph 27(3) has been provided with the notice, the employer is not required to provide that information again.

Regulation 25 amends paragraph (c) of regulation 33 (**Existing members of qualifying schemes: Information**) to oblige the employer to tell the jobholder that the employer must make immediate arrangements to achieve active membership of a qualifying scheme if active membership is lost other than at the jobholder's request.

It replicates the similar amendment to paragraph (g) of regulation 2 above.

Regulation 26 revokes regulation 34 (**Continuity of scheme membership**), which will be redundant following the changes to the continuity of scheme membership provisions in the Pensions Bill 2011.

Regulation 27 amends regulation 38 (**Staged increase in appropriate age**), which enables the appropriate age (or pensionable age) in the test scheme to be increased to broadly reflect increases in state pension age. The regulation is being amended as a consequence of the accelerated timetable for increasing state pension age.

Regulation 28 amends regulation 47 (**Prescribed requirements for non-UK qualifying schemes**). Regulation 47 sets out alternative requirements to UK tax registration for non-UK schemes. An amendment to the regulation ensures that the policy intention is reflected and the alternative requirements can be applied to money purchase schemes, defined benefits schemes, hybrid schemes and personal pension schemes. Currently the provision only applies to money purchase schemes and personal pension schemes.

Regulation 29 inserts a new regulation 47A covering the meaning of "provider" in the context of non-UK qualifying schemes. New regulation 47A prescribes that a non-UK provider of a personal pension scheme is someone who is resident outside of the UK whose business includes the provision of personal pensions.

Regulation 30 amends regulation 50 (**Due date for the purposes of section 37(3) of the Act**). The "due date" for the purposes of unpaid contributions notices under paragraph (2) now becomes the 22nd day of the month

following the month during which contributions payable to a scheme were either not deducted by an employer or were due but not made by an employer.

Part 5 – Automatic Enrolment (Miscellaneous Amendments)

Proposed changes to the Occupational Pension Schemes (Scheme Administration) Regulations 1996 and the Personal Pension Schemes (Payments by Employers) Regulations 2000.

Part 5 – policy background¹¹

Prescribed time limits for employers to pay pension contributions to trustees or managers

Regulations 48 and 49 of The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 make provisions relating to the payment of pension contributions and the due date by which contributions must be paid by an employer to a scheme.

Section 49(8) of the Pensions Act 1995 states that contributions to an occupational pension scheme deducted from a worker's earnings must be paid to the trustees or managers of the scheme within a prescribed period.

Regulation 16 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 states that the prescribed period is 19 days commencing from the end of the month in which the amount is deducted. For example contributions deducted on 1 October would be required to be paid by 19 November.

There is a similar provision relating to the reporting of late payments for workplace personal pensions where direct payment arrangements exist in section 111A (15)(b) of the Pensions Schemes Act 1993 and regulation 5 of The Personal Pension Schemes (Payments by Employers) regulations 2000.

The MAEW Review recommended that automatic enrolment processes should align with existing tax and National Insurance processes where practicable. One of the reasons the review recommended these alignments was to streamline employer processes, providing recognisable thresholds and deadlines that align with existing employer practices to reduce the administration burden.

We propose therefore that the due date for electronic payment to schemes of pension contributions deducted from a worker's earnings should mirror the HM Revenue & Customs 'due date' of the 22nd of the month. In all other cases payment will still need to be made to the scheme by the 19th day of the month following deduction.

We propose to amend regulation 16 of the Scheme Administration Regulations and regulation 5 of the Personal Pension Schemes (Payments by

¹¹ This policy background also explains the policy change in Regulation 30 in Part 4.

Employers) Regulations in order to create the new due date. This will be an addition to the existing 19 day rule and the existing provisions that allow employers to delay paying over contributions deducted during the joining window and opt out period until the last day of the second month following the month in which automatic enrolment occurs. The new due date of the 22nd day of the month for receipt of electronic payments is intended as a backstop. It remains the case that pension contributions should be paid over to the scheme promptly following deduction.

We also propose that a minor consequential amendment will be made to Regulation 50(2) of the Automatic Enrolment Regulations, in order to align with the change to the backstop date.

Meeting the due date payment deadlines

In response to the informal consultation in April 2011, some stakeholders argued that having two different dates in place to pay over contributions will add complexity to the legislation and also they argued for consistency that both manual and electronic processes should be unified at the 22nd day of the month.

Some stakeholders pointed out that they may need to put a system in place to monitor the dual dates for determining compliance with the regulations that would create administrative burden for schemes. One stakeholder commented that there should be a requirement in regulations that trustees or managers of the scheme must receive cleared funds on 22nd day of the month regardless of payment methods.

We recognise that employers may wish to continue to pay contributions by the original due date. They can continue to do so and pension contributions should continue to be paid over to the scheme as soon as possible after deduction. However, for employers who are largely new to workplace pension arrangements we want them to be able to align the new administrative processes with existing practices.

Employers who pay electronically (including through a bank or at a Post Office) must ensure that the cleared payment for the full amount due reaches the scheme's bank account no later than the 22nd day of the month. Where the 22nd falls on a weekend or Bank Holiday, the cleared payment must reach the scheme's bank account no later than the last working day before the 22nd.

Employers who pay by post must ensure that the payment reaches the scheme no later than the 19th of the month.

Electronic payment methods may include direct debit, credit card, credit transfer by telephone or internet, BACS direct debits and CHAPS. For all other cases, non-electronic payment methods may possibly include postal payments by cheque.

For any worker contributions deducted which an employer must pass on to trustees or managers of schemes the deadline for contributions to be paid to the scheme will be:

- the 22nd day of the month following deduction where paid electronically; or
- the 19th day of the month following deduction in all other cases.

We do not intend to make any changes to the due date for contributions deducted from the automatic enrolment date up to the end of the opt out period, which will be the last day of the second month following the month in which automatic enrolment occurs.

The due date for the purposes of the Pensions Regulator's unpaid contribution notices will become the 22nd day of the month to reflect the changes to the due date.

Part 5 – commentary on changes

Regulation 32 amends regulation 16 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (as amended by regulation 48 of the Occupational and Personal pension Schemes (Automatic Enrolment) Regulations 2010).

Paragraph (a) prescribes the period in which an employer must pass any contributions deducted from a worker's earnings to trustees or managers of schemes is 22 days, commencing from the end of the month in which the amount is deducted from earnings, where the payment is made by electronic methods, and in other cases 19 days from the end of the month in which the amount is deducted from earnings.

Paragraph (b) inserts a definition of "electronic communication".

Regulation 33 amends regulation 5 of the Personal Pension Schemes (Payments by Employers) Regulations 2000 (as amended by Regulation 49 of the Occupational and Personal pension Schemes (Automatic Enrolment) Regulations 2010) in a similar manner.

4. Commentary on the draft Automatic Enrolment (Miscellaneous Amendments) (No. 2) Regulations 2011

Draft Automatic Enrolment (Miscellaneous Amendments) (No 2) Regulations

Certification

Certification – policy background

Certification has been designed as an administrative easement for employers who calculate their pension contributions from the first pound, rather than on qualifying earnings.

Employers may wish to consider using certification as a means of ensuring that their scheme complies with the relevant quality requirement if their scheme's provisions or the agreements with the provider do not explicitly provide for a contribution equivalent to at least 8 per cent of qualifying earnings of which at least 3 per cent comes from the employer.

Employers may use certification with the following schemes:

- a money purchase occupational pension scheme with its main operational base in the United Kingdom (UK)¹² or in another member state of the European Economic Area (EEA);
- a personal pension scheme which is provided by a provider based in the UK or another EEA State; and/or
- the money purchase element of certain types of hybrid pension schemes¹³ with the main operational base in the UK or in another member state of the EEA.

An employer who wishes to certify will be required to apply a straightforward test based on the employer and employee contributions set out in the scheme rules, payment schedule or equivalent. The test requires that the employer's scheme satisfy at least one of the following for each jobholder:

- **tier 1** – at least a 9% contribution of the jobholder's pensionable earnings (inclusive of a 4% employer contribution);
- **tier 2** – at least an 8% contribution of the jobholder's pensionable earnings (inclusive of a 3% employer contribution) provided that the total pensionable earnings of all relevant jobholders to whom this tier applies in aggregate constitutes at least 85% of their total earnings; and/or

¹² This includes NEST

¹³ For further information refer to the Hybrid Schemes (Quality Requirements) Rules 2010.

- **tier 3** – at least a 7% contribution of the jobholder’s total earnings (inclusive of a 3% employer contribution). That is, all earnings must be pensionable.

By “pensionable earnings” we mean whichever is the higher of the employer’s definition of pensionable earnings or basic pay, from pound one. Basic pay would be the elements of pay that do not vary, and therefore excludes variable elements of pay such as commission, bonuses and overtime.

In considering this definition we have sought to achieve a balance between ensuring that the test is simple for employers to use and ensuring that individuals do not miss out on contributions relative to contributions calculated on qualifying earnings. This definition allows employers to use existing definitions of pensionable pay, unless that definition dips below basic pay¹⁴. Most employers with existing provision use a definition of pensionable pay is at least basic pay. We feel that it is important that the test is linked to a form of pay that cannot be easily changed by unscrupulous employers.

Consultation question

Q6. Does the proposed approach to pensionable earnings give the right balance between a workable definition for employers in using certification and protection of individuals?

The certification guidance sets out that the certificate should be in place from the staging date. This is to make it a simpler process for employers, since even if an employer chooses to use a waiting period they may have people opt-in during that period. Otherwise, if an individual opted in an employer might not have time to complete the certification arrangements.

If an employer chooses the flexible option for re-enrolment, the period between re-enrolment and the staging date could be up to 18 months. However, we feel that is important to maintain a balance between providing an easement for employers and ensuring that scheme quality is maintained for members. We have therefore concluded that the maximum period should be 12 months. This does not stop employers electing to use a shorter time period to then align their 12 month renewal with the tax year or re-enrolment duties, for example. It would potentially be confusing to give employers different timeframes depending on how they are choosing to exercise their duties and we do not want to risk extending the timeframe too far.

Consultation question

Q7. Does the 12 month period for certification seem reasonable given that it is to support an easement for employers?

¹⁴ 89 per cent of private sector eligible jobholders in DC, GPP and SHPs have pensionable pay at least equal to basic pay. Annual Survey of Hours and Earnings 2010.

Jobholders and/or their representatives will be able to ask the employer for a copy of any certificate. We will ensure that the timeframe within which an employer must make the certificate available is consistent with any timeframe for the disclosure of similar information.

Certification – commentary on changes

Regulation 3 inserts a new **Part 7A** into the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2011, immediately following on from Part 7. This inserts the detailed certification test and processes into the principal regulations.

In new Part 7A (Certification that a quality requirement is satisfied):

New regulation 32A provides that, subject to regulation 32H, a scheme to which the certification provisions in section 28 of the Pensions Act 2008 apply satisfies the relevant quality requirements in relation to the employer's relevant jobholders, if there is a certificate in force in relation to the employers and those jobholders.

New regulations 32B to 32D set out the prescribed alternative requirements for:

- money purchase schemes which have their main administration in the UK or an EEA State other than the UK;
- personal pension schemes where the operation of the scheme is carried on in the UK or an EEA State other than the UK; and
- money purchase elements of hybrid schemes which have their main administration in the UK or an EEA State other than the UK.

These specify in detail for each type of pension scheme the three tier certification test, which requires that the scheme satisfies at least one of the three tiers (set out above) for all of the relevant jobholders.

New regulation 32D extends the certification requirements in regulation 32B to the money purchase provisions of a hybrid scheme and enables the test to be modified for certain types of hybrid in which a member accrues a defined benefits and money purchase pension simultaneously in the proportions set out in the rules of the scheme.

New regulation 32E sets out who may give the certificate, the requirement to consider the certification guidance and the timing of the certificate. The certificate may be in place for up to 12 months, by which time it must either be renewed or alternative arrangements to meet the qualifying criteria made.

New regulation 32F sets out that the certificate must be in writing and what it must contain. This covers which part of the scheme it applies to (if more than

one), which jobholders it relates to, which alternative requirement is used (32B, 32C or 32D) and the certification period.

New regulation 32G provides for the steps that the employer must take to renew their certificate. This involves considering whether the relevant requirements for the certification test were met in the last period, an assessment of any change required to meet the test going forward and making and retaining a record of that assessment for six years.

New regulation 32H sets out the circumstances in which a certificate can be treated as void. If the Pensions Regulator is of the view that there were not reasonable grounds for a person to be of the opinion that the scheme was able to satisfy the relevant quality requirement or the applicable alternative requirement and the scheme did not meet the certification test requirements, the Regulator may serve notice requiring the employer to pay the shortfall between contributions that were payable under the scheme and those that were payable under the certification test or relevant quality requirement. If contributions payable under that notice are not paid to the trustee or provider within the specified deadline, the scheme will be treated as not having met the quality requirements.

New regulation 32I provides for phasing to be used by employers choosing to use certification so that contributions may be gradually improved to up to the full level of contributions required from 2017. The regulation sets out contribution levels for the first transitional period (1 October 2012 to 30 September 2016) and the second transitional period (1 October 2016 to 30 September 2017). These are approximately equivalent to the phasing set out under s.29 of the Pensions Act 2008 for employers using the qualifying earnings band.

Employers operating certain EEA schemes will be able to use them for certification. **New Regulation 32J** sets out the requirements for those EEA schemes. Such schemes can be occupational pension schemes within the definition of section 18(b) of the Pensions Act 2008 or personal pension schemes to which section 27 of the Act applies. The requirements are broadly similar to those for UK schemes.

New regulation 32K defines certain terms used within new regulations 32B, including 32B and 32C as applied by new regulation 32D.

Consequential amendments to scheme quality regulations

Regulation 4 amends regulation 35 (**Further conditions applicable to automatic enrolment schemes**). Regulation 35 sets out the requirements for non-UK automatic enrolment schemes. It is being amended in respect of non-UK schemes with their main administration in a member state of the European Economic Area (EEA schemes). The amendment is to reflect the policy intention that those schemes must meet certain requirements which include a provision that at least 70% of any benefits available to a member are to be used to provide for an income for life.

Regulation 5 amends regulation 36 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 by inserting a reference to the Consumer Prices Index in addition to the Retail Prices Index. Regulation 36 requires career average schemes used for an employer's enrolment duties to provide for the earnings on which the pension accrues to be revalued at least at the minimum rate. The minimum rate is being amended as a consequence of the change from the Retail Price Index to the Consumer Price Index as a measure for inflation proofing pensions so that the latter index may be used instead of the former.

However, to accommodate schemes that might not be able to remove the reference to the Retail Price Index from their rules we are allowing such schemes to continue to use Retail Price Index for revaluation.

Special occupations

The Scottish Police Services Authority and the Scottish Crime and Drug Enforcement Agency – policy background

The Pensions Act 2008 (the Act) requires all employers to automatically enrol eligible jobholders into a workplace pension arrangement.

Eligible jobholders are workers aged at least 22 years and under State Pension age, who work or ordinarily work in Great Britain under a worker's contract and earn more than £7,475 a year (in 2011/12 earnings terms). The actual figures that employers will need to use in the first year of live running will be announced around January 2012 for approval by Parliament.

Police officers could not be captured by automatic enrolment as they are "office holders" and do not fall within the definition of "worker" under section 88 of the Act. Special provision was made to ensure that the Act has effect in relation to police constables and police cadets under section 95(1) of the Act.

As the legislation currently stands police members directly recruited by the Scottish Police Services Authority (SPSA) to work for the Scottish Crime and Drug Enforcement Agency (SCDEA) will not fall within section 95(1) of the Act. Despite its name the SPSA itself is not a police authority or local policing body and therefore it cannot be 'the employer' for the purposes of section 95(2) of the Act.

This leaves police constables or police members directly appointed to the SCDEA outside the scope of automatic enrolment because they do not have worker status as defined by section 88 of the 2008 Act.

Police constables seconded to work to the SPSA itself are in the same situation. They cease to be constables of their home force on appointment to the SPSA and they do not have worker status as defined by section 88 of the 2008 Act.

The new provisions extend the definition of “worker” to these two groups of police officers.

The Scottish Police Services Authority and the Scottish Crime and Drug Enforcement Agency – commentary on changes

This section commentary on Draft Automatic Enrolment (Miscellaneous Amendments) (No. 2) Regulations 2011

Regulation 6 inserts a new **Part 15 (Special occupations)** after regulation 50 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.

New regulation 51 (Police members appointed other than under a contract of employment) provides that the provisions of Part 1 of the 2008 Act apply to police members appointed by the Scottish Police Services Authority (SPSA) who would not otherwise fall within the definition of worker, such that they are treated as workers employed by the SPSA under a worker’s contract.

New sub-paragraph 51(2)(a) defines a police member as a person appointed as a police member of the Scottish Crime and Drug Enforcement Agency under paragraph 7(1) of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 as a result of paragraph 7(2)(c) of that schedule.

New sub-paragraph 51(2)(b) defines a police member as a person serving as a member of staff of the SPSA as a result of paragraph 10(2) of schedule 1 to that Act.

Seafarers and offshore workers

Policy background

Seafarers and offshore workers are currently excluded from automatic enrolment under Sections 96 and 97 respectively of the Pensions Act 2008.

Seafarers are people working in any capacity on board a ship or hovercraft. They include technical, engine and deck officers, people working in the catering and hotel trades, and general ratings (that is, seamen who are not of officer rank) doing a variety of work.

Offshore workers are people working on oil or gas extraction and related activities in the UK territorial sea, UK continental shelf, or in the UK sector of a cross boundary field

The exclusion in the Pensions Act was introduced to allow time for Government to fully consider a series of complex issues before deciding whether or not automatic enrolment should apply to seafarers and offshore workers. In particular, it was important to consider how a policy to auto-enrol seafarers would fit with international sea law and custom in respect of those working on foreign registered ships. Both sections 96 and 97 allow us to make affirmative secondary legislation to bring these groups back into scope.

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We have carefully considered the effect of international sea law and convention. We have sought the view of the Foreign and Commonwealth Office (FCO) on whether applying automatic enrolment to seafarers would breach the international custom of leaving matters to do with the internal economy of foreign flagged ships (whilst in UK internal waters) to the vessel's flag state. Their view was that the automatic enrolment provisions would not impact on the internal economy of the ship and thus not breach this custom.

Officials have also been working to establish whether or not automatic enrolment would interfere with the right of innocent passage enjoyed by foreign flagged vessels under the United Nations Convention of the Law of the Sea (UNCLOS). FCO's view is that because the automatic enrolment duties apply to the employer in respect of seafarers working or ordinarily working in Great Britain, and not the vessel, automatic enrolment would not hamper the right of innocent passage under UNCLOS.

We have received assurances from the Pensions Regulator, the body responsible for regulating workplace pensions in the UK which will take on the role of maximising compliance with the new employer duties, that it will respect international law and custom in carrying out any of its enforcement activities.

The Pensions Regulator aims to pursue compliance irrespective of whether the employer is based within or outside the UK. Whilst some seafarers work for shipping companies based abroad, this is also the case for some land-based workers – and with this in mind, the Pensions Regulator is currently developing proposals in relation to how it will use its enforcement powers with employers overseas. It will publish its compliance and enforcement strategy later in the year which will set out how it plans to maximise compliance with the employer duties and the principles governing how it will use its powers. More detailed enforcement policies and guidance will then follow on in due course.

In brief, the Regulator will take a risk-based and proportionate approach based on educating, enabling, and enforcing to support compliance. Enforcement action will be graduated and may involve warnings, notices or penalties. The aim of the regime will be to encourage a culture of compliance to develop without the use of financial penalties. But where an employer has been given an opportunity to remedy a breach and fails to do so, they may be needed. Criminal prosecution will only be used in the most serious cases, e.g. where there has been a wilful failure to comply with the auto-enrolment duty.

The Government now proposes that seafarers and offshore workers should be covered by auto-enrolment if they work, or ordinarily work, in Great Britain. This means that in principle we will be treating these groups in the same way as land-based workers.

However, we will continue to exclude share fishermen from auto-enrolment as they are self employed and thus outside the scope of these reforms.

Ordinarily working

Our proposed policy is that seafarers and offshore workers who are working, or ordinarily working, in Great Britain should be auto-enrolled. With this approach the location of the employer would not be a key determining factor in deciding whether an individual is ordinarily working in GB, nor would their nationality or place of residence.

Nor would where a ship is registered be a consideration, so a seafarer could be “ordinarily working in GB” on a foreign registered ship. As with land-based workers, we would expect case law in this area to develop over time.

We would expect to capture most seafarers who work on regular routes in British waters and whose employment is based in Great Britain. Relevant case law supports the view that a seafarer’s employment base will determine where they are ordinarily working. A seafarer’s employment base is likely to be determined by several factors including where their tours of duty begin and end, and the terms of their contract.

An example of a seafarer likely to be captured would be someone who regularly works on ferries, and who starts and finishes their working day at a GB port.

Offshore workers will be treated as if they are ordinarily working in Great Britain if they are working in the UK territorial sea, UK continental shelf, or in the UK sector of a cross-boundary field.

Impact

We have estimated the impact of bringing seafarers and offshore workers into automatic enrolment to business, individuals and Government. The impacts and assumptions underlying these proposals are explained in full in the attached Impact Assessment and summarised in the tables below.

We would welcome further evidence which may help us refine the estimates of economic costs to businesses of all sizes as well as the benefits to individuals.

Table 1: Key estimates of the characteristics of seafarers used to assess the number of seafarers eligible for automatic enrolment

Key characteristics	Estimates for ...		
	UK Ratings	UK Officers	Foreign Nationals
Individuals			
Number of workers	11,000	15,000	58,000
Ordinarily working in Great Britain	10,000 (90%)	7,000 (45%)	5,000 (<10%)
Aged 22 to State Pension age	All	All	All
Employees under a 'worker's contract'	All	All	All
Has qualifying earnings of at least £7,475 per year	All	All	All
Average annual earnings	£28,100 men £22,500 women	More than £38,185 (upper earnings limit in 2010/11 terms)	£28,100 men £22,500 women
Proportion already saving in a qualifying pension scheme	20%	85%	None
Number eligible for automatic enrolment	8,000	1,000	5,000
Proportion likely to opt out after automatic enrolment	25%	25%	25%
Number likely to remain in pension saving	6,000	700*	4,000

Notes:

- Source: Impact Assessment: Workplace Pension Reform Secondary Legislation.
- Figures are rounded to the nearest 1,000.
- *Figure is rounded to the nearest 100.

Table 2: Key assumptions of the characteristics of the shipping industry used to assess the impact on business from automatically enrolling eligible seafarers

Key characteristics	Estimates
Firms employing eligible seafarers	
Number of firms	Over 100
Size of firms*	
Has at least one land based staff	Majority
Level of workplace pension provision	Good
Operate PAYE schemes	Majority
Cost to business	
Total employer contribution costs per year in steady state	£7 million
Average annual contribution cost per eligible worker in steady state	£700
Total administration costs in the first year	Up to £0.5 million
Total ongoing administration costs per year	Up to £0.2 million

Notes:

- Source: Impact Assessment: Workplace Pension Reform Secondary Legislation.
- *Costs to business were calculated under two assumptions: all micro and all large.
- Costs are in 2011/12 earnings terms.

Table 3: Key estimates of the characteristics of the offshore workforce and industry used to assess the impact from automatically enrolling eligible offshore workers

Key characteristics	Estimates
Individuals	
Number of workers on UK Continental Shelf	51,000
Ordinarily working in Great Britain	All
Aged 22 to State Pension age	All
Employees under a 'worker's contract'	All
Has qualifying earnings of at least £7,475 per year	All
Average annual earnings	More than £38,185 (upper earnings limit in 2010/11 terms)
Proportion already saving in a qualifying pension scheme	17,000
Number eligible for automatic enrolment	34,000
Proportion likely to opt out after automatic enrolment	25%
Number likely to remain in pension saving	25,000
Firms	
Number of firms	100-150
Size of firms*	
Has at least one land based staff	Majority
Level of workplace pension provision	Good
Operate PAYE schemes	Some: not the majority
Cost to business	
Total employer contribution costs per year in steady state	£25 million
Average annual contribution cost per eligible worker in steady state	£1,000
Total administration costs in the first year	Up to £0.8 million
Total ongoing administration costs per year	Up to £0.5 million

Notes:

- Source: Impact Assessment: Workplace Pension Reform Secondary Legislation.
- *Costs to business were calculated under two assumptions: all micro and all large.
- Costs are in 2011/12 earnings terms.

Consultation questions

Q8. Do you agree with the estimates provided in summary form and in full in the Impact Assessment which accompanies this consultation of (a) economic costs to businesses and (b) benefits to individuals? If not, please provide estimates and supporting information.

Q9. Do you agree with the estimates provided in summary form and in full in the Impact Assessment which accompanies this consultation of the average earnings for different types of worker? If not please provide estimates and supporting information.

Q10. Can you provide any evidence relating to the number of firms (a) employing eligible seafarers, (b) employing offshore workers and (c) the sizes of those firms?

Q11. Can you provide any evidence which would assist the Government in developing a full understanding of the likely impact of automatic enrolment on the shipping industry?

Q12. Can you provide any evidence which would assist the Government in developing a full understanding of the likely impact of automatic enrolment on the offshore industry?

Seafarers – commentary on changes

Regulation 6 inserts new regulation 52 (Persons working on vessels). It provides that the relevant provisions of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 apply to seafarers.

Offshore workers – commentary on changes

This section provides commentary on the draft Automatic Enrolment (Offshore Employment) Order 2011

This instrument covers proposals for offshore workers.

Article 2 (Application of relevant provisions) provides that those in offshore employment should be treated as if they are working, or ordinarily working in Great Britain for the purposes of automatic enrolment. It also ensures that, in the case of a cross-border petrol field, these provisions should not apply to those working in the foreign sector of the UK continental shelf

Article 3 (Jurisdiction) provides that employment tribunals and the first tier tribunal are able to hear complaints, appeals and references made to them in connection with offshore employment in the English, Scottish and Northern

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Irish areas of the UK continental shelf in the same way as they would if the relevant matters had taken place in the UK

5. Commentary on the draft Compromise Agreements (Pensions Act 2008) (Description of Person) Order 2011

Policy background

Section 58 of the Pensions Act 2008 restricts the circumstances in which an employer and workers can agree to exclude or limit the rights or duties arising under that Act. One of the permitted circumstances is where a compromise agreement has been entered into. These agreements between employers and workers can, in return for certain consideration, limit the worker's ability to pursue rights before an employment tribunal. There are several conditions that must be satisfied for such an agreement to be valid, including that the worker must have received advice from a 'relevant independent adviser'.

Legal Executives are now permitted to take on this advice-giving role elsewhere in employment law but were not included in the list of relevant independent advisers in section 58(6) through an oversight.

An order-making power in section 58(6)(d) is therefore being exercised in order to specify that a Legal Executive is a relevant independent adviser for the purposes of section 58, i.e. is able to give advice on compromise agreements covering rights and duties arising in the Pensions Act 2008.

Commentary on changes

Article 1 defines the scope of the Order and details when it will come into force.

Article 2 specifies that a Legal Executive is a 'relevant independent adviser' for the purposes of section 58 of the Pensions Act 2008 so that such a person is able to give valid advice on compromise agreements under that Act. These are legally binding agreements under which a worker, in return for a payment from an employer, agrees not to pursue any claim they may have to an employment tribunal.

Annex A – List of organisations consulted

Adecco
Aegon
Age Concern
Allen & Overy LLP
Aon Consulting UK
Arc Benefits Limited
Association of British Insurers
Association of Chartered Certified Accountants
Association of Consulting Actuaries
Association of Corporate Trustees
Association of Independent Financial Advisors
Association of Members-Directed Pension Schemes
Association of Pension Lawyers
Aviva
Barclays Bank
Bluefin
British Broadcasting Company
British Chambers of Commerce
Building and Civil Engineering Benefits Scheme
Buck Consultants Ltd
Business and Sports Leisure
Capital Hartshead
Chamber of Shipping
Chartered Institute of Personnel Development
Clarks International
Confederation of British Industry
Department of Business Innovation and Skills
Department for Energy and Climate Change
Department for Social Development Northern Ireland
Department for Transport
Engineering Employers Federation
Evershed LLP
Federation of Small Businesses
Fidelity
First Actuarial
Financial Services Authority
Foreign and Commonwealth Office
Friends Provident
Gissings Consultancy Services
GMB
Hamish Wilson
Help the Aged
Hewitt Associates Limited
HM Revenue & Customs
HM Treasury
Hyman Robertson

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Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants of Scotland
Institute of Directors
Investment and Life Assurance Group
Investment Managers Association
Law Debenture
Law Society of England and Wales
Law Society of Scotland
Legal & General
Lloyds Group
Local Government Employers
Logica
Lovells LLP
Marks and Spencers plc
Mayer Brown International
Mercer Limited
Ministry of Justice
Navy, Army and Air Force Institutes
National Association of Pension Funds
National Farmers Union
National Union of Rail, Maritime and Transport Workers
Nautilus
Northern Rock plc
Office of Fair Trading
Office to the Solicitor to the Advocate General
Offshore Contractors Association
Pension Protection Fund
Pensions Management Institute
Pensions Ombudsman
Pensions Policy Institute
Personal Accounts Delivery Authority
PriceWaterhouseCoopers LLP
Professional Contractors Group
Prudential
Punter Southall
Recruitment and Employment Confederation
Resolution
Sainsbury
Saul Trustee Company
Scottish Police Services Authority
Scottish Public Pension Agency
Scottish Office
Society of Pension Consultants
Tax Incentivised Savings Association
Tesco
The Actuarial Profession
The Co-operative Group
The Institute of Payroll Professionals
The Pensions Advisory Service
The Pensions Regulator

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The Scottish Government
The Society of Pension Consultants
The Welsh Assembly Government
Trades Union Congress
Wales Office
Watson Wyatt
Whitbread Group
Which?
Zurich

Annex B – Glossary of terms

19 day rule

The prescribed period outlined in the Occupational Pension Schemes (Scheme Administration) Regulations 1996 and the Personal Pensions (Payments to Employers) Regulations 2000 that sets the due date for worker contributions deducted from salary to be paid over to the scheme. Currently this is 19 days from the beginning of the month following deduction.

Active membership

The definition will be in accordance with individual scheme rules. Each scheme will have a defining action that will create active membership for a member. For personal pensions, active membership will be achieved once the contract is deemed (see deeming the contract below). For the purposes of reenrolment, active membership is defined by regulation 14(4).

Automatic enrolment

Employers will be required to make arrangements by which eligible jobholders become active members of an automatic enrolment scheme with effect from the automatic enrolment date. Automatic enrolment is not applicable if the jobholder is an active member of a qualifying scheme on that date.

Automatic enrolment date

The automatic enrolment date will be the start date of the joining window, which also becomes the effective date of active membership, once the joining process has been completed. The automatic enrolment date will be triggered by:

- the employer's staging date during implementation;
- the first day on which the jobholder starts work and meets the jobholder criteria (post implementation);
- meeting the jobholder criteria whilst in work by either:
- reaching age 22 (in receipt of qualifying earnings); or
- having earnings which exceed the earnings trigger

Automatic enrolment scheme

A qualifying scheme (see below) where the rules have no restrictions on membership and does not require the jobholder to express a choice or provide information in order to become or remain an active member.

Automatic re-enrolment

Requires employers to repeat the automatic enrolment process during a window which starts two years and nine months after their staging date and ends three years and three months after the staging date. Automatic re-enrolment applies to eligible jobholders who opted out of pension saving during the one month opt out period or at any stage after the end of that period left pension saving. There are exceptions to the minimum three years.

Certification

A process by which employers offering money purchase schemes, personal pension schemes and some hybrid schemes (as to the money purchase element) under the employer duty can assure themselves that their scheme meets the necessary quality requirements.

Compliance regime

A set of powers and processes exercisable by The Pensions Regulator (TPR), which have the ultimate goal of maximising compliance with the employer duties and employment safeguards set out in the Pensions Act 2008.

Continuity of scheme membership

Employers are required to maintain a jobholder's active membership of a qualifying scheme, while they are in that employment unless the jobholder chooses to end their membership.

Day one / Day one duty

See automatic enrolment date.

Deeming the contract

The process an employer must use if they are automatically enrolling a jobholder into a workplace personal pension to meet the obligations under the employer duty. This process will not require a signature from the jobholder.

Defined benefit scheme

An occupational pension scheme under which all of the benefits that may be provided accrue at a defined rate and total benefits can be calculated in advance of drawdown.

Defined contribution scheme

Occupational or personal pension schemes where contributions made into the scheme are invested into one or more investment funds. Some times known as money purchase schemes (see the definition of money purchase schemes for more details).

Due date

To be able to issue an Unpaid Contributions Notice TPR must be of the opinion that the contributions have not been paid by the due date. This due date is separate from any due date on a pension scheme's schedule of contributions or payment schedule and is to be set in regulations.

Earnings trigger

The earnings trigger is level of earnings required for an individual to be automatically enrolled into their employer's workplace pension scheme. This is defined in the Pensions Bill 2011 as £7,475 in 2011/12 terms.

Employers

Employer in relation to a worker, means the person by whom the worker is employed (see full definition in section 88 of Pensions Act 2008).

Employee representatives

A recognised independent trades union or body representing employees.

Enrolment information

Factual information which the employer must give to a jobholder who is enrolled into a pension scheme about the effects of the employer duty.

Escalating penalty notice

Where a person remains non-compliant despite having received warnings and compliance notices TPR may issue an escalating penalty notice to them requiring them to pay a daily penalty until they do become compliant.

Fixed penalty notice

TPR may issue a fixed penalty notice to an employer who has contravened certain regulations or failed to do what was required of them under a compliance notice. The penalty notice will require the payment of £400 by a specified time and may warn that escalating penalties could become due if the non-compliance continues.

Group Personal Pensions (GPP)

An arrangement made by employer for workers to participate in a personal pension arrangement. Each worker has an individual contract with the pension provider. Currently, the employer may or may not make a contribution on behalf of the worker. The employer may also pay the worker's contribution direct from his salary through a direct payment arrangement.

Group Self Invested Personal Pension (GSIPP)

A group personal pension where the contracts are SIPPs rather than personal pensions (see SIPP definition).

Hybrid schemes

An occupational pension scheme that is not purely defined benefit or purely defined contribution. Rules and guidance will help employers to identify and apply the appropriate quality requirements.

Impact Assessment

Impact assessment is part of the policy making process that sets out the rationale for a proposed Government intervention of a regulatory nature and identifies the future economic and social consequences in the public, private and third sectors.

Implementation

Implementation refers to staging and the transitional arrangements following the launch of automatic enrolment, to help employers and the delivery authorities to adjust gradually to the new reforms.

Jobholders

A worker who is working or ordinarily works in Great Britain under a contract of employment, who is aged at least 16 and under 75 and has qualifying earnings.

Information on the terms and conditions

The information that pension providers will need to include in the scheme specific information for personal pension schemes used for automatic enrolment under the employer duty. The exact requirements are defined in the automatic enrolment regulations.

Money purchase scheme

Benefits provided under a pension scheme, the rate or amount of which is calculated by reference to an amount available for the provision of benefits to or in respect of the member. Sometimes referred to as a defined contribution scheme.

Non-UK pension scheme

A pension scheme, either defined benefit, defined contribution or hybrid, that has its main administration somewhere other than in the UK.

Occupational pension scheme

A person scheme set up in trust by an employer for their staff. Can be either defined benefit, hybrid or defined contribution.

Opt in

A jobholder who is not eligible for automatic enrolment or whose employer is applying a waiting period may by notice require the employer to arrange for them to become an active member of a scheme.

Opt out

Once active membership has been achieved and the jobholder is in receipt of the enrolment information, the jobholder has a right to 'opt out' of active membership and will be treated as having never been a member of the scheme.

Opt out period

A jobholder who has been automatically enrolled into a qualifying scheme may give notice to opt out of membership within one month from the completion of the joining processes.

Pay reference period

The period of pay that an employer uses to identify whether a scheme is a qualifying scheme, to calculate contribution rates or to decide whether the automatic enrolment duty is triggered for an individual.

The Pensions Regulator (TPR)

UK regulator of work-based pension schemes.

Pensionable pay

The pay on which pension contributions are calculated.

Personal Pension

A contractual arrangement between an individual and a pension provider (such as an insurance company) which enables the individual to make provision for a pension on a defined contribution basis.

Phasing

The gradual introduction of employer contribution costs. For employers staged in on October 2012, they will have 3 years at 1%, until the end of staging, when everyone goes up to 2% in Oct 2015 and to 3% a year later which will be steady state. Jobholders may choose to contribute more, although employers will not be required to match any voluntary contributions. Phasing contributions is not appropriate for defined benefit schemes, which must comply with minimum funding requirements at all times.

Postponement or disapplication of automatic enrolment

All employers will be allowed to defer an individual jobholder's automatic enrolment date by up to three months. This waiting period is intended to provide an administrative easement for employers, particularly those who would otherwise have to continuously automatically enrol short-term workers who leave soon after starting work. This measure replaces the existing postponement provision available only to employers offering pension provision with an employer contribution equal to or more than 6% of qualifying earnings.

Qualifying earnings

An earnings band of £5,035 to £33,540 per annum (in 2006/07 earnings terms), on which pensions contributions will be calculated for money purchase schemes. You must have qualifying earnings (i.e. above £5,035) to be a jobholder. Clause 8 of the Pensions Bill 2011 would allow the top and bottom of the qualifying earnings band to be updated each year by affirmative order.

Qualifying schemes

Qualifying schemes are pension schemes that meet a minimum standard for the level of contributions made to the scheme or the level of benefit provided. There are different quality standards depending on whether the scheme is defined benefit, defined contribution, or hybrid.

Registration

The formal process by which employers will provide information to TPR about how they have met their enrolment duties.

Re-registration

The process by which employers will provide information to TPR every three years following initial registration.

Record keeping

Records that need to be kept by employers, the trustees and managers of occupational schemes and pension providers, to enable TPR to check compliance.

Self-invested Personal Pension (SIPP)

An arrangement which forms all or part of a personal pension scheme, which gives the member the power to direct specifically how some or all of the member's contributions are invested (as opposed to simply choosing a fund or funds).

Staging

The employer duty will be implemented in stages over a period rather than from a single launch date.

Staging group

During the staging process, employers will be divided by size into groups. Each group of employers will be brought under the new duties at a different date over the three year staging period.

Staging date

This is the date on which a particular group of employers will be brought under the new duties during the implementation period.

Stakeholder Pension

Stakeholder pensions are a type of personal pension. They have to meet certain government standards to ensure they are flexible and have a limit on annual management charges.

Tax registered

For a pension scheme to qualify for tax relief it must be registered and approved by HM Revenue & Customs (HMRC).

Third party notices

It's not just employers who have responsibilities under the pension reforms. Third parties, e.g. trustees or managers of a pension scheme, payroll administrators, accountants or pension scheme administrators all may be required to do things as well. TPR will have the power to issue compliance notices to them in certain circumstances. These formally require them to do something or face the possibility of having to pay penalties.

Third party penalty

This term (not actually present in the Regulations) describes (i) the penalty that can become payable for failure to comply with a third party compliance

notice (see above), or (ii) the penalty that can become payable where an employer duty applies to the third party directly (for example, obligation on a scheme to provide information to jobholders) or there is a failure to comply with a compliance notice in such circumstances. Both fixed and daily escalating penalties may come to apply to a third party.

Transitional period: Defined Benefit schemes

The period in which defined benefit schemes (and hybrid schemes) are exempt from phasing in contributions or activating membership of existing members for a period prescribed in regulations

Transitional period: Defined Contribution schemes

See phasing.

Waiting Period

See Postponement or disapplication of automatic enrolment

Worker

An individual who has entered into work under a contract of employment or any other contract by which the individual undertakes to do work or perform services personally for another party to the contract.

Worker without qualifying earnings

A individual who is ordinarily working in Great Britain under a contract, who is aged at least 16 and under 75 and has gross earnings less than £5,035 (in 2006/07 terms).

WPP (workplace personal pension)

An umbrella term covering Group Personal Pensions, Group Self-Invested Personal Pensions and Stakeholder Pensions.

Annex C – Consultation questions

Pay reference periods

Q1. We seek views on whether abolition of the Person A rule is a sensible approach.

Q2. Are there any specific examples of where and how the Person A rule would otherwise be used?

Q3. Is a period of one week from the day following the starting day sufficient time for all employers to issue a notice?

Waiting periods

Q4. Will employers use a second waiting period?

Q5. For employers using a second waiting period, is a period of one week from the day following the starting day sufficient time for these employers to issue a notice, given that weekly paid employees are generally paid one week in arrears and automatic enrolment should occur from the beginning of the relevant pay reference period? Any extension to this period would have to be balanced with not eating too far into the opt-in window as described above.

Certification

Q6. Does the proposed approach to relevant earnings give the right balance between a workable definition for employers in using certification and protection of individuals?

Q7. Does the 12 month period for certification seem reasonable given that it is to support an easement for employers?

Seafarers and offshore workers

Q8. Do you agree with the estimates provided in summary form and in full in the Impact Assessment which accompanies this consultation of (a) economic costs to businesses and (b) benefits to individuals? If not, please provide estimates and supporting information.

Q9. Do you agree with the estimates provided in summary form and in full in the Impact Assessment which accompanies this consultation of the average earnings for different types of worker? If not please provide estimates and supporting information.

Q10. Can you provide any evidence relating to the number of firms (a) employing eligible seafarers, (b) employing offshore workers and (c) the sizes of those firms?

Q11. Can you provide any evidence which would assist the Government in developing a full understanding of the likely impact of automatic enrolment on the shipping industry?

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Q12. Can you provide any evidence which would assist the Government in developing a full understanding of the likely impact of automatic enrolment on the offshore industry?

Annex D – Accidental jobholders

How Person A works

(As proposed in the Pension Act 2008 and the Automatic Enrolment Regulations 2010)

An individual has a contracted salary of, say, £4,500 a year, paid at regular intervals, at £86 a week. They do not have qualifying earnings and are not eligible for auto-enrolment. But if in one week they have a pay spike, perhaps overtime to cover as a one-off for a sick colleague, and earn £120 they would, ordinarily, be auto-enrolled that week because their earnings exceed the weekly jobholder test of £97.

The Person A provision requires employers to add the actual value of the spike in excess of the “normal” weekly wage to the value of the contracted annual salary. So in this example the value of the spike is $£120 - £86 = £34$ spike. But in a year they would still, on the facts known to the employer at the time, only expect to earn their £4,500 plus the value of the “spike” of £34 totalling £4,534. On these annual earnings they would still not be eligible for auto-enrolment. But in that isolated week they could trigger auto-enrolment as an accidental jobholder.

The effects of the automatic enrolment earnings trigger (Pensions Bill 2011)

NOTE: We have used £5715 in the following example but it is subject to legislation currently before Parliament and will be updated for live running in early 2012

The effect of the cushion between the auto-enrolment trigger (£7,475) and the start of qualifying earnings (£5,715) is to remove the likelihood of one off pay spikes, having the same impact.

To illustrate this, if an individual has a contracted salary of, say, £7,350 a year, which is paid at regular intervals, at £141 week. Earnings do not exceed the automatic enrolment earnings trigger (£7,475 a year, £144 a week) and the person does not qualify to be auto-enrolled.

But if in one week they have a pay spike, perhaps seasonal overtime and earn £175 they would trigger eligible jobholder status and be auto-enrolled that week because their earnings exceed the weekly jobholder test of £144. Contributions are then due on all earnings from £110 a week. Unlike the example above once contributions liability is triggered it does not fall away unless earnings fall below £5,715. Anyone who triggers auto-enrolment remains liable for pension contributions on earnings over £110, even though they might not have another pay spike that year. This person routinely has earnings over £110 and this leaves them (and their employer) liable for pension contributions.

The actual and indicative figures shown here will be updated for the 2012/2013 tax year. The principles shown here will still apply.