



Department
for Work &
Pensions

Technical Changes to Automatic Enrolment

Consultation on draft regulations

10 February 2017

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About this consultation

Purpose of the consultation

This consultation is seeking views on a small package of regulations to make two changes to the Automatic Enrolment (AE) process for new employers that are due to become subject to the AE duties during 2017:

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

This document is available in the list of [DWP consultations on GOV.UK](#).

Who this consultation is aimed at

The consultation is aimed at employers, trades unions, employee representatives and pension industry professionals, including scheme administrators, payroll administrators, accountants, payroll bureaux, independent financial advisers and employee benefit consultants.

Scope of consultation

This consultation applies to England, Wales and Scotland. Northern Ireland will make corresponding regulations.

Duration of the consultation

The consultation begins on 10 February 2017 and runs until 3 March 2017.

How to respond to this consultation

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

automaticenrolment.consultation@dwpgsi.gov.uk

Or by post to:

James Newman
Department for Work and Pensions
Automatic Enrolment Policy Team
Zone C, 1st Floor
Caxton House
London SW1H 9NA

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Please ensure your response reaches us by **4pm, Friday 3 March 2017**.

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 an 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 addressed to James Newman at automaticenrolment.consultation@dwp.gsi.gov.uk.

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 purposes 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 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.

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 4th Floor, Caxton House, Tothill Street, London, SW1H 9NA.

Freedom-of-information-request@dwp.gsi.gov.uk

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at <https://www.gov.uk/make-a-freedom-of-information-request>

Consultation principles

This consultation is being conducted in line with the revised [Cabinet Office consultation principles](#) published in January 2016. These principles give clear guidance to government departments on conducting consultations.

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator
Zone F, 1st Floor
Caxton House
Tothill Street
London
SW1H 9NA

CAXTONHOUSE.LEGISLATION@DWP.GSI.GOV.UK

Executive summary

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

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

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

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

The regulations package on which we are now consulting is being made in advance of the outcome of the 2017 Review of AE, which will look at whether AE continues to meet the needs of individuals saving for their retirement in the future. We are doing this because the measures need to be in place before the existing provisions in the Employers' Duties (Implementation) Regulations 2010 start to apply to new employers in April 2017.

We are seeking views on draft regulations (Annex A to this consultation document) which set out to:

- provide certainty about when the AE duties apply to new employers (i.e. those outside the AE staging profile);

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- extend an existing compliance easement to new employers, who would otherwise face an increased regulatory burden when automatically enrolling workers for the first time.

The Department is seeking views on the operation of the draft Statutory Instrument at **Annex A**. We would welcome stakeholder comments on whether these regulations will work in practice to achieve the policy intent of providing a clear and straightforward compliance framework for newly created employers so that they understand when the AE duties will apply to them.

We also want to ensure that pensions industry professionals, including: scheme administrators; payroll administrators; accountants; payroll bureaux; independent financial advisers and employee benefit consultants can scrutinise the proposed changes and advise us of any concerns they might have about the draft regulations; and whether they foresee any unintended consequences for employers or individual savers.

We intend to publish a response to the consultation in March 2017 with the regulations due to come force on 1 April 2017. Our regulations amend the existing Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 and the Employers' Duties (Implementation) Regulations 2010.

Changing the AE duties trigger date for employers

Background

Since October 2012, employers have been brought into workplace pensions gradually with each employer knowing in advance when their AE duties will start. This is set out in the AE Employers' Duties (Implementation) Regulations 2010. The AE staging profile ceases to apply to some newly created employers from April 2017, as more than four years after the reforms were introduced, the expectation is that complying with AE duties is now part of the normal process of setting up a business in the same way that new employers are expected to deal with tax and national insurance from the outset. Therefore during this year new employers will become subject to near immediate AE duties on the *day on which PAYE income is first payable in respect of any worker* – known as the AE duties trigger date.

The AE duties trigger date described above was designed over six years ago without the benefit of our subsequent operational experience with AE. It is clear now that the current, post-staging, compliance mechanism does not allow The Pensions Regulator (TPR) to identify the prescribed AE duties trigger date set out in legislation using the employer data available to them via HMRC systems. This undermines TPR's ability to support and enable employers to meet their AE duties, before deciding whether they need to enforce compliance.

In addition, the current AE duties trigger date, for new employers, differs from that which will be commonly understood by those from whom an employer might seek assistance when complying with their AE duties, e.g. payroll software providers, accountants and pension providers. These groups will only have experience of dealing with employers who are within the AE staging profile, and whose duties dates were set as the beginning of a calendar month determined by their PAYE reference. In these circumstances, it will be difficult to explain clearly, to both employers and their advisers, when the AE duties will apply to a new employer who will be outside the staging profile and who will therefore be subject to near immediate AE duties. Even where the AE duties trigger date can be accurately identified, most new employers would need to carry out a complex manual calculation of their workers' first pension deduction, as most commercially available payroll software does not currently support the post-staging employer AE duties trigger.

Furthermore, the current AE duties trigger date works against the intention of the AE reforms which aim to bring workers into pensions saving at the earliest opportunity after they take up employment. The date of *first PAYE income* trigger means that an

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individual may not be automatically enrolled into pensions saving scheme until up to a month after starting work with their employer. Non-legislative approaches to resolving this issue would not provide the definitive AE duties start date that TPR needs in order to have confidence in whether, and when, to take enforcement action against an employer who fails to comply with the law.

We have therefore concluded that changing the legislative definition for the AE duties trigger date is the correct approach to enable TPR to operate the compliance regime correctly for AE; enable employers to easily know when their duties commence; and make calculations of contributions easier for employers and payroll providers.

Proposed changes

Our draft regulations change the date of the AE duties trigger, for post-staging employers, to the day on which *the first worker begins to be employed by the employer*.

These changes are set out in the draft regulations at Annex A.

Deferring automatic enrolment for new workers

Background

Existing employers brought into the AE duties via the staging profile have the ability to pause automatic enrolment of new workers by up to three months (this is known as ‘postponement’ for employers within the AE staging profile). We propose to extend this administrative easement to new employers.

At the time of the Making Automatic Enrolment Work (MAEW) Review in 2010 many employers expressed concern that the automatic enrolment of new workers could lead to significant costs associated with enrolling large numbers of employees who might remain with an employer for only short periods of time.

The independent MAEW reviewers recommended the introduction of a postponement period to help alleviate these problems, particularly for those business sectors with large numbers of short term, seasonal workers. The approach was also intended to ease the administrative burden generally by allowing employers more time to complete all the processes involved in complying with AE. After consultation, the government determined a three month postponement period to be a proportionate balance between employers being able to manage the administrative burdens of enrolling staff who might only be with them for a short time; without unfairly disadvantaging individuals who should be able to start saving at the earliest opportunity after starting work.

Experience has shown the benefit of this compliance easement. We believe it is sensible and proportionate to extend it to new employers. For these newly created employers, outside the AE staging profile, the compliance easement will be described as the ‘deferral’ period.

Proposed change

A new legislative power is necessary to extend the easement to new employers, including small and micro businesses. These employers are likely to benefit most from the ability to have more time to deal with the official administrative requirements around automatically enrolling a new worker.

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It is the employer's choice as to whether they use the easement, and for how long they choose to defer enrolment within the three month window. We have therefore taken a permissive legislative approach. Please review the deferral provisions in the draft Statutory Instrument at Annex A.

Consultation Questions

We welcome your comments on both the measures described above which have been set out in the draft Statutory Instrument at Annex A.

1. Do you agree with the proposed changes set out in the draft Statutory Instrument?
2. Do you have any concerns about the description of the new proposed **AE duties trigger date** set out in the draft Statutory Instrument, and whether this date will be easily understood by employers? If so, please provide details, or propose an alternative description of the duties trigger date.
3. Do you have any other comments on the content of the draft Statutory Instrument?

Annex A: Draft Statutory Instrument

STATUTORY INSTRUMENTS

2017 No.

PENSIONS

**The Employers’ Duties (Implementation) (Amendment) Regulations
2017**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 12 and 144(2) and (4) of the Pensions Act 2008⁽¹⁾.

Citation and commencement

1. These Regulations may be cited as the Employers’ Duties (Implementation) (Amendment) Regulations 2017 and come into force on 1st April 2017.

Amendments to the Employers’ Duties (Implementation) Regulations 2010

2. The Employers’ Duties (Implementation) Regulations 2010⁽²⁾ are amended in accordance with the following provisions.

- 3. In Regulation 1, in the appropriate places insert—
 - ““automatic enrolment scheme” is to be read in accordance with section 3(8) of the Act;”;
 - ““active member” has the meaning given by section 99 of the Act;”;
 - ““employment” has the meaning given by section 88 of the Act;”;
 - ““qualifying scheme” has the meaning given by section 2(5) of the Act;”;
 - and
 - ““worker” has the meaning given by section 88 of the Act;”.

- 4. In Regulation 2—
 - (a) in paragraph (8)(a) omit “from 1st October 2017”;
 - (b) for paragraph (8)(b) substitute—
 - “(b) the employer first paid PAYE income in respect of a worker on or after 1st October 2017;”;
 - (c) in paragraph (8), for “PAYE income is payable” substitute “the employer’s first worker begins to be employed by the employer”; and

⁽¹⁾ 2008 c. 30.
⁽²⁾ S.I. 2010/4.

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- (d) in paragraph (10), for “qualifying earnings are payable to any worker” substitute “the employer’s first worker begins to be employed by the employer”.

Deferral of automatic enrolment for post-staging employers

5. After Regulation 4A insert—

“Deferral of automatic enrolment for post-staging employers

4B.—(1) Where—

- (a) an employer (E) gives to a worker employed by E on the day on which the worker begins to be employed by E notice that E intends to defer automatic enrolment for the worker until a date specified in the notice (“the deferral date”), and
 - (b) the requirements provided in regulation 4C in relation to the notice are met,
- the worker’s automatic enrolment date is the deferral date if on that date section 3 of the Act applies to the worker as a jobholder of E; if not, paragraph (3) applies.

(2) Where—

- (a) a worker employed by an employer (E) becomes a jobholder to whom section 3 of the Act applies,
 - (b) E gives the worker notice that E intends to defer automatic enrolment until a date specified in the notice (“the deferral date”), and
 - (c) the requirements provided in regulation 4C in relation to the notice are met,
- the worker’s automatic enrolment date is the deferral date if on that date section 3 of the Act applies to the worker as a jobholder of E; if not, paragraph (3) applies.

(3) Where this paragraph applies, section 3(2) of the Act does not apply in relation to any employment of the worker by E in the period beginning with the starting day and ending with the deferral date.

(4) A notice under this regulation may be given on or before the starting day or within the period prescribed by regulation 24(3) of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010⁽³⁾.

(5) The deferral date may be any date in the period of three months after the starting day.

(6) An employer who gives a worker a notice under paragraph (1) may not give the worker a notice under paragraph (2) in relation to any occasion on or before the deferral date specified in the notice on which the worker becomes a jobholder to whom section 3 applies.

(7) In this regulation—

“employer” means—

- (a) in the case of employers who pay PAYE income, an employer for whom the first worker begins to be employed on or after 1st October 2017,
- (b) in the case of employers who do not have a PAYE scheme, an employer for whom the first worker begins to be employed on or after 1st April 2017;

“starting day” means—

- (a) the day on which the worker begins to be employed by E, in the case of a notice under paragraph (1);
- (b) the day on which the worker becomes a jobholder to whom section 3 of the Act applies, in the case of a notice under paragraph (2).

⁽³⁾ S.I. 2010/772.

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Deferral of automatic enrolment: requirements

4C.—(1) A notice given under regulation 4B(1) or (2) must be in writing and, subject to paragraphs (2) and (3), include the information described in paragraphs (6) to (9).

(2) In the case of workers who are jobholders and are not active members of a qualifying scheme, the notice referred to in paragraph (1) must include the information described in either paragraph (4) or (6) and in paragraphs (7) to (9).

(3) In the case of workers who are not jobholders and are not active members of a qualifying scheme, the notice referred to in paragraph (1) must include the information described in either paragraph (5) or (6) and in paragraphs (7) to (9).

(4) The information under this paragraph is a statement that the jobholder may, by giving written notice to the employer, require the employer to make arrangements for the jobholder to become an active member of an automatic enrolment scheme and that the jobholder will be entitled to employer's contributions.

(5) The information under this paragraph is a statement that the worker may, where they are working, or ordinarily work, in Great Britain and are aged at least 16 and under 75 and are not a member of a pension scheme that satisfies the requirements of section 9 of the Act, by giving written notice to the employer, require the employer to make arrangements for the worker to become an active member of such a pension scheme.

(6) The information under this paragraph is a statement that by giving written notice to the employer, the worker who is aged at least 16 and under 75 and—

- (a) who earns more than the lower qualifying earnings limit as specified in section 13(1)(a) of the Act (and the amount must be specified in the statement) and is not an active member of a qualifying scheme, may require the employer to arrange for that worker to become an active member of an automatic enrolment scheme and will be entitled to employer's contributions; or
- (b) who earns more than the lower qualifying earnings limit as specified in section 13(1)(a) of the Act (and the amount must be specified in the statement) and is not a member of a pension scheme that satisfies the requirements of section 9 of the Act, may require the employer to arrange for that worker to become an active member of such a pension scheme but will not be entitled to employer's contributions.

(7) The information under this paragraph is a statement that the employer has deferred automatic enrolment until the deferral date (and the date must be given).

(8) The information under this paragraph is a statement that the employer will automatically enrol the worker into an automatic enrolment scheme if, on the deferral date, the worker is aged 22 or more but less than state pension age, is working, or ordinarily works, in Great Britain, earnings of more than the amount specified in section 3(1)(c) of the Act (and the amount must be given) are payable to the worker and the worker is not already an active member of a qualifying scheme.

(9) The information under this paragraph is a statement that a written notice from the worker must be signed by the worker or, if it is given by means of an electronic communication, must include a statement that the worker personally submitted the notice.”

Signed by authority of the Secretary of State for Work and Pensions

Address
Date

Name
Minister of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations relate to the date the duties under the Pension Act 2008 to automatically enrol a worker into a pension scheme first applies to an employer.

Regulation 4(a) to (c) changes the date the duties first apply to an employer that pays PAYE income and first did so on or after 1st October 2017, to the date on which such an employer's first worker starts work.

Regulation 4(d) changes the date the duties first apply to an employer that does not pay PAYE income after 1st April 2017 to the date on which such an employer's first worker starts work.

Regulation 5 inserts into the Employers' Duties (Implementation) Regulations 2010 provisions which enable an employer that employs its first worker after 1st April 2017 (in the case of a non-PAYE income paying employer) or on or after 1st October 2017 (in the case of a PAYE income paying employer) to defer the date on which the automatic enrolment duties apply to new workers (inserted regulation 4B(1)) and workers who become jobholders under section 3 of the Pensions Act 2008 (inserted regulation 4B(2)).

An employer can defer the date the duties apply for up to three months from the date the worker starts work for the employer in the case of inserted 4B(1) and from the date the worker becomes a jobholder under section 3 of the Pensions Act in the case of inserted regulation 4B(2).

The inserted regulation 4C makes provision about the various requirements of any notice to defer given under the inserted 4B and the different circumstances in which the different requirements apply.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk and copies can be obtained from the Department for Work and Pensions, First Floor, Caxton House, Tothill Street, London, SW1H 9NA.