

Title: Amendments to The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 that provide exceptions to the automatic enrolment employer duties IA No: DWP2016_06 Lead department or agency: Department for Work and Pensions Other departments or agencies: N/A	Impact Assessment (IA)				
	Date: 03/03/2016				
	Stage: Final				
	Source of intervention: Domestic				
	Type of measure: Secondary Legislation				
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Summary: Intervention and Options **RPC: Awaiting scrutiny**

Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year	In scope of OITO	Measure qualifies as
£3.5m (saving)	£3.5m (saving)	-£1.7m (saving)	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?
 The Department introduced, with effect from 1 April 2015, discretionary exceptions to the employer duty for three categories of individuals. Since the introduction of these provisions the Department has received feedback from stakeholders that there are two additional groups of individuals for whom automatic enrolment may not be appropriate because they are likely to have their own arrangements in place These are: individuals who are company directors and individuals who are genuine Limited Liability Partners (LLPs) having regard to the HMRC Salaried Member Rules. Government intervention is necessary to prevent employers from undertaking nugatory work and to put in place discretionary exempt for workers who are not the intended target group for automatic enrolment.

What are the policy objectives and the intended effects?
 The policy objective is to remove an unnecessary administrative burden on employers, particularly small and micro employers, who would otherwise need to enrol and re-enrol workers for whom automatic enrolment is not suitable.
 It also aims to allow individuals who are likely to have existing pension arrangements in place from needing to go through the automatic enrolment process and make unnecessary contributions, only to later opt out.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)
 Two options have been considered: Do nothing or legislate allowing employers to exempt two categories of workers from automatic enrolment (option 1). As the current requirements are set out in legislation a non-legislative option is not feasible.
 Doing nothing will result in continued unnecessary burden for employers and individuals. Although workers maintain the option to opt out of automatic enrolment there is an unnecessary administrative burden on employers enrolling and re-enrolling workers for whom automatic enrolment is clearly not suited. Option 1, allowing employers to exempt certain categories of individuals, is intended to prevent unnecessary administrative burden on employers from enrolling and re-enrolling workers who are already likely to have their own arrangements in place and for whom therefore, automatic enrolment is clearly not suitable. These individuals currently have to opt out every 3 years; this is not in line with policy intent. This change is permissive and does not place a requirement on employers to change their processes or take advantage of the exceptions;

Will the policy be reviewed? It will be reviewed **If applicable, set review date:** 2017

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: *Ros Altman* Date: 7/3/16

Summary: Analysis & Evidence

Policy Option 1

Description: Additional exceptions to the employer duty for Automatic Enrolment

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 7.1	Best Estimate: 3.5
2016/17	2015	2			

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

N/A – no reliable estimates

Other key non-monetised costs by 'main affected groups'

Any potential familiarisation costs are estimated to be negligible because employers approaching their staging date would have to familiarise themselves with relevant literature anyway. The Pensions Regulator (TPR) plans to amend their compliance guidance to reflect these changes.

As this is a permissive change employers are only likely to take advantage of these exceptions if it is more cost effective than using the existing duty.

For company directors and LLP partners who would have inadvertently remained saving in a new workplace pension, if now exempt they would lose tax relief on their pension contributions. However, we expect almost all these individuals to opt out of pension saving once enrolled. We have no evidence on their specific opt out rates.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	3.7	7.1
Best Estimate	0	1.8	3.5

Description and scale of key monetised benefits by 'main affected groups'

Employers who choose to exempt individuals from automatic enrolment will benefit from a reduction in the administrative burden of enrolling workers **We estimate direct benefit to LLPs in terms of AE implementation cost savings worth £3.6 million** (with a range of £0 to and £7.3 million in 2016/17).

Other key non-monetised benefits by 'main affected groups'

For company directors and LLP partners who would have inadvertently remained saving in a new workplace pension, if now exempt, employers would no longer have to make pension contributions. However, we expect almost all these individuals to opt out of pension saving once enrolled. We do not currently have data on their specific opt out rates. In addition, we expect there to be AE implementation costs for employers of company directors who no longer have to go through the automatic enrolment process.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

As the legislation will be permissive, employers are only likely to adopt the new employer exemptions to their duty if the cost of doing so is less than that of complying with the existing requirements.

It is not clear how many employers would indeed exercise this exception.

The estimate that 65 per cent of LLPs have eligible jobholders is based on the wider population of employers with AE duties and not specifically LLPs.

Estimates of the number of affected employers rely on accurate reporting of employer structure through Companies House and the Inter-Departmental Business Register, it is not clear how many people are genuine partners of LLPs.

BUSINESSASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: 1.7	Net: 1.7 (saving)	Yes	OUT

Evidence Base

Background

1. A range of legislation has been introduced to support the Government's strategy to tackle the consequences of increasing longevity and widespread under-saving for retirement. This includes the Pensions Acts of 2008, 2011 and 2014 which set out the high level framework for automatic enrolment.
2. Automatic enrolment mandates employers to provide a workplace pension for their eligible workers. Automatic enrolment began in July 2012 and has now been successfully implemented by all large and medium sized employers. Small and micro employers started to stage from June 2015 and it is estimated that 1.8 million will have been through automatic enrolment by the end of 2018.¹ It is further estimated that around 10 million people are in the eligible target group² for automatic enrolment and 9 million people will be newly saving or saving more into a workplace pension by 2018.³
3. Following a consultation in December 2014 the Department introduced with effect from 1 April 2015 exceptions to the employer duty for three groups of individuals: those with tax protected status for existing pension savings; those who have given or been given notice of termination of employment; and those who cancel membership of a qualifying scheme or opt out before automatic enrolment.
4. Since the introduction of these exceptions the Department has received feedback from stakeholders that there are further groups of individuals for whom automatic enrolment may not be appropriate. In January 2016 the Department consulted on the principle of providing additional discretionary exceptions for individuals who are:
 - a. company directors; and
 - b. genuine partners in Limited Liability Partnerships (LLPs).⁴
5. The response to the recent consultation will be published in due course. Where appropriate, we have referred to responses to the consultation in this impact assessment.

Rationale for intervention

6. Legislation currently mandates employers to automatically enrol all eligible workers into a qualifying workplace pension with the exception of workers with tax protected status for existing pension savings; those who have given or been given notice of termination of employment; and those who cancel membership of a qualifying scheme or opt out before automatic enrolment.
7. Following feedback from stakeholders, the government has identified two additional categories of individuals for whom automatic enrolment is not suitable (company directors and genuine partners in LLPs). Under existing duties these individuals may be automatically enrolled into a workplace pension when they are very likely to already have their own pension arrangement in place and will consequently respond by opting out. Automatically enrolling these individuals only for them to opt out places an unnecessary administrative burden on employers and individuals affected.

¹ <http://www.thepensionsregulator.gov.uk/docs/automatic-enrolment-commentary-analysis-2015.pdf>

² The eligible target group is defined as workers who are aged between 22 and State Pension age, earning over £10,000 and either (i) not currently saving in a pension scheme; or (ii) saving in a pension scheme where the employer contributions are less than 3% of the worker's salary, and is not a defined benefit scheme.

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/460867/workplace-pensions-update-analysis-auto-enrolment.pdf

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/495017/auto-enrolment-technical-consultation-jan-2016.pdf

8. Government intervention is necessary to remove this obligation on the employers of these two additional categories of individuals would be exempt from automatic enrolment. This would remove an unnecessary administrative burden on employers as well as mitigate the risk to company directors and genuine partners of LLPs of making contributions into a workplace pension and having to go through the opt out process where they already have alternative pension arrangements in place.

Policy objectives

9. The policy objective is to prevent unnecessary administrative burden on employers, particularly small and micro employers, from enrolling and re-enrolling workers for whom automatic enrolment is not suitable. It also aims to prevent individuals who are already very likely to have their own pension arrangements in place from going through the automatic enrolment process and making unnecessary contributions only to later opt out.

Description of options

Do nothing

10. Maintaining the status quo and doing nothing would mean that employers would continue to enrol all currently eligible workers to whom existing exemptions do not apply and where automatic is not appropriate individuals would have to opt out. This process would be repeated on a 3 year cycle due to the requirement to re-enrol eligible workers if they have opted out.
11. Whilst this option does allow individuals an exit mechanism from automatic enrolment (through opt out), it places an unnecessary administrative burden on employers. Furthermore there is an ongoing risk that individuals might neglect to exercise their opt out rights and find themselves in a workplace pension when they already have their own pension arrangements in place.
12. Both the unnecessary administrative burden and the impact on individuals (who have to go through the opt out process) go against the intended policy objectives of automatic enrolment. For these reasons it is not the preferred option.

Option 1: Exceptions to the employer duty for Automatic Enrolment (preferred option)

13. The preferred option is to allow employers to exempt two additional categories of individuals from automatic enrolment. These are:
 - a. company directors; and
 - b. genuine partners in Limited Liability Partnerships (LLPs).
14. Under Section 90 of the 2008 Pensions Act, company directors are exempted from the definition of 'worker' for automatic enrolment duties unless they are employed under a contract of employment and there is at least one other person employed under a contract of employment. However, this provision may not apply to company directors.
15. Feedback from stakeholders during the initial implementation of automatic enrolment and in response to our consultation suggests that both groups of individuals are likely to have their own pension saving arrangements in place. An exception from automatic enrolment duties for this group will reduce the administrative burden on affected employers and individuals through preventing them having to go through the automatic enrolment process only to then opt out. This option addresses the stakeholders' response to our recent consultation highlighting this issue and commenting that the current situation creates additional administrative work for employers with little benefit for individuals.
16. On a similar note, a recent Supreme Court decision in *Clyde & Co LLP v Bates van Winkelhof* that self-employed Limited Liability Partnership (LLP) members can be "workers" as defined in employment law meant they could also be subject to the automatic enrolment duties.

17. However, like company directors, genuine partners in LLPs are likely to already have their own pension saving arrangements and are not part of the target group for automatic enrolment. Genuine partners in LLPs may be identified using HMRC's Salaried Members Rules. Again, an exception for this group from automatic enrolment duties will reduce the administrative burden on these employers (and individuals) through preventing them having to go through the automatic enrolment process only to then opt out. Stakeholders responded to our recent consultation highlighting this issue and commenting that the current situation creates additional administrative work for employers with little benefit for individuals.

Employers potentially affected

18. All employers who are company directors and LLPs that currently have to automatically enrol or re-enrol workers will be potentially affected by this change.
19. There were 55,200 active LLPs on the Companies House register at the end of December 2015⁵. It is not clear how many have automatic enrolment duties but TPR estimated in April 2015 that 65 per cent of employers yet to stage have eligible jobholders with automatic enrolment duties.⁶ However based on a lower bound of zero (it is a permissive change so there is nothing mandating an employer to make changes) and an upper bound of 35,900 (55,200 multiplied by 65 per cent with eligible jobholders who use the exception), a mid-point best estimate of LLPs affected is 17,950.
20. We have been unable to accurately estimate the number of employers with company directors from available data who would be affected by this change. We do not have access to HMRC Real Time Information (TRI) data and as this is a permissive change so there is nothing mandating an employer to make any changes. To obtain more evidence on the number of employers who would take advantage of the exceptions to the employer duty would require a large scale survey of employers. Given that these changes are permissive and deregulatory and that completing the survey would impose a burden on employers, the cost would be disproportionate.

Individuals potentially affected

We are proposing that two additional categories of workers be exempt from the employer duty:

- a. company directors; and
 - b. genuine Limited Liability Partners (LLPs) having regard to HMRC's Salaried Member Rules.
21. As described by paragraph 20, we are unable to accurately estimate the numbers of company director expected to be affected by this change as the target group includes both Directors of companies who employ workers where they may have a contract of employment with the company; and Director only companies.
22. From paragraph 19 we estimate that 17,950 (within a range of 0 and 35,900) LLPs will be affected by this change. The Office for National Statistics (ONS)' Inter Departmental Business Register (IDBR) 2015⁷ estimates that the vast majority of LLPs (around 90 per cent) have fewer than 10 employees. Therefore, we estimate lower, mid and upper estimates of the average number of genuine partners per LLP as 2, 5.5 and 9, respectively. Table 1 gives a breakdown of different estimates for individuals expected to be affected by the change based on 39,500 LLPs

⁵ <https://www.gov.uk/government/statistics/incorporated-companies-in-the-united-kingdom-december-2015>

⁶ <http://www.thepensionsregulator.gov.uk/docs/automatic-enrolment-commentary-analysis-2015.pdf>

⁷ <http://www.ons.gov.uk/ons/data/web/explorer/dataset-finder/>

[/q/dcDetails/Economic/UKBAC?p_lifecycle=1&FOFlow1_WAR_FOFlow1portlet_dataset_navigation=datasetCollectionDetails](#)

with eligible jobholders, different proportions of LLPs who utilise the exception and different numbers of genuine partners per LLP.

Table 1 – Estimates of genuine partners at LLPs who are affected by the change

	Proportion of LLPs that utilise the exception		
	0%	50%	100%
Genuine partners per LLP (2)	0	35,900	71,800
Genuine partners per LLP (5.5)	0	98,700	197,300
Genuine partners per LLP (9)	0	161,500	322,900

Monetised and non-monetised Costs and benefits

23. This section explores the costs and benefits that may be faced if employers exercised their right to apply exceptions to the employer duty. As previously mentioned, the legislation will be permissive and employers can choose whether or not to apply the exceptions to the employer duty. If they choose not to this will maintain the status quo and they will not incur any additional costs or benefits. As the exemptions will reduce the administrative burden on employers and potentially reduce employer pension contributions it is likely that they will choose to exercise this right if appropriate i.e. if the benefits of doing so are greater than the costs.

Familiarisation costs

24. Whilst there are familiarisation costs imposed on employers by the introduction of automatic enrolment, any additional familiarisation costs due to the proposed technical changes are deemed to be negligible because, employers approaching their staging date would have to familiarise themselves with the relevant literature in the counterfactual scenario.

Employers

25. There are approximately 17,950 LLPs affected by this change within a range of 0 to 35,900. As the change is permissive employers are likely to only choose to adopt the changes if the benefits are greater than the costs. Respondents to the recent consultation were positive about the changes and believed that they would reduce the administrative costs imposed on employers.

26. Evidence from the Employers' Pension Provision (EPP) survey 2015⁸ suggests that the median cost to an employer of implementing automatic enrolment (including paying for advice but excluding contribution costs) was £200 for employers with fewer than 20 employees⁹. Converted into 2016/17 prices these numbers rise to £203.40.¹⁰

27. Using evidence from the TPR Staging profile, Companies House and 2015 EPP, if LLPs choose to utilise these exceptions, the savings they will make from having not having to implement automatic enrolment will be a direct benefit to employers of up to £3.6 million, calculated as follows:

$$\begin{aligned} &\text{Number of affected employers} \times \text{median implementation cost for small/micro employers} \\ &= 17,940 \times £203.4 = £3.6\text{m} \end{aligned}$$

We estimate these savings will be within a range of £0 to £7.3 million depending on how many LLPs decide to utilise this new exception.

⁸ Link to be added when EPP 2015 published on March 9th, otherwise revert to 2015 AE Evaluation report evidence on employer costs

⁹ Some employers responding to the 2015 EPP may not have quoted their costs in 2015/16 prices but in the price terms at the time they implemented automatic enrolment, which may be anytime from October 2012.

¹⁰ The GDP deflator between 2015-16 and 2016-17 is 101.7 from the November 2015 Autumn Statement. This gives us the following calculation to convert the estimated benefit to micro employers into 2016-17 price terms: £200 x 101.7% = £203.40.

28. As a consequence of inertia there is a risk that some individuals would accidentally begin saving in a new workplace pension when they already have their own pension arrangements and fail to opt out. Employers would then have to make contributions into these pensions. However, if these individuals are exempted then employers will benefit from not having to make these contributions. We are unable to provide reliable estimates of these savings and expect them to be very small as feedback from stakeholders suggests these individuals are aware that saving into a new workplace pension is not appropriate for them and would choose to opt out. We also lack evidence on individual opt out rates for these specific groups.
29. It is estimated that these measures bring a **direct benefit to employers worth £3.6 million** (with a range of £0 to £7.3 million) in 2016/17 prices.

Individuals who are exempt from automatic enrolment

30. As described by paragraph 28, there is a risk that some individuals would accidentally begin saving in a new workplace pension when they already have their own pension arrangements and fail to opt out. If these individuals are exempted they would then lose tax relief on their pension contributions. Again, we are unable to provide reliable estimates of these savings and expect them to be very small as feedback from stakeholders suggests these individuals are aware that saving into a new workplace pension is not appropriate for them and would choose to opt out. We also lack evidence on individual opt out rates for these specific groups.
31. There is likely to also be a benefit to being exempt from automatic enrolment for these two groups (company directors and genuine LLP partners). The alternative of just maintaining opt out as an exit mechanism does work in terms of terminating scheme membership but the process must be repeated on a 3 year cycle due to the requirement to re-enrol eligible workers if they have opted out. The individual will have been put through unnecessary inconvenience and expense due to the opportunity cost of doing so. In response to the recent consultation stakeholders were supportive of the proposed change for these individuals and believed it would provide a significant benefit to those individuals affected. We therefore estimate there is an **unquantifiable but small benefit to individuals**.

Feedback from consultation

32. As previously discussed (paragraph 3) the Government recently consulted on the proposed technical changes to automatic enrolment. The consultation period was from 26th January 2016 to 16th February 2016 and a wide range of stakeholders responded (employers, pensions' professionals, payroll providers and organisations representing employers and workers). The consultation was on the detail of the policy and draft regulations and the general view from respondents was in favour of the changes.
33. Stakeholders continue to be very supportive of the introduction of these exceptions to the employer duty. In particular respondents commented that the changes would be of benefit to both employers and individuals. A permissive approach which would allow employers flexibility on introducing the exceptions was seen as beneficial by stakeholders. Consultation respondents indicated that these changes will offer an administrative saving and remove unnecessary bureaucracy however no evidence was provided to allow us to estimate this saving.

Rationale and evidence that justify the level of analysis

34. For this assessment we have made use of available data – Companies House, TPR's automatic enrolment staging profile and EPP 2015 - alongside consultation and informal engagement with stakeholders to verify our assumptions. As the measure is permissive with no direct costs, it is not proportionate to gather further evidence by surveying employers.

35. Where appropriate we have used responses to the recent consultation to strengthen our evidence. Whilst stakeholders were generally positive about the proposed changes they provided little evidence to help quantify any benefits.

Direct costs and benefits to Business (OITO)

36. The proposals are **deregulatory and within the scope for One-In, Two-Out**. This change does not impose any additional burdens on business as it is purely permissive and employers will only apply exceptions to the employer duty if they feel it will be in their interests to do so. Based on the information above we estimate that if LLPs decide to utilise these exceptions, there could be an **Equivalent Annual Net Cost to Business (EANCB) saving worth £1.7 million**. We are unable to robustly estimate the savings to employers with company directors who are now exempt from automatic enrolment duties.