

Title: Amendment to Employers' Duties (Registration and Compliance) Regulations 2010 IA No: DWP2016_05 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				
Contact for enquiries: joshua.nava@dwp.gsi.gov.uk					
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 One-In, Three-Out?	Measure qualifies as
N/A	N/A	Zero Net Cost	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?
 DWP has received feedback from the Pensions Regulator (TPR) and stakeholders that existing legislation mandating two deadlines for re-declaration of compliance is difficult to communicate and confusing for employers to implement. The current legislation means that employers have to be sure that they have someone to re-enrol if they pick a re-enrolment date later than the third anniversary of their staging date (at the first re-enrolment cycle) otherwise, they will miss their re-declaration deadline if it turns out they have no one to re-enrol. Government intervention is necessary to simplify the process for employers, in turn improving compliance rates and reducing the risk of employers of breaching their automatic enrolment duties.

What are the policy objectives and the intended effects?
 The policy objective is to simplify the implementation of the re-declaration of compliance deadlines and make compliance easier for employers, thus reducing the risk of them breaching their automatic enrolment duties.

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 (whereby two distinct dates for re-declaration of compliance remain depending on whether an employer has someone or no-one to re-enrol); or legislate for the option of having the same re-declaration deadline date for all employers (Option 1).

 Doing nothing is not a reasonable option. The potential confusion, risk of non-compliance (and associated financial penalties) and therefore breaching of their automatic enrolment duties by employers (particularly those whose employee eligibility varies over time). This goes against the original policy intent to minimise the burden on employers and ensure full compliance wherever possible.

 Option 1, having the same deadline for all employers (5 months after the 3rd anniversary of the staging date, with subsequent deadlines being 5 months after the 3rd anniversary of their last re-enrolment date) simplifies the process and makes it easier for employers to fully comply with their automatic enrolment duties.

 As the re-declaration of compliance deadlines are set out in legislation, a non-legislative option is not possible.

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
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: Introduce 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: N/A	High: N/A	Best Estimate: N/A
2016/17	2015	10			

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	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 – there are no costs associated with the proposed change.

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

Any potential familiarisation costs are estimated to be negligible because employers approaching their re-enrolment date would have to familiarise with the relevant literature in the counterfactual scenario. TPR plan to amend this literature to reflect these changes. Furthermore, these costs are expected to decline over time as employers go through more than one re-enrolment episode and become increasingly familiar with the process.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	0	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 benefits by 'main affected groups'

N/A

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

Employers will benefit from a simplified re-declaration of compliance process. This enables them to more easily understand their automatic enrolment duties, saving time for them by minimising the risk of mistakes and helping ensure they are fully compliant (in turn avoiding penalties for non-compliance). However, we have not been able to produce robust costings on the impact of these changes for employers.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

The key assumption is that the benefits of reduced burden for employers are likely to be trivial.

BUSINESSASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0	Benefits: N/A	Net: 0	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. DWP has received feedback from the Pensions Regulator (TPR) and stakeholders that existing legislation mandating two deadlines for re-declaration of compliance is difficult to communicate and confusing for employers to implement. Where employers have eligible staff to automatically re-enrol, they must complete their re-declaration of compliance within two months of their pre-determined re-enrolment date. Whereas any employer with no-one to re-enrol still has a re-declaration deadline, set as the day before the third anniversary of their original declaration of compliance.
4. The current legislation means that employers have to be sure they have someone to re-enrol if they pick a re-enrolment date later than the third anniversary of their staging date (at the first cycle) otherwise, they will miss their re-declaration deadline if it turns out they have no one to re-enrol. In effect the current regulations disadvantage employers without eligible job holders. In January 2016 DWP consulted on the principle of having the same re-declaration deadline date whether an employer has someone to re-enrol or not.⁴ The deadline would be 5 months after the 3rd anniversary of the staging date, with subsequent deadlines being 5 months after the 3rd anniversary of their last re-enrolment date. The responses to the recent consultation will be published alongside the statutory instrument. Where appropriate, we have referred to responses to the consultation in this impact assessment.

Rationale for intervention

5. Legislation currently mandates two distinct deadlines for re-declaration of compliance for employers. One deadline for employers who have no one to re-enrol and a different one for those employers who do. Where employers have eligible staff to automatically re-enrol, they must complete the re-declaration of compliance within two months of their selected re-enrolment date. Any employer with no-one to re-enrol has a re-declaration deadline set as the day before the third anniversary of their original declaration of compliance date.
6. The government has proposed to have the same re-declaration deadline date regardless of whether an employer has someone to re-enrol or not. The deadline would be 5 months after the 3rd anniversary of the staging date, with subsequent deadlines being 5 months after the 3rd anniversary of their last re-enrolment date.

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

7. Government intervention is necessary to simplify the re-enrolment process for employers.

Policy objectives

8. The policy objective is to deregulate the process for re-declaration of compliance making compliance easier for employers, thus reducing the risk of them breaching their automatic enrolment duties.

Description of options

Do nothing

9. Maintaining the status quo and doing nothing would mean that there would continue to be two re-enrolment deadline dates for re-declaration of compliance. These more complex compliance requirements would persist and remain confusing for employers if at one time they have eligible employees but three years later they have no eligible employees, or vice-versa. The current legislation means that employers have to be sure they have someone to re-enrol if they pick a re-enrolment date later than the third anniversary of their staging date. However, if it turns out that they have no-one to re-enrol then they may miss their re-declaration deadline and be in breach of their automatic enrolment duties (with associated burden and the possibility of financial penalties).
10. The potential confusion and risk of non-compliance by employers goes against the original policy intent to minimise the burden on employers and to aid full compliance wherever possible. Consequently this is not a reasonable approach.

Option 1: The same re-declaration of compliance deadline date for all employers

11. Option 1 is to have the same re-declaration deadline date whether an employer has someone to re-enrol or not. The deadline would be 5 months after the 3rd anniversary of the staging date, with subsequent deadlines being 5 months after the 3rd anniversary of their last re-enrolment date.
12. Having the same re-declaration of compliance deadline date would make it simpler for the Pensions Regulator's to communicate to employers as well as make it easier for employers to fully comply with their automatic enrolment duties. Stakeholders responding to our recent consultation offered general support for this measure.

Employers potentially affected

13. All employers who have been through automatic enrolment and later either have employees to re-enrol or no employees to re-enrol but who must re-declare their compliance will be potentially affected by this change. The Pensions Regulator (TPR) estimates that by the end of 2018 approximately 1.8 million employers will have automatically enrolled their employees.⁵ TPR estimate that around 630,000 (35 per cent) of employers will have no eligible jobholders to enrol initially and we assume that this is the maximum number of employers who will have no-one to re-enrol but mistakenly believe they have someone to re-enrol and erroneously miss their re-declaration of compliance deadline. This number must also be highly caveated by the fact that some employers, who initially have eligible jobholders, will enrol them into a workplace pension. If none of these individuals opt out of saving, these employers have no-one to re-enrol. We have no evidence on how many employers may have eligible job holders that don't opt out and consequently have no-one to re-enrol.

⁵ <http://www.thepensionsregulator.gov.uk/docs/automatic-enrolment-commentary-analysis-2015.pdf>

Monetised and non-monetised costs and benefits

14. This section explores the costs and benefits that may be faced if two distinct re-declaration of compliance deadlines, for employers with and without anyone to re-enrol, are replaced by one deadline for all employers.

Familiarisation costs

15. Whilst there were 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 re-enrolment date would have to familiarise themselves with the relevant literature in the counterfactual scenario. TPR plan to amend this literature to reflect these changes. Furthermore, these costs are expected to decline over time as employers go through more than one re-enrolment episode and become increasingly familiar with the process.

Employers

16. All employers who have been through automatic enrolment and later either have employees to re-enrol or no employees to re-enrol but who must re-declare their compliance will be potentially affected by this change. The Pensions Regulator (TPR) estimates that by the end of 2018 approximately 1.8 million employers will have automatically enrolled their employees. However, it is not clear how many employers will have eligible job holders to re-enrol.
17. There are four groups of employers who will be affected by this measure. Employers who have eligible job holders to re-enrol and believe they have someone to re-enrol; employers who have eligible job holders to re-enrol but mistakenly believe they have no-one to re-enrol; employers with no eligible jobholders to re-enrol and who believe they have no-one to re-enrol; and, employers with no eligible jobholders to re-enrol who mistakenly believe they have at least one eligible job holder to re-enrol.
18. Employers who have eligible job holders to re-enrol and believe they have someone to re-enrol are not affected by this change as the proposed new deadline is equivalent to their currently legislated deadline if they were to fully utilise their postponement period at their original staging date.
19. Employers who have eligible job holders to re-enrol and mistakenly believe they have no-one to re-enrol benefit from having a later deadline in order to re-declare their compliance compared with their currently legislated deadline. This increased time period gives employers longer to undertake necessary compliance activities at the most cost effective time, and may reduce the opportunity cost of complying with their automatic enrolment duties.
20. Employers with no eligible jobholders to re-enrol and who believe they have no-one to re-enrol benefit from having a later deadline in order to re-declare their compliance compared with their currently legislated deadline. This increased time period gives employers longer to undertake necessary compliance activities at the most cost effective time, and may reduce the opportunity cost of complying with their automatic enrolment duties.
21. Employers with no eligible jobholders to re-enrol and who mistakenly believe they have at least one eligible jobholder to re-enrol benefit from having a later deadline in order to re-declare their compliance compared with their currently legislated deadline. This increased time period gives employers longer to undertake necessary compliance activities at the most cost effective time, and may reduce the opportunity cost of complying with their automatic enrolment duties. The more transparent legislation also saves time for these employers correcting any mistakes that they may have made that resulted in them being non-compliant.

22. However, without a full scale survey of employers, it is not possible to robustly estimate the benefits of a simplified compliance regime. As the measure will simplify the compliance process and reduce the administrative burden on employers, carrying out such a detailed survey would be disproportionate and impose an unnecessary burden on employers. Response to our recent consultation indicates that where applicable employers are likely to change their processes in line with the proposed changes. We therefore estimate that there will be a net benefit to employers but we are unable to provide accurate costing of this benefit although it is expected to be small in scale.
23. The group of employers with no eligible jobholders to re-enrol and who mistakenly believe they have at least one eligible jobholder to re-enrol risk missing their re-declaration of compliance deadline and being in breach of their duties under current legislation. TPR may respond to this breach of an employer's automatic enrolment duties through various escalation measures ranging from a warning letter, to a statutory compliance notice to a fixed penalty notice worth £400, to an escalating penalty notice worth £50 to £10,000 daily and ultimately prosecution. If issued a penalty this would be a direct cost to non-compliant employers.
24. Using the estimated 630,000 employers who could be affected from paragraph 13, if they were all to mistakenly believe they have someone to enrol and miss their re-declaration of compliance deadline, as well as not comply despite written warnings, then they may all pay a fine of £400 and this will sum to £252 million. However, this number is unrealistically high and we expect that it will be much lower. By illustration, if only 1% (or 6,300) of these employers make this mistake, of which 10% (630) are issued a £400 fixed penalty, then the cost to these employers of missing their re-declaration of compliance deadline is around £0.25 million. Alternatively, if 5% (or 31,500) of these employers make this mistake, of which 20% (6,300) are issued a £400 fixed penalty; then the cost to these employers of missing their re-declaration of compliance deadline is around £2.5 million. These are only illustrative examples and despite support for this measure from stakeholders responding to the consultation, we have no evidence about the number of employers expected to be affected by this change.

Individuals

25. Employers who have eligible job holders to re-enrol are not affected by this change as the proposed new deadline is equivalent to their currently legislated deadline if they were to fully utilise their postponement period at their original staging date. As a consequence this measure has no impact on individuals eligible for automatic enrolment.

Feedback from consultation

26. As previously discussed (paragraph 4) the Government recently consulted on the proposed technical changes to automatic enrolment. The consultation period was from 26th January 2016 to 16th February 2016. A wide range of stakeholders responded (employers, pensions' professionals, payroll providers and organisations representing employers and employees). The consultation was on the detail of the policy and draft regulations and the general view from respondents was in favour of the changes.

Rationale and evidence that justify the level of analysis

27. For this assessment we have made use of available data in the form of the TPR staging profile alongside consultation and informal engagement with stakeholders to verify our assumptions. As the measure has no direct costs and simplifies the compliance process, it is not cost effective to gather further evidence by surveying employers.
28. 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 no evidence to help quantify any benefits.

Direct costs and benefits to Business (OITO)

29. This change does not impose any additional burdens on business as it is purely a simplification of the compliance process.
30. From all the evidence we have gathered through the consultation, we are confident that there will be a deregulatory benefit to business due to the proposed changes. Employers will benefit from a simplified process making it easier for them to fully comply with their automatic enrolment duties.
31. The proposals are deregulatory and within the scope for One-In, Three-Out. We lack robust evidence to be able to quantify or provide costings on the benefit of this measure; however it is to be considered an OUT with a zero net cost to business.