

Title: Amendment to The Employers' Duties (Implementation) Regulations 2010 IA No: DWP2016_07 Lead department or agency: Department for Work and Pensions Other departments or agencies: N/A	Impact Assessment (IA)			
	Date: 29 th February 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 One-In, Two-Out?	Measure qualifies as
£1.24m (saving)	£1.24m (saving)	-£0.59m (saving)	Yes	OUT

What is the problem under consideration? Why is government intervention necessary?

Existing provisions set prescriptive conditions an employer must satisfy to bring their staging date for automatic enrolment forward: obtaining agreement from a pension scheme; giving the Pensions Regulator (TPR) one month's notice of its intentions; bringing the date forward to the 1st of the month; and submitting a declaration of compliance at the original staging date.

Government intervention is necessary to simplify the above process to enable employers who wish to bring their staging date forward to do so more easily

What are the policy objectives and the intended effects?

The policy objectives of the proposed changes are:

- to prevent an unnecessary administrative burden on employers, and reduce the burden on pension providers from having to set up 'shell' pension schemes for employers with no eligible jobholders; and
- to make it easier for all employers (with or without eligible employees) wishing to bring their automatic enrolment staging dates forward to fully comply with 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 (or legislate for the option of changing the conditions which employers must satisfy if they want to bring their staging dates forward (option 1).

Doing nothing involves unnecessary burdens for employers and pension providers. Although employers with no-one to enrol are able to bring their staging date forward there is an unnecessary administrative burden on such employers from having to seek agreement from a pension scheme through setting up a shell pension scheme, as well as inflexible deadlines for all employers, regardless of whether they have eligible employees or not, from bringing their automatic enrolment staging dates forward. This goes against the original policy intent of automatic enrolment to minimise the burden on employers.

Option 1 would mean that employers with no-one to enrol who wish to bring their staging date forward no longer face unnecessary administrative burden of seeking pension scheme agreement and setting up a shell pension scheme, and providers are no longer required to set up these schemes that don't generate revenue. It also gives greater flexibility in terms of deadlines for all employers who wish to bring forward their staging dates, in turn making it easier for them to fully comply with their automatic enrolment duties.

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:  Date: 7/3/16

Summary: Analysis & Evidence

Policy Option 1

Description: The Employers' Duties (Implementation) Regulations 2010

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.54	High: 1.94	Best Estimate: 1.24
2016/17	2015	2			

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0	0
High	0		0	0
Best Estimate	0		0	0

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

N/A

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

Any potential familiarisation costs are estimated to be negligible because under the current legislation employers who wish to bring forward their staging date would have to familiarise themselves with the relevant literature in the counterfactual scenario.

As the decision to bring forward a staging date is discretionary, we assume employers will only take advantage of these new conditions if they believe it is more cost effective to bring it forward than meet their existing staging date.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0.3	0.6
High	0		1.0	2.0
Best Estimate	0		0.7	1.3

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

There is a monetary saving for employers who wish to bring forward their staging date and have no eligible employees if they no longer have to seek agreement from a pension provider through setting up a shell pension scheme. We estimate that time no longer spent on this unnecessary administrative step will generate a **direct benefit for this group of employers to be worth £1.27 million (with a range of £0.55 million to £1.98 million)** in 2016/17 price terms.

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

Removing the condition to give TPR one month's notice, allowing employers greater flexibility to bring forward staging to any date, and the ability to declare compliance on the same day all makes it easier for employers to bring forward their staging dates. Although they must fulfil the same processes, the changes save employers time associated with full compliance with automatic enrolment duties. Due to data limitations we have not been able to provide robust estimates of these savings, or the savings for pension providers who will no longer have to set up shell pension schemes. These measures have received positive feedback from stakeholders responding to our recent consultation but robust monetised estimates of the time-savings of an easier compliance process would only be obtained from a disproportionately burdensome survey of employers.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

A key assumption underpinning these estimates is the proportion of employers yet to stage that we expect to bring forward staging dates based on findings from the 2015 EPP where there is a lack of representative data. The majority of small and micro employers had not staged at the time of the EPP survey so there is a high level of uncertainty around this assumption. We have provided a range to highlight the sensitivity of the NPV to this assumption. It is also assumed that familiarisation costs are negligible, and other non-monetised benefits are trivial.

BUSINESSASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.0	Benefits: 0.6	Net: 0.6	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. The Employers' Duties (Implementation) Regulations 2010 prescribe the timing of when an employer's duty commences, including allowing an employer to bring forward their automatic enrolment staging date if they wish to do so. Existing provisions set prescriptive conditions an employer must satisfy if it wishes to bring its staging dates forward that include:
 - a. obtaining agreement from a pension scheme,
 - b. giving the Pensions Regulator (TPR) one month's notice of its intentions,
 - c. bringing it forward to the 1st of the month, and
 - d. submitting their declaration of compliance at the original staging date.
4. In January 2016 the Government consulted on the principle of making four changes to the conditions which employers must satisfy if they want to bring their staging dates forward:
 - i) Remove the current requirement to obtain agreement from pension schemes for those employers who have no eligible jobholders to enrol;
 - ii) Remove the condition to give TPR one month's notice when an employer wants to bring forward their staging date;
 - iii) Allow an employer with no eligible jobholders to enrol to bring forward their staging date to any date, not just the 1st of the month; and,
 - iv) Allow an employer who wishes to bring forward their staging date to notify TPR no later than the day before their chosen new staging date.⁴

Rationale for intervention

5. Legislation currently mandates conditions set out at paragraph 3 which impose unnecessary burdens on employers wishing to bring their staging date forward.
6. Under current legislation, employers with no eligible jobholders to enrol who wish to bring forward their staging date have to obtain the agreement of a pension scheme through needing to set up a 'shell' pension scheme (a scheme that includes no members).
7. Intervention is required to change the legislation to remove the unnecessary administrative burden placed on these employers as well as to reduce needless pressure on pension providers who incur the cost of setting up a scheme that never generates revenue.

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. Intervention is also necessary to make it easier for employers with and without eligible job holders to bring forward their staging dates and fully comply with their automatic enrolment duties. Current legislation has created a problem for employers wishing to bring their staging date forward at the last minute or those who have brought their staging date forward and forgotten to inform TPR (through declaring compliance at the original staging date). Current legislation makes it difficult for employers to rectify these mistakes immediately and fully comply with their duties. This is costly both to employers in terms of the time spent ensuring they fully meet their automatic enrolment duties and TPR in time spent enforcing their compliance regime. Feedback from our consultation indicated that this had been a problem for some employers and these proposed measures would make it easier to be fully compliant.

Policy objectives

9. The policy objectives of the proposed changes are to prevent unnecessary administrative burden on employers and reduce burden on pension providers from the setting up of shell pension schemes. In addition, make it easier for all employers (with or without eligible employees) that bring their staging dates forward to fully comply with their automatic enrolment duties.

Description of options

Do nothing

10. Maintaining the status quo and doing nothing would mean that employers with no eligible jobholders to enrol wishing to bring forward their staging date forward would still have to go through the unnecessary administrative step of seeking agreement through setting up a pension scheme with associated burden for pension providers. Unnecessary administrative burden goes against the original policy intent of automatic enrolment so doing nothing is not effective.

Option 1: Changes to the conditions that must be met to bring an employer's staging date forward

11. The preferred option is to make four changes to the conditions which employers must satisfy if they want to bring their staging dates forward:
 - i) Remove the current requirement to obtain agreement from pension schemes for those employers who have no-one to enrol;
 - ii) Remove the condition to give TPR one month's notice when an employer wants to bring forward their staging date;
 - iii) Allow an employer with no-one to enrol to bring forward their staging date to any date, not just the 1st of the month ; and
 - iv) Allow an employer who wishes to bring forward their staging date to notify TPR, no later than the day before their chosen new staging date.
12. Removing the current requirement to obtain agreement from pension schemes for those employers who have no-one to enrol removes an unnecessary administrative burden for these employers from having to set up a shell pension scheme and the burden on pension providers who incur the cost of setting up schemes with no members to generate revenue.
13. Removing the condition that when an employer wishes to bring forward their staging date that they must give TPR one month's notice removes the problem created by an employer bringing their staging date forward at the last minute, It removes the risk that employers deduct contributions, without the legislative requirement to deduct applying, at the point they make the deductions.
14. Allowing an employer with no-one to enrol to bring forward their staging date to any date, not just the 1st of the month, and notify TPR no later than the day before their chosen new staging date. This makes it easier for these employers to both bring forward their staging dates and fully comply with their automatic enrolment duties. In turn reducing the time spent by employers checking for errors and the need for TPR to take corrective action under the compliance regime.

Employers potentially affected

15. The Pensions Regulator (TPR) estimates that by 2018, 1.8 million employers would have implemented automatic enrolment.⁵ Potential employers affected by these changes will be those who are yet to stage in Automatic Enrolment and who want to bring their staging date forward.
16. TPR estimates that between the start of April 2016 (when these measures will come into force) and 2018 approximately 1,570,000 employers will have to meet their automatic enrolment duties. Of these 1,570,000 employers, around 65 per cent (1,020,500) will have eligible jobholders and around 35 per cent (549,500) will not have any eligible jobholders.
17. Evidence from DWP's 2015 Employers' Pension Provision (EPP) survey⁶ suggests that "across all employers, both those staged and those yet to stage, 5 per cent of employers with 1 to 19 employees have automatically enrolled early". However, it is noted that "this figure may rise as the majority of employers have not yet staged and employers have up to two years left before their deadline". At the time of the EPP survey all employers with 50 plus employees had now staged, of which 18 per cent had staged early, so we treat this as the upper bound. If we assume that 5 per cent of remaining (all small and micro) employers will choose to stage early, this would result in a total of 9 per cent of this group staging early by the time rollout out completes. We take this as a lower bound. There is no firm evidence on whether smaller employers are more or less likely to choose to stage early. On the one hand, larger employers are more likely to have centralised HR and payroll activity and may be more likely to benefit from staging early to align with existing processes. On the other, smaller employers are more likely to not have any eligible jobholders, and may be more likely to wish to stage early to 'get out of the way' the need to declare compliance early. We make a best estimate of 11.5 per cent (mid-point of our upper and lower bound from the EPP 2015 evidence) for employers yet to stage who will decide to stage early, but recognise the high level of uncertainty around this assumption.
18. The 2015 EPP survey did not differentiate between employers with at least one eligible employee to enrol and those with no eligible employees when asking whether they had taken advantage of the option to bring forward their staging date for automatic enrolment. Furthermore, given the majority of small and micro employers had not staged at the time of the 2015 EPP survey, there is significant uncertainty around the assumption about the number who will bring forward their staging date based on this evidence.
19. Using the latest published staging profile estimates from TPR and the 2015 EPP evidence on early staging suggests that between 78,500 and 282,600 (with a central estimate of 180,550) employers will choose to bring forward their staging date and will therefore be affected by these changes. Of these 180,550 employers expected to bring forward their staging date, we estimate that 63,200 (35 per cent) will have no eligible employees.
20. Furthermore, TPR estimates that the majority (66 per cent) of employees left to stage will be classified as micros (1 to 4 employees) and the remainder (34 per cent) as smalls (5 to 49 employees). Using the central estimate from paragraph 18, of the 180,550 employers who will bring forward their staging date, around 119,200 (41,700 with no eligible jobholders) will be micros and 61,400 (21,500) will be smalls.

Monetised and non-monetised Costs and benefits

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

⁶ Link to be added when EPP 2015 published on March 7th, otherwise refer to forthcoming publication.

21. This section explores the costs and benefits that may be faced if employers decide to bring forward their staging date but four conditions have been changed in relation to early automatic enrolment as outlined in Paragraph 11.

Familiarisation costs

22. 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 wishing to bring forward their staging date would have to familiarise themselves with the relevant literature in the counterfactual scenario.

Employers who are due to stage

23. The model⁷ used to estimate administration costs in the Workplace Pension Reform Regulations Impact Assessment (2010) disaggregates the costs to employers (of implementing AE)⁸. The section relevant to our proposed changes can be seen in Table 1 below.

Table1: Breakdown of administration costs to employers in year 1 in (2009/10 price terms)

Year 1 Cost Breakdown by Firm size	Large (£millions)	Medium (£millions)	Small (£millions)	Micro (£millions)
Making an arrangement with a pension scheme so that employees can be enrolled from the automatic enrolment date	0.1	0.4	5.4	13.4

24. Dividing the numbers in Table 1 by the estimated populations of micros (747,000) and smalls (318,000) in the Workplace Pension Reform Regulations Impact Assessment (2010) the average cost of “making an arrangement with a pension scheme so that employees can be enrolled from the automatic enrolment date” is £17.94 for micros and £16.98 for smalls in 2009/10 price terms. Converting these average cost numbers into 2016/17 prices, suggests average costs of £20.43 for micros and £19.34 for smalls.⁹ Evidence from the 2015 EPP suggests that 72 per cent of employers yet to stage offer no pension provision; this increases to 86 per cent for employees with only 1 or 2 employees.

25. It is estimated that 41,700 (with a range of 18,100 to 65,300) micro employers and 21,500 (with a range of 9,300 to 33,600) small employers will bring forward their staging dates and have no eligible job holders to enrol (paragraph 19). Removing the current requirement to obtain agreement from pension schemes for these specific employers, we estimate that time no longer spent on this unnecessary administrative step will generate a **direct benefit for this group of employers worth £1.27 million¹⁰ (with a range of £0.55million to £1.98 million)** in 2016/17 price terms. Annex A outlines the key workings underpinning this calculation.

26. The three other conditions we propose to change make it easier for employers bringing forward their staging date to fully comply with their automatic enrolment duties. However, due to modelling constraints and a lack of evidence, it is not possible to reliably estimate the benefits brought from an easier compliance process for these employers in terms of time saved ensuring

⁷ An ‘administrative cost model’ initially developed in 2006 for the White ‘Paper Personal accounts: a new way to save’, thoroughly scrutinised by a cross government working group and included in subsequent Workplace Pension Reform Impact Assessments used a range of published data sources and specially commissioned research to estimate the administrative cost to employers of the processes required under the employer automatic enrolment duties by firm size.

⁸ <http://webarchive.nationalarchives.gov.uk/20100304151554/http://dwp.gov.uk/docs/wpr-ia.pdf>

⁹ The GDP deflator between 2009-10 and 2016-17 is 113.88. This gives us the following calculation to convert the estimated benefit to micro employers into 2016-17 price terms: £17.94 x 113.88% = £20.43.

¹⁰ Calculated as (41,700 x £20.43) + (21,500 x £19.34)

they are compliant. Employers must go through the same steps before and after the implementation of these measures, only the deadlines/timing change. This means that savings for employers with eligible job holders who wish to bring forward the staging dates cannot be quantified, but we expect monetary value to be trivial. These measures have received positive feedback from stakeholders responding to our recent consultation but robust cost estimates of the time-savings of an easier compliance process would only be obtained from a disproportionately burdensome survey of employers.

Pension Providers

27. Removing the current requirement to obtain agreement from pension schemes for those employers who have no eligible jobholders to enrol also produce a saving for pension providers. In particular, pension providers who no longer incur the cost of setting up a scheme that never generates any revenue. However, we are unable to robustly monetise these costs as we don't have information on the cost to pension providers up setting up a new scheme or the number of providers that would be affected by this change.

Feedback from consultation

28. As previously discussed (paragraph 4) the Government recently consulted on the proposed technical changes to automatic enrolment. The consultation period was from 26 January 2016 to 16 February 2016 and a wide range of stakeholders responded (employers, pension's 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.

29. Stakeholders continue to be supportive of the introduction of these exceptions to the employer duty. Respondents commented that the changes would be of benefit to both employers and pension providers and remove the risk of reputational damage to automatic enrolment. Stakeholders 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

30. For this assessment we have made use of available data in the form of the most recent TPR staging profile, Employers' Pension Provision 2015 and administration costs in the Workplace Pension Reform Regulations Impact Assessment (2010) - alongside consultation and informal engagement with stakeholders to verify our assumptions. As the measure only affects employers who choose to bring forward their staging date with no direct costs, it is not proportionate to gather further evidence by surveying employers.

31. 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 that would help to quantify any benefits.

Direct costs and benefits to Business (OITO)

32. The proposals are **deregulatory** This change does not impose any additional burdens on business as it is a discretionary choice of an employer to bring forward their staging date and they will only do so if they feel it will be in their interests.

33. From all the evidence we have gathered through the consultation, we are confident that there will be a benefit to business due to the proposed changes.

34. Employers and pension providers will benefit from a reduction in the administrative burden of employers without anyone to enrol and who wish to bring forward their staging date no longer

having to seek agreement from and setting up a shell pension scheme. We estimate that time no longer spent on this unnecessary administrative step will generate a **direct benefit for this group of employers worth £1.27 million (with a range of £0.55 million to £1.98 million)** in 2016/17 price terms. Given that only employers yet to stage are affected by the proposed changes, which will come into force in April 2016, and all employers will have completed staging by February 2018, we use a two year time period to calculate the EANCB. For OITO purposes the EANCB is calculated at -£0.59 million (a saving to business).

35. In addition, the measures make it easier for employers who wish to bring forward their staging dates to fully comply with their automatic enrolment duties. However, we have not been able to robustly quantify these benefits.

Annex A – Calculations underpinning the estimates

Volumes estimates

				Source
TPR staging profile by 2018	1,800,000			TPR 'AE Commentary and Analysis 2015'
April 2016 to 2018	1,570,000			TPR 'AE Commentary and Analysis 2015'
Eligible JH (Apr16 onwards)	65%			TPR 'AE Commentary and Analysis 2015'
No eligible JH (Apr16 onwards)	35%			TPR 'AE Commentary and Analysis 2015'
Eligible JH (Apr16 onwards)	1,020,500			calculation
No eligible JH (Apr16 onwards)	549,500			calculation
Scenario	Low	High	Central	
Early staging date	5%	18%	11.50%	EPP 2015
Early stage (Apr16 onwards)	78,500	282,600	180,550	calculation
Eligible JH (Apr16 onwards)	51,000	183,690	117,400	calculation
No eligible JH (Apr16 onwards)	27,500	98,900	63,200	calculation
April 2016 to 2018 - smalls	34%			TPR 'AE Commentary and Analysis 2015'
April 2016 to 2018 - micros	66%			TPR 'AE Commentary and Analysis 2015'
Early stage (Apr16 onwards) Smalls	26,700	96,100	61,400	calculation
Eligible JH (Apr16 onwards) Smalls	17,300	62,500	39,900	calculation
No eligible JH (Apr16 onwards) Smalls	9,300	33,600	21,500	calculation
Early stage (Apr16 onwards) Micros	51,800	186,500	119,200	calculation
Eligible JH (Apr16 onwards) Micros	33,700	121,200	77,500	calculation
No eligible JH (Apr16 onwards) Micros	18,100	65,300	41,700	calculation

Average costs

	Large (£millions)	Medium (£millions)	Small (£millions)	Micro (£millions)	Source
Making an arrangement with a pension scheme so that employees can be enrolled from the automatic enrolment date	0.1	0.4	5.4	13.4	Workplace Pension Reform Regulations Impact Assessment (2010)
Population in 2010IA			318,000	747,000	Workplace Pension Reform Regulations Impact Assessment (2010)
Average cost (£ 2009/10)			16.98	17.94	calculation
GDP deflator 2009Q4	94.4				2015 Autumn Statement and Spending Review
GDP deflator 2016Q4	107.5				2015 Autumn Statement and Spending Review
GDP deflator %change	113.88%				calculation
Average cost (£ 2016/17)			19.34	20.43	calculation

Savings for employers with no one to enrol who bring forward their staging ate and no longer need to make an arrangement with a pension provider (£2016/17)

	lower	high	central	
No eligible JH (Apri16 onwards) Smalls	180,600	650,300	415,500	calculation
No eligible JH (Apri16 onwards) Micros	370,400	1,333,500	852,00	calculation
Total	551,069	1,983,849	1,267,459	calculation
£m	0.55	1.98	1.27	calculation