

**EXPLANATORY MEMORANDUM TO**  
**THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (AUTOMATIC ENROLMENT) (AMENDMENT) REGULATIONS 2015**

**2015 No. 501**

**1.** This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1. The regulations simplify the process of automatically enrolling eligible jobholders into workplace pension saving and reduce the auto-enrolment duties of employers.

2.2. The changes made by these Regulations:

- Create exceptions to the employer duties in certain circumstances.
- Simplify the information requirements of employers
- Introduce alternative quality requirements for defined benefits schemes

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

None

**4. Legislative Context**

4.1. Chapter 1 of Part 1 of the Pensions Act 2008 (the 2008 Act) (<http://www.legislation.gov.uk/ukpga/2008/30/contents>) provides powers to the Secretary of State to make regulations setting out the arrangements an employer must make to automatically enrol an eligible jobholder into a qualifying scheme and pay at least a minimum contribution. The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (S.I. 2010/772) (<http://www.legislation.gov.uk/uksi/2010/772/contents/made>) set out the processes and timings for complying with the employer duties (automatic enrolment, opt out, automatic re-enrolment, voluntary opt in, the provision of certain information and the minimum quality standards for certain schemes).

4.2. Section 10 of the 2008 Act originally required the Secretary of State to make provisions in regulations for individuals to be given information about the effect of the employer duty on them. Section 38 (1)(a) Pensions Act 2014 (the 2014 Act) amended section 10 of the 2008 Act to give the Secretary of State a discretion as to what may be prescribed in regulations.

4.3. Section 38(2) of the 2014 Act also inserted a new section (87A) into the 2008 Act. It allows for exceptions to the employer duties so that in prescribed situations an individual may not be automatically enrolled into pension scheme membership. The employer duty can be turned into a power so that the employer may choose whether the duty applies because sometimes it is easier to enrol everyone than set up monitoring requirements.

4.4. Section 39(2) of the 2014 Act inserted a new section 23A into the 2008 Act which provides powers to introduce alternative quality requirements for Defined Benefits (DB) schemes. It allows for alternative prescribed tests to demonstrate that a DB scheme is good enough to be used to meet the employer duty.

4.5 These regulations are necessary to implement the simplifications and reduce duties on employers.

## **5. Territorial Extent and Application**

These Regulations apply to Great Britain. Separate but corresponding provision will be made for Northern Ireland.

## **6. European Convention on Human Rights**

The Rt. Hon. Steve Webb MP, Minister for Pensions, has made the following statement regarding Human Rights:

“In my view the provisions of The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 are compatible with the Convention Rights”.

## **7. Policy background**

*What is being done and why*

*Exceptions to the Employer Duty*

7.1 This measure acknowledges that there are people who are not currently saving in a pension scheme for whom pension saving, or further pension saving, is either not suitable, or where the requirement is disproportionate. Currently the legislation obliges the employer to go through the automatic enrolment process when the jobholder becomes eligible or the employer has reached staging date, and the only option for the individual who may not wish to be enrolled is to opt out on each occasion. This is administratively burdensome for employers and individuals alike and serves little purpose. The Regulations will give employers the power to choose whether or not to automatically enrol or automatically re-enrol jobholders in the following circumstances:

- Where notice of termination of employment has been given before the end of the 6 week period after the automatic enrolment or automatic re-enrolment date. The Regulations also remove opt-in rights during this period and provide that the automatic enrolment duties reapply if the jobholder and employer agree that notice has been withdrawn;
- Where an individual has chosen to cancel membership of a qualifying scheme within the period of 12 months before the automatic enrolment or re-enrolment date, or has opted out of a qualifying scheme as an eligible jobholder. In these circumstances, the employer's duty is carried over to the next cyclical re-enrolment date. Cyclical re-enrolment dates are broadly every three years.

- Where a jobholder has tax protected status for existing pension savings or during a 12 month period after they have received a winding-up lump sum. In these cases further pension contributions may produce disadvantageous tax implications for both employers and individuals.

### ***Information Requirements for Employers***

7.2 The current legislation means there are 5 different pieces of information that an employer must give to different types of worker about what is happening to them under automatic enrolment. The requirements are complicated and can require more than one communication or notice to be given to the same person in quick succession. This has led to a degree of confusion for the individual and imposes an unnecessary burden on employers because they need to constantly assess their workforce and send different letters to different workers. Separately, there are also the postponement notices, which enable the employer to exercise their choice to use postponement and issue a notice to defer the automatic enrolment date. The postponement notice has 4 sub-types for the employer to choose between, which vary the requirements according to the category of worker.

7.3 These requirements present employers with a number of difficulties including identifying the different requirements relevant to each worker. An employer (or their agent/service provider) needs to understand the distinction between all these types of information; the different minimum content requirements; and the deadlines in order to comply with their information-giving duties. This adds to the complexity and compliance difficulty. The effect of the current requirements also means that an employer must continue to assess their workforce to identify the first time that section 7 (jobholder's right to opt in) or section 9 (workers entitled to join) of the 2008 Act applies to that worker.

7.4 The Regulations reduce the employer's obligation to make an on-going assessment of all categories of workers, facilitate one individualised communication, which suits all circumstances and reduce the information requirements to a basic minimum that would be appropriate for all types of worker.

7.5 Employers will be able to continue with the existing information requirements if they wish to, for example if this is embedded in their systems and change would cause additional costs. However, where employers choose to change or they are yet to begin the automatic enrolment duty, they will be able to streamline the information provision process.

### ***Alternative Quality Requirements for Defined Benefit Schemes***

7.6 A workplace pension scheme used by an employer to comply with their automatic enrolment duties must meet the relevant minimum quality threshold. Sections 21-23A of the 2008 Act set out the relevant requirements for Defined Benefits schemes. The existence of a valid contracted out certificate was accepted as evidence of a scheme's quality, because the scheme would have to meet a test of overall scheme quality in order to be used for contracting out. With the abolition of contracting out from 6 April 2016, formerly contracted out qualifying Defined Benefits schemes would have to meet the Test Scheme Standard (TSS). Employers using the TSS would have to ensure that their scheme provides benefits broadly equivalent to those provided by a hypothetical "test scheme". The TSS is scheme level and based on an average of benefits across the scheme, with the proviso that no more than 10% of jobholder members can have benefits lower than those

that would have been provided by the test scheme. This prevents the test from being distorted by high earners.

7.7 The abolition of contracting out means that schemes which were previously qualifying by virtue of holding that status would need to meet the TSS from April 2016. As part of a public consultation in 2013, the Government canvassed views from stakeholders on whether there was a less onerous way for DB schemes to demonstrate that they were of appropriate quality for automatic enrolment. The majority of respondents felt that the existing quality test was unnecessarily complex and employers would benefit from the flexibility to use an alternative, simpler test. Respondents helpfully suggested initial thoughts on the different ways in which an alternative test might operate for all DB schemes. The Government therefore introduced powers in the 2014 Act to provide for alternative tests.

7.8 The contracting out test and the TSS are tests of overall scheme quality based on benefit output. Section 23A of the 2008 Act provides for an alternative quality test based on the cost to the scheme of the future accruals of active members' benefits. These Regulations outline the features of the test at a level that broadly represents the cost of providing the benefits of the TSS. In any case, the level of the alternative test cannot be set below the quality requirements for money purchase schemes: 8 per cent of a band of qualifying earnings. The simplicity of the test is that it can be run in parallel with scheme funding activities. The test has been designed as far as possible so that existing information, in recent actuarial valuations and reports required for funding purposes, can be relied upon to determine whether the scheme satisfies the alternative test.

7.9 In response to feedback from the public consultation, these Regulations also provide, in some specific circumstances, a further test whereby a DB scheme will be able to use the money purchase quality requirement for DC schemes set out in section 20 of 2008 Act. The requirement is that, under the scheme, the total contributions paid by the jobholder and the employer must be at least 8 per cent of the jobholder's qualifying earnings; including an employer contribution of at least 3 per cent. The Regulations also set out further conditions that are required for the scheme to meet the quality requirement.

### ***Consolidation***

7.10 Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website [legislation.gov.uk](http://legislation.gov.uk). An explanation as to which instruments are maintained on each site is available [here](#).

## **8. Consultation**

8.1 The Government carried out an initial consultation on technical changes to automatic enrolment in early 2013 which led to amendments to the 2008 Act being introduced through the 2014 Act.

8.2 A further consultation on the detail of the draft Regulations ran for 6 weeks from 1 December 2014 until 9 January 2015. We received 49 formal written responses to the

consultation from employer organisations, pension providers, accountants, independent financial advisers, lawyers, actuaries, trades unions and consumer organisations.

8.3 Responses were generally supportive of the measures with the vast majority of respondents agreeing that these Regulations would reduce burdens on employers and schemes. There were also a number of detailed technical issues raised which the department considered helpful in achieving the policy intent and amended the draft Regulations accordingly.

8.4 The corresponding drafting changes are set out in full in the Government response to the consultation Technical Changes to Automatic Enrolment: consultation on draft regulations which is available on gov.uk at <https://www.gov.uk/government/consultations/workplace-pensions-automatic-enrolment-simplifying-the-process-and-reducing-burdens-on-employers>.

## **9. Guidance**

The Pensions Regulator produces detailed guidance on all aspects of automatic enrolment which can be accessed at <http://www.thepensionsregulator.gov.uk/automatic-enrolment.aspx>.

## **10. Impact**

10.1 There is positive impact on business and civil society. However the impact is difficult to quantify due to modelling and data constraints. There is a small measurable reduction in the burden on employers from streamlining information requirements.

10.2 There is also a small positive impact on the public sector. The impact of these changes is unquantifiable due to modelling and data constraints.

10.3 Three Impact Assessments (for each of the changes set out at paragraph 2.2) are attached to this memorandum and will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

The automatic enrolment legislation places a duty on all employers, whatever their size, to automatically enrol eligible workers into a workplace pension arrangement. Implementation is staged with smaller employers starting to become subject to the automatic enrolment duty in the 2015/2016 tax year.

## **12. Monitoring and review**

12.1 The automatic enrolment programme is fully evaluating its effects against the policy objective of getting more people to save more for retirement.

12.2 We are also continuing to assess the impact of the reforms on employers and the pensions industry to evaluate the extent to which we meet this policy objective whilst placing a minimal burden on employers and maintaining current good quality pension provision for employees.

12.3 The effect of automatic enrolment is evaluated through analysing a range of data, including Management Information from the Pensions Regulator and the National Employment Savings Trust pension scheme, existing continuous surveys of individuals and employers run by DWP and other government departments such as the Office for National Statistics and where appropriate, research commissioned by DWP. As such, the evaluation is being conducted by a combination of external research organisations, academics and DWP analysts. The evaluation will be carried out on an on-going basis to gauge progress throughout the implementation of the reforms and beyond, and findings will be available publicly at key stages.

12.4 The 2014 Act requires the Secretary of State to review regulations made under 23A (alternative requirements for UK defined benefit schemes) during 2017 and then at least every three years after the completion of the previous review.

### **13. Contact**

For any queries regarding this instrument, please contact Alison Evans at the Department for Work and Pensions Telephone number: 020 7449 5758 or e-mail:

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