Department for Work & Pensions

Technical Changes to Automatic Enrolment

Consultation on draft regulations

December 2014

Contents

About this consultation

Purpose of the consultation

This consultation is seeking views on proposals to further simplify the automatic enrolment process and reduce burdens on employers and on draft regulations intended to achieve these changes. These measures will:

- Introduce an alternative quality requirement for defined benefits (DB) schemes
- Simplify the information requirements on employers
- Create exceptions to the employer duties in certain circumstances

We also want to ensure that those who will benefit most from pension saving continue to be automatically enrolled and that there are no unintended consequences for individual savers. An executive summary is provided on page 7. This document is available on the Department's website at: www.gov.uk/dwp.

Who this consultation is aimed at

The consultation is aimed at employers, Trade Unions, employee representatives and pension industry professionals, including scheme administrators, payroll administrators, accountants, payroll bureaux, Independent Financial Advisors and employee benefit consultants.

Scope of consultation

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

Duration of the consultation

The consultation period begins on 1 December 2014 and runs until 9 January 2015.

How to respond to this consultation

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

Automaticenrolment.consultation@dwp.gsi.gov.uk

Or by post to:

Alison Evans
Department for Work and Pensions

Automatic Enrolment Programme
1st Floor
Caxton House
London SW1H 9NA

Please ensure your response reaches us by **9 January 2015**

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

Any queries about the subject matter of this consultation should be addressed to Alison Evans at Alison.evans@dwp.gsi.gov.uk

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Central Freedom of Information Team 4th Floor Caxton House Tothill Street London SW1H 9NA

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

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

Consultation principles

This consultation is being conducted in line with the Cabinet Office Consultation Principles. The key principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;

- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be ‘digital by default’, but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.

Feedback on the consultation process

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

DWP Consultation Coordinator
2nd Floor
Caxton House
Tothill Street
London
SW1H 9NA

CAXTONHOUSE.LEGISLATION@DWP.GSI.GOV.UK

Executive Summary

Since October 2012, employers are obliged to enrol all workers who satisfy age and earnings criteria into a workplace pension arrangement and pay at least a minimum level of contributions. The roll-out of automatic enrolment started with the largest organisations and will be extended to all employers over the next four years.

Automatic enrolment is designed to target non-savers and under-savers. This includes those individuals whose employer provided a scheme but did not pay into it; and those where the employer provided a scheme but not one that everyone could access. It obliges every employer, irrespective of size or industry, both public and private sectors, to provide a workplace pension and pay into it.

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

More recently, following a consultation on technical changes to automatic enrolment, run in early 2013 we included measures in the Pensions Act 2014, which are intended to further simplify automatic enrolment and reduce burdens on employers. These measures will:

- Introduce an alternative quality requirement for defined benefits (DB) schemes
- Simplify the information requirements on employers
- Create exceptions to the employer duties in certain circumstances

The Department has drafted regulations which set out the detail of these measures and is now seeking views, in particular on whether the draft regulations achieve the overarching policy intent of simplifying the process for employers. We also want to ensure that those who will benefit most from pension saving continue to be automatically enrolled and that there are no unintended consequences for individual savers.

We will publish a response to the consultation in January 2015 with a view to making the regulations in February. The regulations would come into force in April 2015 and would amend the existing Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.

Alternative Quality Requirements for Defined Benefits Schemes

Background

Employers who use a Defined Benefits (DB) scheme to meet their automatic enrolment duty need to ensure their scheme meets the minimum quality requirements. At present that means that their scheme must either be 'contracted out' or satisfy the Test Scheme Standard (TSS) in relation to all relevant jobholders.

In last year's consultation Technical Changes to Automatic Enrolment we said the Government was keen to find simpler ways to determine whether schemes which are not money purchase schemes are good enough to be automatic enrolment qualifying schemes.

The majority of respondents to the consultation felt that a simpler test of scheme quality should be considered. We have since worked with interested stakeholders to develop further the possible options for simplifying the ways in which the DB quality requirements could be met. The Pensions Act 2014 amended the Pensions Act 2008 ("PA 2008") and introduced a power to provide in regulations for alternative quality requirements for DB schemes.

We have now developed our proposals for an alternative requirement with draft regulations under section 23A(1)(b) PA 2008. The policy objective is to provide a simpler way of determining that a DB scheme is good enough for use under automatic enrolment than the existing TSS. This alternative test should be of particular help to employers with formerly contracted out schemes who from 2016 onwards would otherwise need to ensure that their schemes met the TSS. The alternative test is based on the cost to the scheme of the future accrual of active members' benefits. The prescribed level of this alternative test cannot be below the 8% total contribution required for a qualifying defined contribution scheme. This floor ensures that the alternative test cannot significantly weaken the existing quality standards.

The proposed alternative requirement

Under the alternative requirement at section 23A(1)(b) PA 2008, a DB scheme would qualify for use under automatic enrolment if "the cost of providing the benefits accruing for, or in respect of, the relevant members over a relevant period would require contributions to be made of a total amount equal to at least a prescribed percentage of the members' total relevant earnings over that period."

The different prescribed features of the proposed test (a scheme-level cost of accruals test) are described below. Our overall intention has been, where possible, to keep the alternative test as simple as possible and for it to run parallel to existing

requirements in relation to scheme funding so that actuarial work required for scheme funding purposes can be relied upon for this test as well.

The level of the cost of accruals test

Analysis from the Government Actuary's Department (GAD) suggests that 10% to 12% of qualifying earnings would broadly represent the cost of providing the benefits under the TSS for a typical membership profile using typical funding assumptions in current market conditions. This estimate includes 1% representing the cost of providing pension benefits to surviving spouses/partners.

The alternative test that we are proposing features a cost to the scheme that would require contributions equal to 10% of qualifying earnings or 9% if the scheme does not provide dependant pension benefits. How to express this required rate in terms of a scheme's pensionable earnings as an alternative to qualifying earnings, is considered below alongside the other prescribed features of the test.

The changes are in regulation 11 of the draft regulations at **Annex A** that inserts new regulation 32L(6).

Consultation Question

Q1: Does the level of the alternative test deliver broad equivalence with the Test Scheme?

The definition of 'relevant earnings'

Many schemes will pay contributions on pensionable pay based on a definition other than qualifying earnings. In addition to the prescribed level of 10% of qualifying earnings, the proposed test features three variations on the definition of relevant earnings. These follow the example of the three sets of alternative requirements provided for Defined Contribution (DC) schemes.

Under these variations the test would also be satisfied if

- The pensionable earnings of the relevant members are at least equal to their basic pay and the cost of future accruals would require total contributions of at least 11% of the members' pensionable earnings OR
- The pensionable earnings of the relevant members are at least equal to their basic pay and the cost of future accruals would require total contributions of at least 10% of the members' pensionable earnings and taking all of the relevant members together, the pensionable earnings of those members constitutes at least 85% of the earnings of those members OR
- Where all earnings are pensionable, the cost of future accruals would require total contributions of at least 9% of the members' total earnings

'Earnings' and 'Qualifying Earnings' are defined in section 13 of PA 2008. The definition of 'Basic Pay' is similar to the definition in regulation 32K of the 2010 regulations in relation to the certification of DC schemes.

The changes are in regulation 11 of the draft regulations at **Annex A** that inserts new regulation 32L(5).

Consultation Question

Q2. Will these variations be helpful to employers? Are they still valuable even though they add some complexity to the test? How many employers do you think will take advantage of these variations?

The definition of 'relevant period'

We propose to allow flexibility for schemes to use a period that is appropriate to the cost of accrual that already exists within scheme documentation. For public service pension schemes, we propose to link this to the period set out in the HMT Directions for such schemes. For other schemes, we propose that the period should be either: a period of 12 months; or determined by reference to the most recent scheme documentation valuing the scheme's assets and determining its liabilities. The documentation referred to should be prepared and signed by an actuary.

The changes are in regulation 11 of the draft regulations at **Annex A** that inserts new regulation 32L(4).

Consultation Question

Q3: Does this definition meet the needs of schemes? Are there scenarios where this definition would create additional work for schemes/employers? Is the default period of 12 months an appropriate period for schemes which may not have an actuarial valuation or control period?

The definition of 'relevant members'

We propose that this alternative test should apply at the level of benefit scales rather than at the scheme level. So the cost of providing benefits to active members of parts of schemes that provide for different benefits would be tested separately. We understand that existing practice under scheme funding is for actuaries to calculate costs at this level so additional work should not be required for the purposes of this alternative test.

The changes are in regulation 11 of the draft regulations at **Annex A** that inserts new regulation 32L(2 and 3).

Consultation Question

Q4: Does this definition fit with existing practice? Are there any circumstances in which it would cause problems or additional work?

The methods and assumptions to be used

We do not propose to prescribe the methods and assumptions to be used under this test, leaving the matter to the discretion of scheme actuaries. Our assumption is that actuaries will use those methods and assumptions already used for other purposes – scheme funding or its equivalent in unfunded schemes.

Consultation Question

Q5: Are there any risks in not prescribing methods and assumptions? Does this provide an incentive to select methods or assumptions which enable a scheme to meet the test where it otherwise might not?

Benefits to be included/disregarded

We do not propose to prescribe the benefits to be included/disregarded in the test. The cost of providing all benefits (including those for survivors) for funding purposes will therefore be calculated in this test. As mentioned above a 1% lower prescribed level is proposed for schemes that do not provide survivors' pension benefits.

Consultation Question

Q6: Does this fit with existing practice and provide simplicity? Are there any circumstances in which it would cause problems or additional work?

Actuarial certification

We do not propose to require actuarial certification for the purposes of this alternative test. It relies on work already certified for scheme funding purposes and while we want to allow for the option of voluntary actuarial certification we also want employers to be able to determine themselves whether or not the test is satisfied by examining the work carried out for funding purposes.

Consultation Question

Q7: Are there any particular risks in not requiring an actuary to explicitly certify that the scheme meets the cost of benefit accruals test?

Other alternative quality requirements

Section 23A of the 2008 Act also provides powers to prescribe two other alternative DB quality requirements but we do not propose to exercise them.

The first was to permit DB schemes of a prescribed description to satisfy the quality requirement for occupational money purchase schemes. The intention was to make it easier for DB schemes to be used as qualifying schemes where their structure more closely resembles that of DC schemes. In drafting the Pension Schemes Bill, we have developed an approach to the quality requirements for shared risk schemes that will provide a more comprehensive solution. The Hybrid Schemes Quality Requirement Rules will be developed to direct such schemes towards the relevant quality requirements.

Consultation Question

Q8: Are there schemes which: cannot use the alternative proposed; could not demonstrate appropriate quality via the shared risk route; and should be allowed to satisfy the money purchase quality requirement? If so, what are they and how could they be prescribed?

The second was to prescribe a cost of accruals test at the individual level. This would only be met if the cost of providing benefits was at least a prescribed level for at least 90% of the relevant members. The intention behind this variant of the accruals test was to provide a secondary test for schemes that could not meet the aggregate scheme level test.

An individual level test may not, however, furnish the simplicity we are looking to provide for schemes. Furthermore, at the suggested level of the proposed scheme-level test we understand that it is unlikely that many schemes which did not pass the aggregate test would be able to pass the individual test given the 8% floor in the legislation. Our view is that the scheme-level test will achieve the Government's policy objectives of increasing flexibility and simplicity for employers providing good quality DB schemes.

Consultation Question

Q9: Are there circumstances in which an individual level cost of accrual test would provide a simpler way to demonstrate compliance with the DB quality requirement?

Proposed changes to the Information Requirements for Employers

Background

The Government is concerned to reduce the administrative burden on employers and is looking to improve automatic enrolment processes, particularly having regard to the small and micro employers that will be staging from 2015 onwards. The Pensions Act 2014 (PA14) amended section 10 of the Pensions Act 2008 (PA2008) to give the Secretary of State a discretion to stipulate by regulation what information he requires employers to give employees about the effect of the employer automatic enrolment duties.

The current legislation means there are 5 different pieces of information that an employer must give to different types of employee about what is happening to them under automatic enrolment. The requirements can require more than one communication or notice to be given to the same employee in quick succession. This has led to a degree of confusion for the employee and imposes an unnecessary burden on employers because they need to assess their workforce and send different letters to different employees.

Separately, there are also the postponement notices, where the employer exercises 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.

The current information provisions present employers with a number of difficulties including identifying the different requirements relevant to each employee. 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 an employee to identify the first time that section 7 (jobholder's right to opt in) or section 9 (workers without qualifying earnings) PA 2008 applies to that employee.

The policy intention behind the reduction of the information requirements is threefold:

1. To reduce the employer's obligation to make an assessment of all categories of employees;
2. Facilitate one individualised communication, which suits all circumstances; and
3. Reduce the information requirements to a basic minimum that would be appropriate for all types of employee.

Consequently, there are still some minimum pieces of information that, from an automatic enrolment policy perspective, it would be desirable for an employee to be

given directly. We would propose that these minimum requirements can be dealt with in two or three pieces of information at three relevant moments in time.

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.

We are therefore consulting on draft legislation to consider which current regulations can be removed, combined or simplified and how to amend the detailed requirements in schedule 2 to SI 2010/772, with the aim of lightening the burden of employers by reducing the potential number of communications and the amount of information that goes into each one.

Proposed minimum amount of information an employee should be given

We think that an employee should know the following minimum level of information:

a) If they are being enrolled into a qualifying scheme; and accordingly, will have an employer contribution and deductions taken (at which rates and into which scheme, including confirmation that tax relief will be given on employee contributions); that they can opt-out and how to do so, including knowing when the opt-out period is and confirmation that any contributions will be refunded.

b) If they meet the necessary requirements that they can opt in or ask to join if they do not have qualifying earnings; and

c) If they are being postponed, that their enrolment is being postponed and that they will be enrolled on a deferred date, but in the meantime, they can opt in or ask to join.

We have made the following proposals below to reduce the burden on employers and simplify the information that is given to employees – by removing and combining the existing regulations, and by removing and simplifying the paragraphs in schedule 2 of SI 2010/772.

1. Amending existing regulations

The draft regulations revoke existing regulation 17 and amalgamate the provision into a consolidated regulation 21 in SI 2010/772 to remove the need for a separate communication to an employee who is a jobholder entitled to opt in to pension saving, and to a worker without qualifying earnings who is entitled to join a pension scheme but is not entitled to employer contributions. This communication may be combined in a letter to be sent to all workers at staging date or simply to the relevant workers when the relevant duties arise for the employer.

Accordingly, regulation 21 is redrafted to require the information in the newly drafted paragraph 18 of schedule 2 be given to all relevant employees for whom those duties arise in relation to the employer. This means that paragraph 18 may be sent to all workers and jobholders at the same time as automatic enrolment duties arise for an employer in relation to all employees under sections 2-9 of PA 2008, or (according to convenience) the time when either sections 7 or 9 of PA 2008 apply to the employee. The re-drafted regulation also captures employees who are new starters, thereby giving rise to automatic enrolment duties for the employer. This will remove the need for the employer to assess his employees on a continuous basis as he may combine the information in paragraph 18 with the enrolment information to be sent to all workers.

The changes are in regulations 7 and 8 of the draft regulations attached at **Annex A**.

Consultation Questions

Q10: Does revoking regulation 17 and amending regulation 21 reduce the practical burden of information requirements for employers?

Q11: Will these amendments enable the employer to combine the information to employees within a single communication and remove the need to assess on a continuous basis?

Q12: Will employees receive the information that they need at the right time?

The draft regulations amend existing regulation 24 so that all the relevant information is given to employees whose employer decides to postpone the date of automatic enrolment under sections 4 of the PA 2008. It is proposed that all employees for whom automatic enrolment is being postponed will receive the information contained in paragraphs 18, 20, 21 and 24 of schedule 2.

The draft regulations make a consequential amendment to the requirements for employers using the DB transitional period in existing regulation 27 as result of the changes made to schedule 2.

The changes are in regulations 9 and 10 of the draft regulations attached at **Annex A**.

Consultation Questions

Q13: Does amending these regulations reduce the practical burden of information requirements for employers?

Q14: Will employees receive the information that they need at the right time?

We propose to remove all information obligations in relation to employees who are already an active member of a qualifying scheme and will not therefore be automatically enrolled or re-enrolled, whether at the time of automatic enrolment or on a postponed date. The purpose of this communication, along with paragraphs 7,

19 and 23 of schedule 2, was to provide the employee with information about the continuity of scheme membership protection. However, we have received representations that these requirements are superfluous and can be removed as the employee's status will not change and there is little benefit to them or the employer in sending a letter to confirm this. Accordingly, Regulation 33 is revoked (and related paragraphs 7, 19 and 23 in Schedule 2 are also removed – see below).

The changes are in regulations 12 (and 14) of the draft regulations attached at **Annex A**.

Consultation Questions

Q15:- Would the removal of the notice under regulation 33 reduce the practical burden of information requirements for employers?

Q16: Is it agreed that the notice under regulation 33 serves little purpose and can be removed without any risk to employees?

2. Amendment of the detailed requirements in Schedule 2 to SI 2010/772

The draft regulations simplify paragraph 1 so that it is suitable for any employee (jobholder or worker) to be told that they are being enrolled into a pension scheme.

It is hoped that this will deal with the practical difficulties at re-enrolment where an employer may be automatically enrolling eligible jobholders at the same time that they are automatically re-enrolling. This currently requires communications with a different opening statement.

The draft regulations revoke paragraphs 2 and 3, which will remove the requirement to give employees (jobholders) as part of enrolment information under regulation 2 the date of enrolment and also the details of the scheme. Along with the other changes, it is hoped this will assist with the aim of using a generic notice for all employees. These details are usually provided by the scheme provider. We think that all an employee really needs at staging or first day of employment is the minimum enrolment information and details as to how they can opt out.

The changes are in regulation 14 of the draft regulations attached at **Annex A**.

Consultation Questions

Q17: Would the removal of paragraphs 2 and 3 be welcome and help get away from individualised communications thereby reducing administrative costs for employers?

Q18: Are there any risks to the employee in not receiving the information in paragraph 2?

Q19: Is there a risk that the employee may not receive the information in paragraph 3 from another source?

Q20: Although the draft regulations make no change to paragraph 10 of schedule 2, would further details of where the opt out notice may be obtained be useful for employees?

The draft regulations provide for paragraph 6 to be simplified to provide confirmation as to whether tax relief is to be given on employee contributions.

The draft regulations revoke paragraph 7 as this has been considered unnecessary.

The draft regulations remove paragraphs 16 and 17 to avoid the need to write different letters to employees who are jobholders entitled to opt in and workers who are entitled to join. Instead, the policy intention is to amalgamate the information within paragraphs 16 and 17 into a consolidated and simplified version of paragraph 18. Current paragraph 24 is being retained because it explains how a written notice from a worker may be valid, which is important information for the employee.

These changes are in regulation 14 of the draft regulations attached at **Annex A**.

Consultation Questions

Q21: Does amending these paragraphs of schedule 2 reduce the practical burden of information requirements for employers?

Q22: Is the new consolidated paragraph 18 clear enough to both types of employee (jobholder and worker) who will need to distinguish whether they fit into paragraph 18(a) or 18(b)?

Q23: If the actual figure for qualifying earnings under section 13(1)(a) PA 2008 is not provided in the statement in paragraph 18, is there a risk that employees will not understand the requirements and may stay out of pension saving?

The draft regulations remove paragraph 25 as it is considered to be superfluous to the employer's obligations and we are of the view that it should be a matter for the employee to conduct their own searches for more information about pension saving.

These changes are in regulation 14 of the draft regulations attached at **Annex A**.

Consultation Question

Q24: Does the removal of this paragraph strike the right balance between reducing the load on employers and placing the onus on the employee to find out more information about pension saving?

As a result of paragraph 18 being redrafted and 25 being removed, it is proposed to make consequential amendments to the relevant regulations to replace paragraphs 16 and 17 with paragraph 18 and remove any reference to paragraph 25 (this applies to regulations 2, 21, 24 and 27).

These changes are in regulations 3, 8, 9, and 10 of the draft regulations at **Annex A**.

3. Reducing the pieces of information coming from an employer

By having these minimum requirements we think we could reduce communications to 3 pieces of information:

(i) one to all employees at staging date or individually when a new employee joins;

(ii) one to all employees if the employer decides to postpone; and

(iii) one to each employee when they are automatically enrolled, re-enrolled or enrolled following opting in or joining.

Furthermore, there is nothing that prevents an employer combining these communications into one or two communications, if they consider it appropriate.

Consultation Questions

Q25: Is the aspiration of 3 communications realistic and workable?

Q26: Will the overall proposed changes to the information requirements bring simplicity to the automatic enrolment process and with it a reduction in administration and costs for employers? If so, what is the average saving for an employer due to a reduction in the administrative burden?

Q27: How many employers do you think will take advantage of these changes?

Q28: Can these changes be communicated to employees within existing material?

Q29: Is there any risk that the overall consequence of these amendments may cause confusion or detriment to the employee?

Communications

To supplement these changes to the information requirements, and as a further aid to employers we will work with TPR to review the existing letter templates on their website, as well as consider the need to develop other communications assets that could be of benefit to an employer. The key thing is to ensure consistency and we would like the aim to be that the minimum, albeit key, pieces of information and material are given to employees.

Exceptions to the employer duty

Background

It became apparent during the early days of live running that pension saving, or further pension saving, may not be appropriate for everyone. In its response to the March 2013 consultation on technical changes to improve the operation of automatic enrolment, the Government expressed the view that there was a strong case for excepting from the automatic enrolment requirement individuals:

- who are leaving employment;
- who cancel membership of a pension scheme before automatic enrolment;
- with tax protected status for existing pension savings.

The 2014 Pensions Act inserted a new Section (87A) into the 2008 Act. It allows us to prescribe exceptions to the employer duty so that in certain situations an employer is not required to take action to achieve pension scheme membership. It provides that the exceptions may in particular turn an employer duty into a power.

It also allows us to modify any of the enrolment or joining processes, and turn the duties back on if the circumstances that triggered the exception come to an end. The detail of how we intend to use these provisions is set out below.

Jobholders leaving employment

Where someone hands in their notice, gives notice to retire, or is under notice of dismissal and their period of notice spans their automatic enrolment date, the legislation currently obliges an employer to automatically enrol the employee even though they know that they are about to leave their employment.

Notice periods are covered by employment law. The minimum legal notice period for employment lasting between 1 month and 2 years is 1 week. For employment lasting over 2 years, the minimum period is 2 weeks; thereafter it’s an extra week for every full year worked with a maximum requirement of 12 weeks. Contracts of employment might provide for more than the legal minimum requirements and there is no right to a notice period following dismissal for gross misconduct.

Proposed changes

The draft regulation turns the duty to enrol into a power to enrol if someone is in a notice period or where a notice is given at any time up to 6 weeks after the duty has arisen. The effect is that the employer can choose whether or not to enrol the employee. They can also choose to stop the AE process where notice is given after the duty has arisen but before the arrangements are complete. The regulations do

not distinguish between different reasons for notice being given; they apply equally to resignation, dismissal or retirement.

The regulations will not apply to people who are merely at risk of dismissal or redundancy, or to those who are on fixed-term contracts. In the case of fixed and short-term contracts, employers will know in advance the individual's end date and can use postponement where appropriate. Also, many fixed-term contracts are renewed so it's important that automatic enrolment is not unnecessarily delayed in these cases.

The draft regulations provide that during a notice period, a) the jobholder is not able to opt in to a qualifying scheme and, b) the worker is not able to join a pension scheme. For most people, notice periods are under 12 weeks, for many considerably shorter. Therefore we expect that many individuals subject to automatic enrolment will have left their employment before opt-in/joining could take place. Preserving opt-in/joining in these cases would create nugatory work for employers and additional information requirements whilst providing very little benefit for an individual.

If notice is withdrawn for any reason, the automatic enrolment duty will effectively be turned back on and will apply from the date of the withdrawal. The employer and employee must agree the withdrawal date. This will prevent a long gap in pension contributions from jobholders in this position.

These changes are in regulation 5 (new 5B) of the draft regulations attached at **Annex A**.

Consultation Questions

Q30: Do you think that this will be a helpful exception, particularly for small and micro employers? If not, why not?

Q31: How many employers do you think will take advantage of this exception?

Q32: Can this exception be communicated to employees within existing material?

Q33: Can you foresee any difficulties with removing opt-in rights during notice periods for either employers or individuals?

Q34: In your experience, how frequently is notice withdrawn? Do you think that turning the duty back on in withdrawal cases will cause any problems for employers or employees? If not, why not?

Q35: Do you think that this exception should be extended to other 'end of employment' situations, for example where a fixed term contract is coming to an end? What do you think the advantages or disadvantages would be to this approach?

Cancelling membership of a scheme prior to automatic enrolment

Some employers may choose to enrol workers into a pension scheme when they start work. Currently, contractually joined employees who then cancel their

membership may still have to be automatically enrolled when they become eligible jobholders (i.e. they reach the age 22 and have appropriate earnings, or when the employer reaches its staging date) even if they have only recently left the pension scheme.

The intention is to remove duplication but leave people's right to access pension savings intact. This means introducing an exception to the employer duty so that where a person cancels membership after joining the employer has no further obligation until a point in the future.

Proposed changes

The draft regulations turn the enrolment duties into powers thereby giving the employer the choice as to whether to enrol the employee. They apply to all those who have left a qualifying scheme regardless of the reason for joining. This is a change in policy from that in regulation 14 and so that regulation is revoked.

The draft regulations restrict the exception to people who left a qualifying scheme within 12 months prior to the automatic enrolment, or re-enrolment, date. Anyone who left a scheme more than 12 months before the automatic enrolment date will have to be enrolled.

The automatic enrolment duty is lifted permanently. Therefore, the next time the employee would be enrolled would be when the next re-enrolment date arises.

These changes are in regulations 5 (new 5C) and 6 of the draft regulations attached at **Annex A**.

Consultation Questions

Q36: Do you think this exception will help to simplify the automatic enrolment process for employers, particularly small and micro employers?

Q37: Do you agree that applying this exception to all people who have left a qualifying scheme (as opposed to just contract joiners) will simplify the process for employers?

Q38: Can you foresee any negative consequences for employers or employees?

Q39: Do you think that 12 months is a suitable timeframe for restricting the exception?

Q40: How many employers do you think will take advantage of this exception?

Q41: Can this exception be communicated to employees within existing material?

Q42: Do the benefits of this exception outweigh the risks of people being left out of pension savings for up to 3 years?

Individuals with tax protected status

Some employees who have already accrued pension savings above the lifetime allowance are protected from tax charges, under enhanced or fixed protection

provisions, provided no further tax-relieved pension contributions are made. Automatic enrolment puts these arrangements at risk because of the nature of the employer duty where the employee is automatically enrolled into a pension scheme.

At the moment the only option available to these employees with this protection is to self-identify and opt out. If for any reason the employee doesn't do so within the statutory time limit they could face significant tax charges. Opt out works because it undoes scheme membership, but both the employer and the employee will have been put through unnecessary inconvenience and expense. The underlying employer duty is still there and creates nugatory work that has started to have a negative impact on the credibility of the policy. This is an experience which may have to be repeated every three years when employees will be re-enrolled if they meet the eligibility criteria.

Employees with a pension-related protected tax status have accumulated pension wealth savings, or have pension benefits in payment, that put them outside the core target audience for automatic enrolment. The automatic enrolment problem is similar in all these situations. The person has reached the ceiling of tax-relieved pension contributions and further contributions, whether from the individual or the employer could invalidate declarations and may produce disadvantageous tax implications. We therefore think there is merit in exempting these employees from the scope of automatic enrolment.

Proposed changes

The draft regulations turn the employer duty into a power that the employer is able but not required to exercise where they have an employee who has a HMRC certificated tax protection for maximum accrued tax-relieved pension saving up to the lifetime allowance. If employers find it easier to enrol all eligible employees, regardless of whether or not those employees have tax protected status they can. If this happens the employee can always opt out. We are proposing a wide exception covering all current forms of tax protection, including those types of protection that allows future pension accrual without attracting adverse tax consequences.

The draft regulations provide for the exception to apply to automatic enrolment and automatic re-enrolment. However, the proposal is to keep the opt-in right under section 7 and the right to join under section 9 for those employees who may want further pension accrual because some people would not be subject to a tax charge for doing so.

For the employee we are aiming to make it easier to avoid incurring unwanted tax charges by removing the requirement for them to be automatically enrolled or re-enrolled. Taking these employees out of the system altogether prevents the risk of the employee not opting-out in time.

For the employer we want to stop them having to even start the automatic enrolment process for these employees and prevent unnecessary administrative work and expense. We are therefore proposing that there should be no information requirements for these employees, including information about opt-in and joining so

that an employer choosing to take advantage of the exception can be completely kept out of the automatic enrolment process in relation to these employees. The draft regulations do not mention sections 7 and 9 Pensions Act 2008 as we think it unlikely anyone with tax protection would wish to jeopardise that protection.

The employer must have reasonable grounds to believe their employee has tax protected status. It follows that it is for the employee to make the fact known to the employer. We think that the employer having a copy of the HMRC certificate will be one way to ground a reasonable belief.

HMRC guidance currently alerts employees about the impact automatic enrolment has on their tax protected status and about opting out. That guidance will be amended to make employees aware of the exception and the need to notify their employer confirming their tax status. TPR will also update their detailed guidance to reflect this exception (and all the others) when talking about the employer duties.

These changes are in regulation 5 (new 5D) of the draft regulations attached at **Annex A**.

Consultation Questions

Q43: Do you think the exception should be this wide or restricted to certain protections, for example only where further pension accrual could jeopardise an employee's tax status?

Q44: Will the proposed exception as drafted help reduce the administrative burden and costs for employers by allowing these employees to be kept out of the automatic enrolment process altogether? If so, what is the average saving for an employer due to a reduction in the administrative burden?

Q45: How many employers do you think will take advantage of this exception?

Q46: Can this exception be communicated to employees within existing material?

Q47: Is the proposed exception a welcome easement for employees who have tax protected status?

Q48: Does the benefit of having this exception for employers outweigh the risk to employees receiving no information about their right to opt in?

Q49: Does placing the onus on the employee and the proposed changes to HMRC and TPR guidance sufficiently deal with the practical problem of the employer knowing of the individual tax status as well as what the employee needs to do?

Winding up lump sums (WULSs)

Last year's consultation indicated strong support for the exclusion of individuals paid a WULS under an agreement, which prevents employees receiving further pension accrual. If the employer's scheme is wound up and a purported WULS is paid by the scheme to an employee, any subsequent contributions to any registered pension scheme by the employer in the following 12 months in respect of that employee will

make the WULS an unauthorised payment and tax charges can apply. At the time the WULS is paid the employer has to undertake to HMRC that they will not make any further tax-relieved payments into a pension scheme for the next 12 months in respect of the member receiving the WULS.

Both the scheme administrator of the pension scheme and the employee who has received the WULS will be subject to tax charges (totalling up to 70% of the WULS) if that individual accrues further pension rights in connection with the employment to which the WULS was related.

The existence of automatic enrolment and the employers obligations under section 2 (continuity of scheme membership) and section 3 (duty to automatically enrol) therefore creates a mis-match between DWP and HMRC tax legislation, so that for an employer who continues to trade and continues to employ, or re-employs the eligible jobholder within 12 months they cannot in all conscience give this undertaking.

The WULS rules are employer specific. If a WULS is paid out and the employee immediately leaves the company, or is a deferred member who is not in the employment of the employer there is no problem from an automatic enrolment perspective. If the person works for another company then the employer duty applies to the new employer. Also, any transfer of pension savings to another registered pension scheme at the point of winding up is not a problem (provided it is a 'recognised' transfer for tax purposes). However, we think there is a strong case for providing an exception to the duties where a WULS is paid out in specific instances where ex-employees are then re-employed.

We are not minded to provide for an exception to the duties where a WULS is paid out to existing employees who continued to be employed. We have received representations that this may occur where an employer has started winding up an existing scheme before their staging date then sometime later but within the 12 months of the WULS being paid to the employee the employer is required to automatically enrol that same person. This can happen where the pension arrangement is being wound up to be replaced by an automatic enrolment scheme.

It is not clear why WULSs are being paid out in these circumstances when individuals are continuing in the same employment. It does not seem appropriate to provide for an exception so as not to automatically enrol someone just because the same employer that continues to employ an employee has decided to wind up the earlier scheme and pay out a lump sum. Where the same employer is concerned, it would not seem too difficult for them to arrange to transfer their employees from the earlier scheme to the automatic enrolment scheme.

To provide an exception in these circumstances could enable people to access their pension savings early, which is not consistent with keeping people in pension savings, and is the rationale for the 12 month rule that is part of the undertaking given by the employer to HMRC preventing employers from contributing to a pension scheme for the same employee who has been paid a WULS.

Proposed changes

The draft regulations turn the employer duties into a power. The effect is the employer can choose whether or not to enrol employees to whom they have paid a WULS subject to the HMRC undertaking given by the employer to HMRC that states the condition in paragraph 10(3)(c) of Schedule 29 to FA 2004 will be met (which subjects the employee receiving or making further pension accrual from that employer to a tax charge on the WULS), but who are then re-employed by the same employer within 12 months of giving the undertaking to HMRC. The duty to re-enrol remains the same as there is a sufficient gap in time between the 12 month period after receiving a WULS in which the employer cannot provide further pension rights for the individual and the re-enrolment date, three years after the original automatic enrolment was due. The employee can always opt-in after the 12 month period has elapsed and before their re-enrolment date.

In this situation the onus is on the employer to know of the employee's WULS tax status because they've given the undertaking to HMRC and it is not any action of the employee that has led to the WULS being paid in the first place.

The draft regulations also lift the employer duties in relation to the employee's right to opt in / join. The employee may request the employer to make arrangements for them to join but cannot require the employer to do so or be entitled to an employer contribution. After the expiry of the 12 month period, the automatic enrolment duty continues to be permanently lifted for the employer so the next time the relevant employee would be enrolled would be when the next re-enrolment date arises in relation to that employee.

These changes are in regulation 5 (new 5E) of the draft regulations attached at **Annex A**.

Consultation Questions

Q50: Do you think this exception provides a useful easement for employers as well as a sensible protection from unwanted tax charges for the employee?

Q51: How many employers do you think will take advantage of this exception?

Q52: Can this exception be communicated to employees within existing material?

Q53: Does the benefit of having this exception for both the employer and employee outweigh the risk of some people being left outside of pension saving for a period of what could be 3 years?

Q54: Does the benefit of having this exception outweigh the risk to employees receiving no details or confirmation of their employer's lawful decision not to automatically enrol them?

Q55: To what extent are WULSs being paid out by employers to employees who continue to be employed by them? If they are why, having regard to the tax rules on paying WULSs?

Effect of the exercise of a discretion

The draft regulations provide for a modification to ensure that where the employer has the power to automatically enrol or re-enrol and chooses to exercise that power positively, the relevant legislation is to be read as if he were discharging an employer duty. Accordingly, he may therefore be enforced against in relation to those duties.

This change is in regulation 5 (new 5F) of the draft regulations attached at **Annex A**.

Taking a pension income using Flexible Drawdown

Responses to last year's consultation indicated some support for an exclusion of employees who have entered into a flexible drawdown arrangement post-55. There may be employees in the workplace, with eligible jobholder status, who have entered into a flexible drawdown arrangement who will then be subject to automatic enrolment. Under current tax rules this may have adverse tax implications for employees in relation to the annual allowance as they effectively have a nil annual allowance for all types of pension savings. Going forward this may have adverse tax implications for employees in relation to the money purchase annual allowance, which will be introduced from April 2015.

The annual allowance for money purchase pension savings will be reduced to £10,000 for people who have flexibly-accessed their pension rights. From April 2015 someone will have flexibly-accessed their pension rights if they have received one of the following payments:

- flexi-access drawdown pension
- uncrystallised funds pension lump sum
- flexible annuity
- a money purchase scheme pension where there are fewer than 11 other members receiving a scheme pension
- a stand-alone lump sum where they also have primary protection

On 6 April 2015 someone is treated as flexibly accessing their pension rights if they had a flexible drawdown pension fund before that date, even if they have not had a payment from that scheme since before 6 April 2015.

Whilst we have considered whether we should provide for an exception for these employees we are currently of the view that the effect of automatic enrolment here is not as severe as those say with tax protected status from the lifetime allowance. Also, with the proposed changes to the tax rules on drawdown arrangements that are planned to take effect from next April we think the numbers that could be affected with adverse tax implications may decrease. We do not want to burden the employer with having to consider information provided to him by the employee and to come to a decision of whether or not to enrol so all in all we do not consider an exception here

worth the extra work and cost to the employer. Therefore, the draft regulations do not provide for an exception for these employees but views would be welcome as to whether an exception would be welcome or considered appropriate, particularly in light of the proposed flexibility changes from next April.

Consultation Question

Q56: Do you think an exception for employees who flexibly-access their pension rights would be welcomed by employers or considered appropriate given the proposed changes to the tax rules from next April?