

EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (AUTOMATIC ENROLMENT) (MISCELLANEOUS AMENDMENTS) REGULATIONS 2016

2016 No. 311

1. Introduction

- 1.1 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 This instrument makes amendments to the Employers' Duties (Implementation) Regulations 2010 (S.I. 2010/4), the Employers' Duties (Registration and Compliance) Regulations 2010 (S.I. 2010/5) and the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (S.I. 2010/772) (<http://www.legislation.gov.uk/ukxi/2010/772/contents/made>) to simplify elements of the process for employers in meeting their duties under automatic enrolment legislation.
- 2.2 The changes made by these Regulations provide for:
- A simpler process for the re-declaration of employer compliance;
 - A simpler process for employers to bring their staging date forward;
 - Further exceptions to the employer duties;
 - A transitional easement for employers using formerly contracted-out defined benefits schemes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of special interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

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.
- 4.2 The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (S.I. 2010/772) (<http://www.legislation.gov.uk/ukxi/2010/772/contents/made>) set out the further details of the automatic enrolment framework and 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).

- 4.3 The Employers' Duties (Registration and Compliance) Regulations 2010 (S.I. 2010/5) (http://www.legislation.gov.uk/uksi/2010/5/pdfs/uksi_20100005/) set out the processes for the registration of information by employers with the Pensions Regulator and compliance requirements. The Employers' Duties (Implementation) Regulations 2010 (S.I. 2010/4) set out the dates that the automatic enrolment duties apply to different descriptions of employer (http://www.legislation.gov.uk/uksi/2010/4/pdfs/uksi_20100004/).
- 4.4 This instrument amends the above legislation to simplify the enrolment and declaration processes for employers complying with the automatic enrolment duties for workplace pensions.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.
- 5.3 Subject to the agreement of the Northern Ireland Assembly, the Department for Social Development in Northern Ireland will be making corresponding provisions for Northern Ireland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 Automatic enrolment legislation mandates employers to provide a workplace pension for eligible workers. Automatic enrolment began in July 2012 and has now been successfully implemented by 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.
- 7.2 These measures make various changes to the existing regulations which underpin the automatic enrolment framework with the objective of simplifying certain requirements and processes in the circumstances outlined below.

Directors and Limited Liability Partnerships (LLPs)

- 7.3 Legislation currently requires employers to automatically enrol all eligible jobholders into a qualifying workplace pension with the exception of those with tax protected status for existing pension savings; those who have given or have been given notice of termination of employment; those in receipt of a winding-up lump sum; and those who have within the past 12 months chosen to opt out of pensions saving.
- 7.4 Following discussions with stakeholders, the Government intends to add two additional categories of individuals likely to have their own pension arrangements and for whom automatic enrolment may not be suitable: company directors and genuine partners in LLPs.

- 7.5 For company Directors and genuine partners in LLPs, who are otherwise eligible for automatic enrolment, the new provisions turn the employer duty into a power that the employer is able, but not required, to exercise on the basis these individuals are not the target group for automatic enrolment.
- 7.6 If employers find it easier to enrol or re-enrol all workers, regardless of whether they are a director or a genuine partner, they can choose to exercise that option.

Winding Up Lump Sum

- 7.7 These provisions make minor amendments to clarify the current exception to the employer duty for workers who have received a Winding Up Lump Sum. This will ensure that where a worker has been paid a winding up lump sum, if within the next 12 months after payment of that sum, he has ceased to be employed and is re-employed by the same employer, the duty to enrol and re-enrol is lifted during that period (becoming a discretion). The next time enrolment would arise would be at the next periodic re-enrolment. If a worker receives a winding up lump sum, but then reaches eligibility or the employer stages after the expiry of the 12 month period, he would be automatically enrolled in the usual way.

Compliance easements

- 7.8 The instrument makes changes to the re-declaration of compliance process and the process for an employer to bring forward their staging date. The purpose of the change is to make the compliance process more straightforward for employers.
- 7.9 Firstly, the requirements for employers who wish to bring forward their staging date, are simplified so that where the employer has no eligible jobholder to automatically enrol, they no longer need to seek the agreement of a pension scheme to bring forward their staging date.
- 7.10 Secondly, the measures remove the requirement for employers to give the Pensions Regulator one month's notice of their intention to bring forward their staging date so that notice can be given at any point up to and including their new early automatic enrolment date.
- 7.11 Thirdly, employers without anyone to enrol can now bring forward their staging date to any date, between today and their original staging date, and are no longer restricted to a 1st of the month date.
- 7.12 Finally, the measures align the timescales for re-declaration regardless of whether an employer has eligible jobholders. Employers with no jobholder to re-enrol are now treated in the same way as employers with eligible jobholders, so that they need only provide information to the Regulator within 5 months of the third anniversary of their original staging date; and then, broadly, at 3 year intervals from their last re-enrolment date.

Transitional easements for formerly contracted-out schemes

- 7.13 Employers must automatically enrol their eligible workers into qualifying workplace pension schemes which among other things have to meet a certain quality requirements. The Regulations introduce an easement for employers using defined benefits pension schemes that relied on a 'contracting out certificate' to satisfy the quality requirements for automatic enrolment prior to 6th April 2016 and who wish to use the 'cost of accruals test' to satisfy the quality requirement following the

abolition of contracting out. Employers using these schemes can apply the Cost of Accruals Test at scheme level rather than benefits level for a transitional period.

- 7.14 Section 23A(1)(b) of the Pensions Act 2008 and regulation 32M of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 established ‘the Cost of Accruals Test’, which applies at benefit scale level. These Miscellaneous Regulations introduce a transitional easement for employers using defined benefits schemes that met the contracting out requirements on 5 April 2016. The Regulations permit the employers using such schemes to apply the test at scheme level rather than benefit scale level for a transitional period: until the earlier of two dates - either the date of the first report signed by the actuary after 5 April 2016 that breaks down the cost of accruals to benefit scale level; or 5 April 2019. This simplifies the test for formerly contracted out schemes that are typically delivering benefits that were at least equivalent or in excess of the requirements for contracting-out of the additional State Pension.
- 7.13 The easement has been introduced in response to the outcome of the consultation in 2015 on Technical Changes to Automatic Enrolment. DWP was asked to consider a transitional easement for schemes that were contracted-out on 5 April 2016, where the employer has not made changes to scheme benefits that would prevent the contracting-out requirements from being satisfied but for their abolition. Without the easement, employers would have to undertake or commission nugatory work to demonstrate that their scheme was of sufficient quality to be used for automatic enrolment. This is the first opportunity we have had to legislate.

Consolidation

- 7.14 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. An explanation as to which instruments are maintained on each site is available [here](#).

8. Consultation outcome

- 8.1 The Government issued its consultation document ([Technical Changes to Automatic Enrolment: consultation on draft regulations](#)) on 26 January 2016 and the consultation ran for 3 weeks, until 16 February 2016. We received 25 formal written responses to the consultation from employer organisations, pension and payroll professionals, accountants, lawyers and actuaries.
- 8.2 Responses were overwhelmingly supportive of these simplification and deregulation measures with the vast majority of respondents agreeing that the measures would reduce burdens on employers and schemes. The Department has worked with the Pensions Regulator (TPR) to improve the practical effect of the legislation so that the TPR compliance process is as straightforward as possible for employers. The Government Response to the consultation can be found here: <https://www.gov.uk/government/consultations/automatic-enrolment-technical-changes>

9. Guidance

- 9.1 The Pensions Regulator will produce updated guidance on the practical effect of these changes to automatic enrolment which can be accessed at (<http://www.thepensionsregulator.gov.uk/automatic-enrolment.aspx>.) The Department for Work and Pensions plans to issue guidance on the alternative quality requirements for defined benefits pension schemes and the defined benefits element of hybrid pension schemes.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is beneficial as it reduces administrative burdens on employers.
- 10.2 The impact on the public sector is beneficial as it reduces administrative burdens on public sector employers in relation to contracted-out occupational pension schemes.
- 10.3 Three Impact Assessments are submitted with this memorandum respectively assessing: the exceptions to the automatic enrolment duties for company directors and individuals who are genuine Limited Liability Partners (LLPs); the changes to the re-declaration of compliance; and the changes to requirements for bringing forward an employer's staging date. The Department estimates the savings to employers as a result of these legislative changes is approximately £4.87 million over two years. All three Impact Assessments are published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 These Regulations amend the automatic enrolment legislation which applies to small businesses. The Regulations simplify the operation of the legislation for small businesses.

12. Monitoring & review

- 12.1 It is not appropriate in these circumstances to make statutory provision to review this instrument. Regulations in this instrument implement deregulatory measures, as such; the cost of conducting a statutory review and monitoring its impacts would be disproportionate to the economic impact of the provision in the instrument. On the balance of the benefits versus adverse effects, the Department's view is that it would not be appropriate to conduct a review.
- 12.2 We have legislative commitments to review some specific aspects of automatic enrolment in 2017. These include a review of certain aspects of the operation of the National Employment Savings Trust (NEST), quality requirements for defined benefits schemes and how the certification requirements (which allow employers to use existing pension schemes to meet their automatic enrolment duties) are working. The Government may undertake a broader review of automatic enrolment policy in 2017, at the discretion of the Secretary of State. The Department will undertake work with interested stakeholders to determine the scope of the review that should be carried out in 2017.
- 12.3 The Secretary of State is required to review the regulations made under powers in section 23A(1) of the Pensions Act 2008 which introduces the alternative quality

requirements for UK defined benefits schemes, in 2017, and thereafter at three yearly intervals.

13. Contact

- 13.1 James Newman at the Department for Work and Pensions, email: james.newman@dwp.gsi.gov.uk can answer any queries regarding the instrument.