

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (AUTOMATIC ENROLMENT) (AMENDMENT) REGULATIONS 2017

2017 No. 79

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 These regulations amend the employer duty to automatically enrol their workers into a qualifying pension scheme. Existing regulations give employers discretion to automatically enrol their workers into a qualifying pension scheme in certain circumstances, including where an individual worker may be financially disadvantaged by being enrolled into pensions' saving. These regulations add to the circumstances in which employers have discretion in relation to lifetime allowance and to ensure this aligns with changes to the value of the lifetime allowance as set out in the Finance Act 2016¹.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to 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 Regulation 5 of SI 2015/501² introduces further exceptions to the automatic enrolment employer duties contained in the Pensions Act 2008³. Where these exceptions apply, the relevant duties (in the 2008 Act) are modified. Thus, the duty to automatically enrol a jobholder or worker is turned into a discretion where a job holder benefits from certain tax protection (Regulation 5D).
- 4.2 These amending regulations extend the tax protection category in Regulation 5D to cover transitionally protected individuals whose pension savings were already over £1m but less than £1.25m at the time the lifetime allowance was reduced from £1.25m to £1m (from 6 April 2016, via the Finance Act 2016).
- 4.3 The existing protections in Regulation 5D do not cover this most recent reduction in the lifetime allowance, and without it those workers who have been granted transitional tax protection under the Finance Act 2016 would not count as an

¹ <http://www.legislation.gov.uk/ukpga/2016/24/contents/enacted>

² http://www.legislation.gov.uk/uksi/2016/311/pdfs/uksi_20160311_en.pdf

³ http://www.legislation.gov.uk/ukpga/2008/30/pdfs/ukpga_20080030_en.pdf

exception for automatic enrolment purposes. This would mean that their employer and they would be obliged to continue making contributions (unless the individual took action to opt-out), and this could result in the worker being subject to penalty tax charges on their accrued pension benefits. Accordingly, the changes made by these amending regulations are necessary.

- 4.4 This is essentially a consequential amendment to automatic enrolment legislation made necessary by a change to HMRC's Pension Tax legislation (contained in the Finance Act 2016). The new (additional) tax protection is being inserted in Regulation 5D of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (SI 2010/772)⁴.

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 Separate but corresponding provision will be made for Northern Ireland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to 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 (AE) into workplace pensions is not always appropriate. It may impose nugatory work on an employer and in some circumstances could cause an individual worker to incur a financial penalty. Section 87A of the Pensions Act 2008 introduces exceptions to the AE duties for employers to take account of these situations: the duty to automatically enrol a jobholder or worker is turned into a discretion where a job holder benefits from certain tax protections (Regulation 5D).
- 7.2 These regulations insert a new provision into the tax protection category in Regulation 5D to cover transitionally protected individuals whose pension savings were already over £1m but less than £1.25m at the time lifetime allowance was reduced, from £1.25m to £1m, from 6 April 2016, through changes made by the Finance Act 2016 (Schedule 4, Part 1, paragraph 1 for: fixed protection; and Schedule 4, Part 2, paragraph 9⁵ for: individual protection).
- 7.3 This measure is essentially a consequential amendment as a result of the change to HMRC's Pensions' Tax legislation (including to the lifetime allowance) that required a new (additional) tax protection to be inserted into automatic enrolment legislation (through Regulation 5D(1)(d) of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (SI 2015/501)).
- 7.4 The Finance Act 2016, which introduced the changes to pensions' tax protection, did not receive Royal Assent until September 2016. DWP could not introduce regulations until the primary legislation was in place.

⁴ <http://www.legislation.gov.uk/uksi/2010/772/contents/made>

⁵ <http://www.legislation.gov.uk/ukpga/2016/24/schedule/4/enacted>

Consolidation

- 7.5 Informal consolidated text of instruments is available to the public free of charge via the National Archive website legislation.gov.uk.

8. Consultation outcome

- 8.1 The Department for Work and Pensions carried out a public consultation on a package of amendments to automatic enrolment legislation which included discussion of these measures. The consultation ran for 3 weeks from 26 January 2016 until 16 February 2016.
- 8.2 We received 26 formal written responses to the consultation from employer organisations, pension providers, lawyers and actuaries.
- 8.3 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 at www.gov.uk/government/uploads/system/uploads/attachment_data/file/506593/government-response-auto-enrolment-technical-consultation.pdf

9. Guidance

- 9.1 The Pensions Regulator produces detailed guidance on all aspects of automatic enrolment. The relevant guidance about how to treat individuals with tax protection is found in paragraph 6c of the guidance for employers that can be accessed at www.thepensionsregulator.gov.uk/docs/resource-emp-duties-and-safeguards.pdf

10. Impact

- 10.1 There are no new impacts on business, charities or voluntary bodies. These regulations are aligning AE legislation with changes to the HMRC pensions' taxation framework in order to allow employers to continue to exercise their discretion to choose whether to automatically enrol workers with tax protected status.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses. There are no new burdens on small businesses. Small businesses will have the same discretion in respect of workers with tax protected status as larger businesses.

12. Monitoring & 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 putting minimal burden on employers and maintaining current good pension provision.
- 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.

13. Contact

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