

**EXPLANATORY MEMORANDUM TO**  
**THE AUTOMATIC ENROLMENT (MISCELLANEOUS AMENDMENTS)**  
**REGULATIONS (NORTHERN IRELAND) 2012**

**S.R. 2012 No. 232**

**1. Introduction**

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under sections 107A(15)(b) and 177(2) to (4) of the Pension Schemes (Northern Ireland) Act 1993, Articles 49(8) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995 and sections 2(3), 3(2), (5) and (6), 4(1) to (3) and (5), 5(4), (6) and (8), 6(1)(b) and (2), 7(5), 10, 11, 12, 15(1) and (2), 16(2), 22(4), 23(1)(b) and (c), (3) and (6), 24(1), 29(2) and (4), 30(5), (7A) and (8), 37(3), 38(2) to (4), 40(4), 41(4) and (5), 43(3), 52(3), 54(3), 59, 78 and 113(2) of the Pensions (No. 2) Act (Northern Ireland) 2008 and is subject to the negative resolution procedure.

**2. Purpose**

- 2.1 These Regulations amend the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 (S.R. 2010 No. 122), the Employers' Duties (Implementation) Regulations (Northern Ireland) 2010 (S.R. 2010 No. 123) and the Employers' Duties (Registration and Compliance) Regulations (Northern Ireland) 2010 (S.R. 2010 No. 186) which establish the compliance regime, set out the practical arrangements underpinning automatic enrolment and set out the arrangements to implement the employer duties under the Pensions (No. 2) Act (Northern Ireland) 2008.
- 2.2 In particular, the Regulations –
  - ensure that the compliance regime reflects the introduction of the optional waiting period and is aligned with the new arrangements being put in place;
  - specify the information that must be provided in a notice by an employer to a jobholder informing them that the employer intends to defer automatic enrolment in their case to the end of a waiting period. This includes information regarding the right of the jobholder to opt into workplace pension saving if they wish to do so;
  - provide for the form, timing and content of the notice to be provided to an eligible jobholder where the employer intends to defer the individual's automatic enrolment date until the end of a transitional period;

- insert an information Schedule, to simplify and clarify the automatic enrolment information provisions;
- allow employers greater flexibility in their enrolment date (so that it can be up to 3 months before, or within 3 months beginning with, the third anniversary of the staging date or last re-enrolment date);
- provide for exemptions in relation to the cyclical re-enrolment obligation and to exempt jobholders from automatic re-enrolment where scheme membership is interrupted by reason of an action or omission of the employer but where this was at the request of the jobholder;
- set out the requirements a type of defined benefits scheme must satisfy in relation to the sum of money to be made available at the appropriate age for the provision of benefits to a member;
- provide very large employers with the flexibility to bring their staging date forward to 1st July 2012.

### **3. Background**

- 3.1 The Pensions (No. 2) Act (Northern Ireland) 2008 and corresponding provision in the Westminster Pensions Act 2008 (“the 2008 Acts”) introduce a duty on employers to enrol eligible jobholders into a qualifying workplace pension and to make minimum contributions into it. Under the legislation, employers are able to choose the qualifying workplace pension scheme they adopt to discharge this duty. A qualifying scheme is a scheme which meets specific criteria, for example, an occupational pension scheme (including the National Employment Savings Trust (NEST) established on a UK-wide basis under the Pensions Act 2008) or a workplace personal pension scheme.
- 3.2 An independent review of automatic enrolment into workplace pensions was announced by the Westminster Government in June 2010. The review examined the scope of the automatic enrolment policy. Recommendations were published in October 2010 in the report *Making Automatic Enrolment Work*.
- 3.3 Part 2 of the Pensions Act (Northern Ireland) 2012 and corresponding provision in the Westminster Pensions Act 2011 amend the 2008 Acts to implement recommendations of the Making Automatic Enrolment Work review.

### **4. Consultation**

- 4.1 There is no requirement to consult on these Regulations as they make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain.

## **5. Equality Impact**

5.1 Proposals for the Pensions (No. 2) Act (Northern Ireland) 2008 and the Pensions Act (Northern Ireland) 2012 were subject to full Equality Impact Assessments. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these legislative proposals. As the proposals are of a technical nature and give effect to provisions of the Pensions Act (Northern Ireland) 2012 which was subject to a full Equality Impact Assessment they have little implication for any of the section 75 categories. In light of this, the Department has concluded that the proposals would not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

## **6. Regulatory Impact**

6.1 A Regulatory Impact Assessment was carried out on the proposals for the Pensions (No. 2) Act (Northern Ireland) 2008 and the Pensions Act (Northern Ireland) 2012. The legislation introducing the waiting period notice will affect all employers who choose to use the waiting period of up to 3 months. These costs are estimated in the Regulatory Impact Assessment which is attached as an annex to this Explanatory Memorandum.

## **7. Financial Implications**

7.1 None for the Department.

## **8. Section 24 of the Northern Ireland Act 1998**

8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that these Regulations –

- (a) are not incompatible with any of the Convention rights,
- (b) are not incompatible with Community law,
- (c) do not discriminate against a person or class of person on the ground of religious belief or political opinion, and
- (d) do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

## **9. EU Implications**

9.1 None.

## **10. Parity or Replicatory Measure**

- 10.1 The corresponding Great Britain Regulations are the Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215) which come into force on 1st June 2012. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions provided for in section 87 of the Northern Ireland Act 1998.

## **11. 21 Day Rule**

- 11.1 The Great Britain Regulations were made on 31st January 2012 and came into force on 1st June 2012. These Regulations were made as soon as possible following the Pensions Act (Northern Ireland) 2012 receiving Royal Assent on 1st June 2012. Owing to parity considerations it is vital that the Regulations come into operation as soon as possible, in this instance on 7th June 2012.

## REGULATORY IMPACT ASSESSMENT

### WORKPLACE PENSION REFORM: SUBORDINATE LEGISLATION 2012

The costs and savings outlined in this Regulatory Impact Assessment are calculated on a UK-wide basis.

## Section 1: Overview and summary of costs and benefits

### Background and objectives for reform

- 1.1 The legislative changes set out in the Pensions (No. 2) Act (Northern Ireland) 2008, the package of workplace pension reform regulations in 2010, the Pensions Act (Northern Ireland) 2012 and corresponding Great Britain legislation aims to increase private pension saving in the UK. They form part of a wider pensions reform package designed to ensure that the UK has a pension system that enables individuals to save towards achieving the lifestyle they aspire to in retirement while minimising the burden on employers and industry.
- 1.2 This Regulatory Impact Assessment accompanies the regulations which complete the legislative framework for the onset of the automatic enrolment duties. It includes a number of policies intended both to finalise details of the workplace pension reform policy and to implement the policy recommendations made by the independent *Making Automatic Enrolment Work* review<sup>1</sup> which was commissioned by the Westminster Government. The content and timing of the waiting period notice that employers must provide to the worker if they choose to use a waiting period is discussed in detail.

### The need for reform

- 1.3 The Pensions Commission was set up in 2002 to assess how the pension system was developing over time and to make recommendations on whether the pension system should move beyond a purely voluntary approach.
- 1.4 The Commission concluded that whilst pensioner income levels are on average high by historical standards, the existing system of private funded pensions combined with the current state system will deliver increasingly inadequate and unequal results. The report concluded that millions of people are not saving enough to meet their retirement aspirations, with analysis from

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<sup>1</sup> Johnson P, Yeandle D and Boulding A, 2010, *Making automatic enrolment work – a review for the Department for Work and Pensions*, Parliamentary Command Paper Cm 7954

the Department for Work and Pensions (DWP) putting this figure at around 7 million<sup>2</sup>.

1.5 There are a number of barriers to saving, even where people recognise that it is in their best interests to do so. Specifically:

- A limited understanding, amongst many people, of pensions and the benefits of saving for retirement.
- A tendency to procrastinate. Evidence shows that even where people make commitments to saving, they put off acting on that decision, suggesting hyperbolic (rather than even) discounting of consumption.
- The power of inertia. People often accept the situation as it is, or choose the course of action which requires least decision making. People who start saving usually keep saving, often at the same contribution rate. People who are not saving usually continue not saving. Pension schemes in which the default option is for new employees to join produce much higher pension participation than if an active decision to join has to be registered.
- Difficulty in accessing pension provision. There is an ongoing decline in the provision of pension schemes offered by employers and relatively poor market provision for many on moderate to low incomes and those who work for small firms.

1.6 The Commission explored three solutions to the problem of under saving, namely: a major revitalisation of the voluntary system and/or significant changes to the state system; and/or an increased level of compulsory private pension saving beyond that already implicit within the UK system.

1.7 They concluded that the problems are not solvable through changes to the state system alone, nor by incremental measures to encourage voluntary saving. At the same time, compulsion with respect to private pension saving presents risks of forcing some people to over-save, and does not accommodate diversity in people's preferences for different ways to save (eg through housing assets).

1.8 The Commission recommended a solution whereby the State strongly encourages people to achieve a minimum level of private pension provision, whilst enabling them to save more in a cost efficient way. The suggestion was for a minimum replacement rate<sup>3</sup> of 45% for the median earner. Overall, this means increasing both the number of people saving in pensions and the amounts saved.

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<sup>2</sup> This figure is based on Department for Work and Pensions modelling using data from the English Longitudinal Study of Ageing (ELSA) and was published in the Department for Work and Pensions May 2006 White Paper, 'Security in Retirement: towards a new pension system', which was issued for consultation in Northern Ireland

<sup>3</sup> A replacement rate measures income in retirement as a percentage of income before retirement

1.9 To achieve this objective, the Commission recommended:

- The creation of a National Pension Savings Scheme (NPSS).
- All employees not already covered by a good quality pension scheme should be automatically enrolled into this NPSS.
- Individual contributions should be matched by modest compulsory employer contributions, to ensure that the scheme offers attractive returns, and to level the playing field between employers who do and do not already offer pension provision.

1.10 These recommendations were broadly accepted by the Westminster Government of the time and commanded a widespread political consensus. Since 2006 work has been ongoing to develop the detail of this policy, and to put in place the legislative framework to prepare for implementing the proposals in 2012.

1.11 The policy set out in the Westminster Pensions Act 2008, the Pensions (No. 2) Act (Northern Ireland) 2008 and associated regulations broadly followed the Commission's recommendations, as follows:

- Employers will be required to automatically enrol their eligible jobholders into a pension scheme meeting minimum quality requirements.
- Minimum contributions of 8% on a band of earnings must be paid in respect of the member, of which at least 3% must come from the employer.
- The National Employment Savings Trust (NEST), a trust-based occupational pension scheme is set up on a UK-wide basis with a public service obligation to accept any employer (and qualifying worker) that wishes to use the scheme.

1.12 The Pensions (No. 2) Act (Northern Ireland) 2008 which corresponds to provision in the Pensions Act 2008 gives the Department the power to make regulations to set out the detailed procedures under which employers must automatically enrol eligible jobholders into qualifying workplace pension schemes. Regulations were made in March 2010, with an accompanying Regulatory Impact Assessment. A further Regulatory Impact Assessment accompanied the Pensions Act (Northern Ireland) 2012<sup>4</sup>.

1.13 This Regulatory Impact Assessment builds on the analysis presented in the previous Assessments. The Regulations complete the legislative framework for the onset of the automatic enrolment duties.

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<sup>4</sup> <http://www.dsdni.gov.uk/pensions-bill-regulatory-impact-assessment.pdf>

## Building consensus around the policy

- 1.14 It is considered essential that there is a stable and long lasting system of pension saving in the UK, so that decisions taken by savers today are not undermined by changes to the system tomorrow.
- 1.15 In Autumn 2009 implementation plans for automatic enrolment were reconsidered in light of changing economic circumstances. The key objective was to get the infrastructure in place as quickly as possible, whilst ensuring that the reforms are implemented in an operationally achievable way that is also manageable and sustainable for employers and individuals. The implementation plan was therefore adjusted to allow small employers and new businesses more time before being staged into the duties.
- 1.16 An independent review of automatic enrolment was announced by the Westminster Government in June 2010. The review examined the scope of the automatic enrolment policy. Recommendations expanding on the measures introduced by the Pensions Act 2008 and the Pensions (No. 2) Act (Northern Ireland) 2008 were published in October 2010 in the report *Making Automatic Enrolment Work*. Those recommendations provide the basis for a number of measures in the Pensions Act 2011 and corresponding provision in the Pensions Act (Northern Ireland) 2012. The changes include: introducing a higher earnings trigger for automatic enrolment; introducing an optional waiting period of up to 3 months before the automatic enrolment duty commences; and simplifying the way an employer can certify that their pension scheme meets the necessary quality test.
- 1.17 Work has been ongoing on further additions and amendments to the legislative framework for automatic enrolment which will be introduced through Regulations before the reforms are introduced from 2012. These changes include the subordinate legislation that is required to complete the implementation of the *Making Automatic Enrolment Work* recommendations and a series of technical amendments needed to complete the policy framework.
- 1.18 This Regulatory Impact Assessment accompanies this further set of workplace pension reform regulations relating to the onset of automatic enrolment. It presents the costs and benefits of:
- the introduction of waiting period notice which will enable employers to use the optional waiting period of up to 3 months;
  - exempting dual-status workers from automatic enrolment; and
  - a number of minor or technical changes to enhance existing legislation.

## Section 2: Impact of waiting period notice and timing

### Background

2.1 The *Making Automatic Enrolment Work* review was commissioned in order to test the automatic enrolment policy and to ensure that it struck an appropriate balance between costs and benefits to individuals, employers and government. The outcome of the review included a package of deregulatory measures. These included:

- Increasing the earnings threshold at which an individual is automatically enrolled, aligning with the income tax personal allowance.
- Introducing an optional waiting period of up to 3 months before an employee needs to be automatically enrolled into a workplace pension scheme. Workers can, however, opt in during the waiting period.
- Introducing flexibility to a number of areas of the automatic enrolment process in order to ease the burden on employers.

2.2 The findings of the review were accepted and the Pensions Act 2011 and the Pensions Act (Northern Ireland) 2012 (“the Pensions Acts”) give effect to these recommendations. Total savings for employers in steady state were estimated to be £170 million per year in contributions and £6 million per year in administration costs.

2.3 The Pensions Acts require employers to issue a waiting period notice if they choose to use a waiting period. These Regulations enable the waiting period to work in practice, setting out the content of an information notice about the waiting period, the right to opt in and how quickly an employer must give the waiting period notice to a worker. The total cost to employers of administering the waiting period notice is estimated to be £25 million in the first year and then £4 million per year thereafter. This is part of a wider deregulatory package that includes savings for employers from the introduction of a waiting period of up to 3 months. These savings to employers are potentially up to £280 million<sup>5</sup> in contributions in the first year and £150 million per year in contributions thereafter<sup>6</sup>.

### Stakeholder views

2.4 Employer and industry groups have long been concerned about the value of automatically enrolling short-term workers and so they overwhelmingly welcomed the regulatory easement and flexibility that the introduction of a waiting period brought to the process. They were concerned that the process

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<sup>5</sup> Department for Work and Pensions modelling, based on participation estimates described in Pensions Bill 2011 impacts – Annex B; Workplace Pension Reform. Department for Work and Pensions, January 2011 – Annex G

<sup>6</sup> Pensions Bill 2011 impacts – Annex B: Workplace Pension Reform, Department for Work and Pensions, January 2011

around the worker's right to opt in during the waiting period is as straightforward as possible.

- 2.5 Consumer groups were generally opposed to individuals having a waiting period before being automatically enrolled, but were reassured by the fact that the Regulations will require employers to make jobholders aware of their right to opt in.

## Which options were considered?

- 2.6 In order to balance the easement that the optional waiting period brings to employers against the risk to individuals' savings, workers will have the right to opt in to a qualifying scheme during the waiting period. The waiting period notice will ensure that individuals understand what is happening to them in the waiting period. This will help maintain the broad-based consensus around the reforms which is crucial to achieving a stable and long lasting system of workplace pensions in the UK.
- 2.7 The introduction of an optional waiting period of up to 3 months is deregulatory for employers, enabling them to avoid automatically enrolling short-term workers and avoiding 3 months of contribution costs for jobholders who decide to remain in workplace pension saving.
- 2.8 Three options were considered for the timing of the notice: the first day, the first week and the first month. Providing the notice on the first day the automatic enrolment duties apply to an individual was deemed to be too rigid a requirement and therefore inflexible and burdensome for employers. The first month was considered too lengthy as individuals would need to receive the information quickly in order for opt in within the 3-month waiting period to be a genuine possibility. The period of 1 week was originally chosen to balance these competing priorities.

## Option chosen

- 2.9 It was considered that a period of 1 week would be unworkable for employers for considerable numbers of workers. It could, in fact, prevent the use of the waiting period for individuals with fluctuating earnings. It was also decided that, at the other end of the scale, 1 month is the optimum period. Anything in between, say 2 or 3 weeks, would still be unworkable because of how the automatic enrolment process works.
- 2.10 This change will mean that an employer will be required to provide information about the waiting period, the worker's new automatic enrolment date, and their right to opt in before the end of a period of 1 month starting from the day after the beginning of the waiting period.
- 2.11 There will still be flexibility for employers to provide information relevant to enrolment at the same time as they provide information on the waiting period, but within the waiting period 1-month deadline. This will be particularly helpful to employers if they choose to use a short waiting period.

- 2.12 At the same time, employers will be able to provide 2 separate information pulses if they wish – 1 for waiting periods by the 1-month deadline, and 1 for enrolment within a period of 1 month beginning with the automatic enrolment date (as now).
- 2.13 The processes following the automatic enrolment date remain the same. The processes allowing opt in also remain the same, regardless of whether or not an employer uses a waiting period, ie opt in will take effect from the first day of the following pay reference period after the employer receives an opt-in notice from the jobholder.
- 2.14 For employers who choose not to use a waiting period, there will be no change to the Regulations in respect of the automatic enrolment process, or requirements around provision of opt in information.
- 2.15 The waiting period policy has been designed to keep employer burden to a minimum. Therefore, employers will not be required to check an individual worker's eligibility for automatic enrolment before using a waiting period.
- 2.16 This less burdensome process means that an employer will only be required to provide a generic notice to all workers and not be required to provide tailored information around whether workers are an eligible jobholder, a jobholder with qualifying earnings, a worker without qualifying earnings or an existing member of the employer's pension scheme.
- 2.17 However, an employer may choose to provide individuals with tailored information at the beginning of a waiting period if they wish, segregating them into the above groups and providing only the relevant information required for each.
- 2.18 Whichever process an employer chooses to use, they will be required to check eligibility for automatic enrolment at the end of the waiting period (and will need to monitor eligibility of existing employees going forward).
- 2.19 At the end of the waiting period, where a worker is eligible for automatic enrolment, the employer will automatically enrol them. If, at the end of a waiting period, a worker is not eligible, the employer will not be required to take any further action (apart from tracking jobholder status going forward) until the worker does satisfy the eligibility criteria, or if the individual makes a request to opt in.
- 2.20 Where the employer identifies that an existing worker becomes eligible for automatic enrolment, the employer may use a second waiting period of up to 3 months. Where an employer chooses to do this, a waiting period information notice must be issued to the newly eligible jobholder. However, this notice must be tailored to the individual, even where the employer has issued a generic notice to all workers at the employer's staging date and to new employees from their first day of employment. It must specify, for example, that they are a jobholder with qualifying earnings and will be

automatically enrolled into the employer's scheme on the day after the last day of the waiting period if their circumstances remain the same.

2.21 The information which an employer has to provide both in the generic and tailored notice is prescribed in Regulations. It is intended that employers will be provided with a template for both forms of notice.

## Analytical approach

2.22 In summary, the estimates of cost to firms of the waiting period notice take into account the range of processes that the employer needs to undertake in order to fulfil their obligation. These are categorised into four high level groups: preparing for start up; registration; enrolment; collection and administration. See paragraph 2.25 for further detail of the processes directly relevant to issuing the waiting period notice.

2.23 Each process involves a number of tasks which the firm would need to carry out. The cost of each depends on: the time taken to carry out the task; the person who is carrying out the task and their effective wage per hour (or the cost of outsourcing the task to a specialist organisation) based on wage estimates from the latest Annual Survey of Hours and Earnings; and the number of eligible workers in the firm.

## Costs and benefits

### Impact on employers

2.24 Employers will be able to use an optional waiting period to defer automatic enrolment by up to 3 months. This will allow employers to:

- avoid automatically enrolling short-term workers who leave soon after starting work;
- align the automatic enrolment process with existing processes, such as payroll timings, avoiding part-period calculations of contributions; and
- stagger automatic enrolment of a large workforce (during staging).

2.25 Now that the waiting period has been incorporated into the automatic enrolment process, it is possible to see where the burdens are additional to those already accounted for. The introduction of the waiting period note will bring additional activities to employers during the enrolment stage. Specifically, in relation to the information that the employer must provide to individuals in order to use a waiting period. To meet the minimum requirements the firm would need to:

- customise and distribute the waiting period notice to all workers;

- bear the opportunity cost associated with workers reading the waiting period notice in the workplace; and
- answer queries for around 1 in 10 workers who receive the waiting period notice.

It is assumed that an administrator would undertake the tasks in relation to issuing the waiting period notice.

2.26 Following the agreed methodology, and using the assumptions agreed for other information requirements, the cost of providing an additional notice is estimated to be £25 million in total in the first year. This compares with savings of up to £280 million<sup>7</sup> in contributions for those employees who do not opt out.

2.27 The administrative cost and the contribution saving is higher in the first year as it includes the enrolment of the stock of individuals who are not currently members of a pension scheme<sup>8</sup> as well as the flow of individuals who become newly eligible for automatic enrolment during the first year. The contribution saving takes account of the fact that employer contributions are only one per cent. of qualifying earnings at this time due to phasing<sup>9</sup>. In each year thereafter, it is estimated that the total cost of providing waiting period notices will be around £4 million, compared with savings of up to £150 million in contributions for those employees who do not opt out<sup>10</sup>.

2.28 Table 2.1 shows estimates of the total administrative cost to firms of providing a waiting period notice. The overall costs are larger for large firms and smaller for micro firms. The costs for small firms reflect the estimated number of waiting period notices expected to be issued (see Table 2.3).

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<sup>7</sup> Department for Work and Pensions modelling, based on participation estimates described in Pensions Bill 2011 impacts – Annex B: Workplace Pension Reform, Department for Work and Pensions, January 2011 – Annex G

<sup>8</sup> This assumes that all employers choose to use the full 3 month waiting period for all jobholders who need to be automatically enrolled

<sup>9</sup> The required employer contributions are 1 per cent. of qualifying earnings from 2012, then 2 per cent. from October 2016, reaching 3 per cent from October 2017

<sup>10</sup> Pensions Bill 2011 impacts – Annex B: Workplace Pension Reform, Department for Work and Pensions, January 2011

Table 2.1: Total employer administrative cost of waiting period notice, by firm size (£ million)		
Size of firm	Year 1 cost	Ongoing cost in future years
Large	9	2
Medium	4	1
Small	8	1
Micro	4	1
<b>Total Costs</b>	<b>25</b>	<b>4</b>

Notes:

- Source: DWP modelling based on participation estimates described in the Pensions Act 2011 Impacts – Annex B
- Figures are expressed in 2011/12 earnings terms and may not sum due to rounding.
- Costs in Year 1 include one-off costs and the ongoing cost for that year.
- Costs of re-enrolment and re-registration which only occurs every 3 years have been divided by three.
- Micro firms are defined as those with fewer than 5 employees: small firms have at least 5 employees but less than 50, medium firms have at least 50 but less than 250 employees and large firms have at least 250 employees.

2.29 The average costs are relatively low in comparison to the value of employer contributions saved through opting to use a waiting period of up to 3 months. In the first year the administrative cost of providing a waiting period notice is estimated to be £9 million for large firms, £4 million for medium firms, £8 million for small firms and £4 million for micro firms. This is compared with estimated savings in contributions of £105 million for large firms, £52 million for medium firms, £89 million for small firms and £32 million for micro firms in contributions for those employees who do not opt out<sup>11</sup>.

2.30 In each year thereafter the cost of providing a waiting period notice is £2 million for large firms and £1 million for smaller firms. The corresponding annual contribution savings are £60 million for large firms, £20 million for medium firms, £40 million for small firms and £20 million for micro firms. These are the savings each year in employer contributions for those employees who do not opt out, once contributions are fully phased in<sup>12</sup>.

2.31 Table 2.2 shows the number of firms of each size and an average cost per firm of providing a waiting period notice. This shows that the average costs are greatest for larger firms (£1,000 in the first year and £200 per year after that) and lowest for micro and small firms (£20 and £5 for a small and micro firm respectively in the first year and £4 and £1 respectively in ongoing years).

<sup>11</sup> Department for Work and Pensions modelling, based on participation estimates described in Pensions Bill 2011 impacts – Annex B: Workplace Pension Reform, Department for Work and Pensions, January 2011 – Annex G. The contribution saving takes account of the fact that employer contributions are only one per cent. of qualifying earnings at this time due to phasing

<sup>12</sup> Pensions Bill 2011 impacts – Annex B: Workplace Pension Reform, Department for Work and Pensions, January 2011

Table 2.2: Average administrative cost of waiting period notice, by firm size			
Size of firm	Number of firms	Year 1 cost (£)	Ongoing cost in future years (£)
Large	7,500	1,000	200
Medium	32,000	100	20
Small	422,000	20	4
Micro	768,000	5	1
All firms	1,230,000*	20**	4**

Notes:

- Source: DWP modelling based on participation estimates described in the Pensions Act 2011 Impacts – Annex B.
- Figures are expressed in 2011/12 earnings terms and may not sum due to rounding.
- Figures less than £100 are rounded to the nearest £10 or £1 as appropriate and may not sum due to rounding.
- Micro firms are defined as those with fewer than 5 employees: small firms have at least 5 employees but less than 50, medium firms have at least 50 but less than 250 employees and large firms have at least 250 employees.
- \* Total number of projected firms in 2012.
- \*\*Refers to the average administrative cost.

2.32 Table 2.3 shows the average cost per waiting period notice within firms of each size. The cost of providing a waiting period notice ranges from £1.80 for a large firm to £2.40 for a micro firm. The number of waiting period notices in Year one relates to the automatic enrolment of the stock of eligible jobholders, not currently in a workplace pension as well as the flow in that first year.

Table 2.3: Average administrative cost per employee of waiting period notice, by firm size			
Size of firm	Number of waiting period notices		Cost (£) per waiting period notice
	Year 1	Ongoing years	
Large	4,907,000	863,000	1.80
Medium	2,170,000	382,000	1.80
Small	3,817,000	672,000	2.20
Micro	1,566,000	275,000	2.40
All firms	12,460,000	2,192,000	2.00

Notes:

- Source: DWP modelling based on participation estimates described in the Pensions Act 2011 Impacts – Annex B.
- Figures are expressed in 2011/12 earnings terms and may not sum due to rounding.
- Figures are rounded to the nearest 10 pence as appropriate and may not sum due to rounding.
- Micro firms are defined as those with fewer than 5 employees: small firms have at least 5 employees but less than 50, medium firms have at least 50 but less than 250 employees and large firms have at least 250 employees.

2.33 For a median earner, earning about £25,900, the minimum employer contribution would be more than £50 per month, so the saving to the employer from using the waiting period and providing the waiting period notice is potentially around £149 (in 2011/12 earnings)<sup>13</sup>.

### **Impact on individuals**

2.34 The Regulatory Impact Assessment for the Pensions Act (Northern Ireland) 2012 sets out the impact of the introduction of the waiting period on individuals and the potential impact on savings levels. An optional waiting period of up to 3 months will reduce the number of individuals who are automatically enrolled on any particular day by up to 0.5 million individuals. It will particularly affect young people, who are likely to move jobs relatively frequently.

2.35 Mindful of this potentially significant impact on individuals, it was recommended that this be mitigated by allowing individuals to opt in to pension saving during the waiting period.

2.36 On average, analysis suggests that individuals have 11 different labour market interactions during their lifetime. On that basis, a waiting period of up to 3 months could reduce an individual's accumulated saving by up to 3 years, which is equivalent to a 7% reduction in pension funds<sup>14</sup>.

2.37 For some individuals, such as those who remain on short-term contracts throughout their lives, the impact could be more significant. For individuals with full working histories, around 2% have 20 or more labour market transactions (which is an average job length of 2 years)<sup>15</sup>.

2.38 Receiving the notice and being alerted to their right to opt in early will allow individuals the flexibility to continue saving in a workplace pension scheme without a three month break each time they change job.

### **Summary of costs and benefits**

2.39 Table 2.4 shows the resource costs to employers of providing employees with a notice that they are using a waiting period and informing the individual of their right to opt in. The average annual cost to employers is around £7 million (in 2011/12 terms).

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<sup>13</sup> Based on 3% of earnings over £5,715, Median earnings from the Annual Survey of Hours and Earnings 2010, Office for National Statistics

<sup>14</sup> *Making automatic enrolment work: a review for the Department of Work and Pensions*, 2010, Department for Work and Pensions

<sup>15</sup> *Making automatic enrolment work: a review for the Department of Work and Pensions*, 2010, Department for Work and Pensions

**Table 2.4: Estimated resource cost arising from providing a notice to employees when using a waiting period (£ million)**

	Annual average	One-off cost (present value)	2012	2020	2030	2040	2050
Employer administrative costs	-6.8	0.0	-2.0	-5.1	-6.2	-7.6	-9.2

Notes:

- Figures are expressed in 2011/12 price terms; present values are 2011/12 based.
- Costs are presented as negative numbers, benefits as positive numbers.
- All figures rounded to the nearest £0.1 million.
- Information on the staging of employers is available for the existing scope of automatic enrolment and so these costs do take account of when employers are staged. This is why the cost in 2012 seems low.

### Cost to business for One-in, One-out

2.40 The Net Present Value (NPV) cost to business of employers providing individuals with a waiting period notice is estimated to be £135 million over the 39 years from 2012 to 2050. The Equivalent Annual Net Cost to Business (EANCB) is estimated to be £6 million (2011/12 prices). The Pensions Act (Northern Ireland) 2012 requires employers to use a waiting period notice if choosing to use a waiting period. The benefit of the waiting period to firms was included in the Regulatory Impact Assessment which accompanied the Pensions Act (Northern Ireland) 2012<sup>16</sup> and the EANCB of the pension contributions saved during the waiting period of 3 months is estimated to be a £175 million (saving)<sup>17</sup>.

## Section 3: Dual-Status Workers

### Background

3.1 It is possible that a small number of individuals could have ‘dual-status’ – being both a “qualifying person” and a “jobholder” simultaneously. A jobholder is a person working or ordinarily working in Great Britain or Northern Ireland. A qualifying person is a person whose place of work is sufficiently located in an EEA state other than the UK that they are subject to the social and labour laws of that country.

3.2 This overlap means that while an employer has a duty to automatically enrol the jobholder, there are consequences for any scheme that wanted to accept them as a member, and there is no obligation for the scheme to do so. To

<sup>16</sup> <http://www.dsdni.gov.uk/pensions-bill-regulatory-impact-assessment.pdf>

<sup>17</sup> Based on Department for Work and Pensions modelling, based on participation estimates described in Pensions Bill 2011 impacts – Annex B: Workplace Pension Reform, Department for Work and Pensions, January 2011 – Annex G

offer a pension to a qualifying person, a UK occupational pension scheme must be able to comply with the social and labour law relevant to the field of occupational pensions of the other EEA state. This can be complex and costly, and very few schemes offer cross-border provision.

- 3.3 As a result, when automatic enrolment starts, employers may find it difficult to comply with the new duty in respect of dual-status workers, as there may be no pension scheme willing or able to provide a workplace pension to such workers. Employers could therefore be in breach of the duty without any practical means of remedying the situation.

### **Options Considered**

- 3.4 Doing nothing could leave some employers unable to comply with the automatic enrolment requirements through no fault of their own. The definition of jobholder has been cast deliberately widely to catch the range of working arrangements. The preferred option is to exclude dual-status workers from the automatic enrolment duty. It should be emphasised that this will only exclude dual-status workers and not cross-border workers in general.
- 3.5 The estimated costs and benefits of removing the requirement for employers to enrol dual-status workers into a qualifying pension scheme are set out below. These include the reduced costs for employers in respect of minimum pension contributions and administrative costs, reduced pension contributions from workers, and an estimate of the effect on pension saving dual-status workers.

### **Explanation of Costs and Benefits**

- 3.6 The following tables show the costs and benefits of the option to exclude dual-status workers from the scope of automatic enrolment.
- 3.7 The tables present average annual changes over the 39 years to 2050, followed by the one-off transitional cost and then the ongoing cost in 2012. Changes every ten years are shown, where, in some cases, costs increase with earnings growth. The methodology here for both calculating contribution and administrative costs, and in presenting estimates over a 39 year time period, is consistent with previous Workplace Pension Reform Impact Assessments. Tables present net benefits, where benefits are positive and costs are negative. Costs are in 2011/12 prices terms which means that future price inflation has been taken into account. Present values are discounted to take into account the social discount rate (3.5% falling to 3% after 30 years).

## Summary of Income Transfers

Table 3.1: Estimated transfer costs and benefits from removing dual-status workers from the scope of automatic enrolment (£ million).							
	Annual average	One off cost (present value)	2012	2020	2030	2040	2050
<b>Individuals</b>							
Contribution costs	10	0	9	9	10	10	11
Savings into private pensions	-20	0	-18	-19	-20	-21	-23
<b>Net Benefit</b>	-10	0	-9	-10	-10	-11	-12
<b>Employers</b>							
Contribution costs	7	0	7	7	7	8	8
<b>Government</b>							
Contribution costs (tax relief)	3	0	3	3	3	3	4
<b>Total</b>							
<b>Net benefit</b>	0	0	0	0	0	0	0

### Notes:

- Figures are expressed in 2011/12 price terms; present values are 2011/12 based.
- Costs shown include increases in earnings over and above price inflation.
- All figures rounded to the nearest £1 million.
- Costs are presented as negative numbers, benefits as positive numbers.
- Information on the staging of employers is not currently available for dual-status workers and so it is assumed that the duties apply from 2012.

- a) **Individual contribution costs** are the cash contributions paid by the worker into a workplace pension.
- b) **Individual savings into private pensions** are the sum of contributions paid by the individual, employee, and from the exchequer (in the form of tax relief).
- c) **Employer contribution costs** are the cash contributions made by employers if the employers were to make the minimum contribution of 3% for all eligible jobholders who do not opt out.

- d) Government contribution costs (including tax relief)** reflect the change in contributions costs to the exchequer, in the form of tax relief.

### Approach to analysis

- 3.8 No information is available that specifically assesses the characteristics of dual-status workers; as such, the analysis has been adapted to cover cross-border workers in general. Analysis of cross-border workers has been produced using a combination of survey data from the Labour Force Survey, and research evidence that looks specifically at cross-border commuting between EU countries. None of these sources capture ex-patriate workers, but they do capture peripatetic, incoming, and non-resident cross-border workers.
- 3.9 The European Employment Services (EURES) Cross Border Partnership published a detailed study – Measuring Mobility in a Changing Island<sup>18</sup> – in 2010. The study brought together evidence from the UK and Republic of Ireland censuses, government statistics, and survey evidence, to estimate the number of frontier workers<sup>19</sup> at 23,481. This figure is based on an extrapolation of a survey of organisations collected around the Londonderry/Donagall border. Of these frontier workers, 15,301 commute from the Republic of Ireland to Northern Ireland, whilst 8,180 commute from Northern Ireland to the Republic of Ireland.
- 3.10 Further academic research from the European Commission<sup>20</sup> (2009) indicates that there are 17,000 cross-border workers commuting out of the UK, and 12,500 workers commuting in. This suggests that the net level of cross-border work in the UK is close to zero; that there are as many workers commuting out of the UK as commuting in (particularly when compared to other EU countries).<sup>21</sup> This allows us to estimate the volume of cross-border workers coming into the UK, based on the volume of cross-border workers heading out of the UK. However, the narrow definition of cross-border workers used here means that we cannot use these estimates directly. Therefore, this research gives the indication that the volume of cross-border work in either direction in the UK is relatively even, but other data sources should be used in estimating the impact of this policy option.
- 3.11 The findings of this study have been used to infer the order of magnitude of cross-border work; it is likely that the number of cross-border workers ordinarily working in the UK is in the tens of thousands, given that the UK-Republic of Ireland border is likely to see cross-border commuting relatively frequently. Evidence from the above European Commission report supports this, as it suggests that nearly all cross-border employment occurs between countries that share a land-border; because of this, we would expect that

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<sup>18</sup> <http://www.crossborder.ie/pubs/eures-05-08-2010.doc>

<sup>19</sup> Here, frontier workers were defined as those who commute to work across the Northern Ireland/Republic of Ireland border, and whose workplace is based within 30km of this border. Definitions of frontier and cross-border workers tend to differ across studies.

<sup>20</sup> [www.ec.europa.eu/social/BlobServlet?docId=3459&langId=en](http://www.ec.europa.eu/social/BlobServlet?docId=3459&langId=en)

<sup>21</sup> This study uses a narrow definition of cross-border commuting: in order to be a cross-border worker, the worker must return to the usual country of residence at least once a week.

cross-border commuting between the UK and Republic of Ireland constitute the largest volume of UK cross-border work.

3.12 The UK Labour Force Survey asks UK-residents of working age whether their region of work is normally outside the UK. Using this methodology, it is estimated that the number of UK-residents who regularly work outside the UK at 45,000.<sup>22</sup> This has been used as a proxy to indicate the level of non -UK residents who ordinarily work in the UK. The evidence from the above European Commission report suggests that the cross-border traffic coming in and out of the UK is roughly the same. Therefore, we have interpreted the results from the Labour Force survey as also being representative of the volumes and characteristics of cross-border workers coming into the UK. Key estimates of the current number of cross-border workers are displayed in Table 3.2. We have assumed that the level of cross-border work does not change over time; we have little longitudinal evidence with which to project a whether the level of cross-border employment would increase or decrease.

3.13 Median earnings among cross-border workers are much higher than the rest of the population, according to the Labour Force Survey. Cross-border workers have median earnings of £42,000, compared to £23,000 for the rest of the population. This suggests that this group of workers are already highly likely to be saving in a pension scheme. Analysis of the Annual Survey of Hours and Earnings indicates that around 79% of those earning within £1,000 of £42,000 are currently enrolled in an occupational pension. Therefore, the proportion of individuals in this group that would have been automatically enrolled is small.

**Table 3.2: Estimated number of dual-status workers, number eligible for auto-enrolment, and median earnings (Labour Force Survey, Q1-Q4 2010)**

Number of cross border workers <sup>23</sup>	Of which dual-status, eligible <sup>24</sup> , and not saving in a pension	Estimated number newly saving or saving more following auto-enrolment	Median earnings
45,000	9,000	7,000	£42,000

<sup>22</sup> This figure is based on a 4-quarter average, from Q1 2010 to Q4 2010. Cross-border work appears to be relatively infrequent, as such, the sample size across the four quarters is 61.

<sup>23</sup> Excluding expatriates.

<sup>24</sup> Of qualifying age (22 to state pension age) and earnings (£7,475 in 2010/11 terms).

## Impact on employers

### Contribution costs and benefits to employers

3.14 The final volume of dual-status workers who remain auto-enrolled in a pension scheme is calculated as a product of the total number of dual-status workers, the proportion who are not currently saving in a pension scheme (21%), and the proportion that remain after opt out is considered. We have assumed that opt out rates are the same among dual-status workers as they are among the rest of the eligible population, where we estimate that around a third of workers will opt out after auto-enrolment.

3.15 From this, it is estimated that the contributions cost to employers of auto-enrolling the additional 7,000 dual-status workers will be, on average, £7m per year in a steady state (in 2011/12 price terms.) These figures are based on employers contributing at the minimum contribution level of 3% of salary, which is assumed to be £42,000. As enrolment of dual-status workers will no longer be required, this will lead to a saving to employers in contribution costs. The evolution of this cost between 2012 and 2050 is shown in Table 3.3.

**Table 3.3: Estimated contribution costs to employers of removing the requirement to enrol dual-status workers at specific points in time (£ million).**

	<b>Annual average</b>	<b>One off cost (present value)</b>	<b>2012</b>	<b>2020</b>	<b>2030</b>	<b>2040</b>	<b>2050</b>
<b>Employer contribution cost</b>	7	0	7	7	7	8	8

Notes:

- Figures are expressed in 2011/12 price terms; present values are 2011/12 based.
- Costs shown include increases in earnings over and above price inflation.
- All figures rounded to the nearest £1 million.
- Costs are presented as negative numbers, benefits as positive numbers.
- Information on the staging of employers is not currently available for dual-status workers and so it is assumed that the duties apply from 2012.

3.16 Contribution costs are transfers from the employer to the individual. If dual-status workers are no longer auto-enrolled, whilst the employer would receive a benefit in reduced contribution costs, this would cost the worker in reduced pension contributions, and the net effect would be zero.

### Administrative costs and benefits to employers

3.17 Whilst there is little evidence on the administrative cost of auto-enrolling dual-status workers, there are estimates of the administrative costs of auto-enrolment to employers in general. Evidence suggests that, on average, the administrative cost of auto-enrolment is £40 per enrolment in year one, and

£10 for each subsequent year. Identifying exempted workers may incur a small admin burden on employers, although this additional burden would be close to zero. The administrative cost to employers for enrolling dual-status workers is shown in Table 3.4.

<b>Table 3.4: Estimated administrative costs and benefits to employers of removing the requirement to enrol dual-status workers at specific points in time (£ million).</b>							
	<b>Annual average</b>	<b>One off cost (present value)</b>	<b>2012</b>	<b>2020</b>	<b>2030</b>	<b>2040</b>	<b>2050</b>
<b>Employer admin cost</b>	0.1m	0.3m	0.1m	0.1m	0.1m	0.1m	0.1m

Notes:

- Figures are expressed in 2011/12 price terms; present values are 2011/12 based.
- Costs shown include increases in earnings over and above price inflation.
- All figures rounded to the nearest £0.1 million.
- Costs are presented as negative numbers, benefits as positive numbers.
- Information on the staging of employers is not currently available for dual-status workers and so it is assumed that the duties apply from 2012.

## **Impacts on Individuals**

3.18 Exempted workers will still have the opportunity to save in a pension scheme, and can either opt into their employer's workplace pension scheme, or contribute to a personal pension. However, there are likely to be a significant number of dual-status workers no longer saving. These workers will no longer contribute to a pension scheme, and so their own contribution costs are removed. However, they will no longer receive a contribution from their employer, or from the Government in the form of tax relief.

3.19 The costs and benefits to individuals of excluding dual-status workers from auto-enrolment to individuals are shown in Table 3.5. The assumptions used here are similar to those used to calculate the cost to employers: average salary is £42,000, but employee contributes 4% of salary, and receives an additional 1% in the form of tax relief.

**Table 3.5: Estimated costs and benefits to employees of removing the requirement to enrol dual-status workers at specific points in time (£ million).**

	<b>Annual average</b>	<b>One off cost (present value)</b>	<b>2012</b>	<b>2020</b>	<b>2030</b>	<b>2040</b>	<b>2050</b>
<b>Employee contribution cost</b>	10	0	9	9	10	10	11
<b>Savings into private pensions</b>	-20	0	-18	-19	-20	-21	-23
<b>Net benefit</b>	-10	0	-9	-10	-10	-11	-12

Notes:

- Figures are expressed in 2011/12 price terms; present values are 2011/12 based.
- Costs shown include increases in earnings over and above price inflation.
- All figures rounded to the nearest £1 million.
- Costs are presented as negative numbers, benefits as positive numbers.
- Information on the staging of employers is not currently available for dual-status workers and so it is assumed that the duties apply from 2012.

3.20 There is little information on working patterns and lifetime histories of dual-status workers. Therefore, it is not possible to identify whether individuals are likely to have spells as cross-border workers throughout their working lifetimes, or whether dual-status work is characterised by short spells in employment. Below, we present examples for illustrative purposes: if dual-status workers frequently spend their working lifetimes as dual-status workers, the cumulative effect of lost employer contributions would be greater.

3.21 A 30 year-old worker, earning £42,000 per year who does not receive the minimum employer contribution for one year, but continued to invest 4% of salary into a personal pension scheme, would lose 70 pence per week in his or her final private pension income. If this individual continued to work for a European employer for five years, the lost employer contributions would lead to a reduction of £4.10 per week in his or her final private pension income.<sup>25</sup>

3.22 If this same 30 year-old worker chose not to save at all for one year, he or she would lose £1.90 per week in his or her final private pension income. Should this worker continue to no longer contribute to a pension for five years, the lost income would result in £10.90 less private pension income per week.

## Impact on the Exchequer

3.23 Individuals who contribute to a pension receive an additional contribution from the state in the form of tax relief. Tax relief is only paid on the contributions

<sup>25</sup> This example, and the example in paragraph 22, are obtained through DWP modelling of individual pension outcomes. They assume a salary of £42,000 per year, and assume a level of fund growth of 6%, and a 0.5% annual management charge. Different fund structures, charge levels, and annuities will mean that individual outcomes will vary greatly, and so the examples will vary greatly.

from the individual, and not the employer. The option to exclude dual-status workers from automatic enrolment will affect government expenditure on tax relief, as the volume of individuals saving will be reduced. The benefits to the exchequer of excluding dual-status workers from automatic enrolment are shown in Table 3.6.

<b>Table 3.6: Estimated costs to the exchequer of removing the requirement to enrol dual-status workers at specific points in time (£ million).</b>							
	<b>Annual average</b>	<b>One off cost (present value)</b>	<b>2012</b>	<b>2020</b>	<b>2030</b>	<b>2040</b>	<b>2050</b>
<b>Exchequer costs</b>	3	0	3	3	3	3	4

Notes:

- Figures are expressed in 2011/12 price terms; present values are 2011/12 based.
- Costs shown include increases in earnings over and above price inflation.
- All figures rounded to the nearest £1 million.
- Costs are presented as negative numbers, benefits as positive numbers.
- Information on the staging of employers is not currently available for dual-status workers and so it is assumed that the duties apply from 2012.

### **Impact on Pension Providers**

3.24 The estimated effect of these regulations is to remove up to 7,000 workers from saving with pension providers. As such, these providers will experience decreased revenue through a lack of pension contributions. A dual-status worker earning £42,000 per year, contributing 8% of their salary for 10 years would provide a typical pension provider with £1,100 of revenue over that 10 year period. By removing the requirement to auto-enrol dual-status workers, pension providers will not receive as much revenue from this group of workers.

3.25 These costs should be balanced against the costs of administering a cross-border pension scheme. The cost to a pension provider of administering a cross-border scheme is likely to be much higher than the cost of administering an ordinary pension scheme. If just one member of a scheme is a cross-border employee, then the whole scheme becomes a cross-border scheme, and is obliged to comply with legislation relating to the relevant member state. Administrative costs to the provider increase with each additional employer and country with which a cross-border scheme is arranged. It is likely that the worker must be a fairly high earner before he or she would be profitable for the pension provider to run a pension scheme for.

## Annex: Index of Assumptions

<b>Table 3.7: Index of assumptions used in impact assessment.</b>			
<b>Volumes assumptions</b>		<b>Admin Costs</b>	
Total cross border workers	45,000	One off set-up cost	£40
of which eligible and not currently saving in qualifying pension provision	9,000	Ongoing cost	£10
of which remaining after opt out	7,000		
		<b>Provider assumptions</b>	
<b>Contributions</b>		Annual management charge	0.5%
Employer contribution rate	4%	Fund growth	6%
Individual contribution rate	3%		
Tax relief	1%		
Median salary	£42,000		

3.26 The impact on business and civil society organisations is beneficial. Removing the requirement to automatically enrol dual-status workers is judged to have a net benefit to business of around £7 million a year once the reforms have been fully implemented.

## Section 4: Impacts of other legislative changes

### Background

- 4.1 This section summarises a number of minor changes. These are designed to enhance existing provision in the Pensions (No. 2) Act (Northern Ireland) 2008 and subsequent regulations and to implement the recommendations made by the *Making Automatic Enrolment Work* review.
- 4.2 While there is some benefit to employers, the financial impacts are negligible so they are not monetised in the Regulatory Impact Assessment. Therefore, the impacts of these proposed legislative changes summarised here are presented for completeness only.
- 4.3 The changes are grouped into three areas: easements which will deliver greater flexibility for employers, non-technical and technical amendments.

## Easements which bring greater flexibility

### **Certification**

- 4.4 A change in order to make regulations that will introduce a self-certification process which will enable employers to calculate their contributions on their own definition of pensionable pay provided that it starts from £1. The intention is that employers using certification will be able to increase gradually their contributions over the implementation period.
- 4.5 This will further benefit employers with good existing provision who are keen to retain their existing schemes. They will not have to make expensive system changes or unnecessarily overhaul their pension arrangements in order to implement automatic enrolment.
- 4.6 Overall, individuals should benefit from the change as it makes it easier for employers to continue to provide existing, often high quality, pension provision. There is a slight risk that some individuals could receive less than the minimum legislated for in the Pensions (No. 2) Act (Northern Ireland) 2008 but this is strongly mitigated by broadly linking the certification test to the minimum level of contributions required for individuals by the legislation and requiring the Department to periodically review the strength of the test.

### **Provision to allow large employers to enrol before existing staging dates**

- 4.7 The Employers' Duties (Implementation) Regulations (Northern Ireland) 2010 ("the Implementation Regulations") set out when the workplace pension reform duties will begin for each employer. This is a date between 1 October 2012 and 1 September 2016 (the staging period) and starts with the largest employers. The staging date is based on the pay as you earn (PAYE) scheme size for employers with 50 or more individuals in their PAYE scheme and PAYE scheme reference number for employers with fewer than 50. The Implementation Regulations allow an employer to bring forward their staging date within the staging period if certain conditions are met.
- 4.8 Employers in the first tranche (1 October 2012) currently have no flexibility to bring forward their staging date and employers in the second tranche (1 November 2012) can only bring forward their staging date by 1 month. A minor amendment to the Implementation Regulations will allow employers in the first and second tranches to move their staging date forward as early as 1 July 2012. This would provide a statutory base to deduct pension contributions from wages and provide information to pension schemes on workers.
- 4.9 This will affect only the largest employers (with 50,000 or more individuals in their PAYE scheme). It provides the largest employers with a choice and will increase the flexibility they have around their staging date. It could bring approximately 450,000 workers into pension saving early, although the proportion of these large employers which would choose to enrol early is not known.

## **Allowing employers increased flexibility around the re-enrolment date**

- 4.10 The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 allowed employers the discretion to choose a re-enrolment date within a period of 1 month beginning with the third anniversary of the staging date (or previous re-enrolment date).
- 4.11 Those Regulations are amended to allow employers to choose a re-enrolment date to suit their business up to 3 months either side of the third anniversary of their staging date (or previous re-enrolment date).

## **Aligning the due date of the electronic payment of pension contributions with the due date of tax payments to Her Majesty's Revenue and Customs (HMRC) on the 22nd of each month**

- 4.12 Amendments will be made to create a new due date for electronic payment of pension contributions to mirror the HMRC "due date" of the 22nd of the month. Non-electronic payments will still need to be made to the scheme by the 19th day of the month, continuing to mirror HMRC rules for non-electronic payments.
- 4.13 The *Making Automatic Enrolment Work* review recommended that automatic enrolment processes should align with existing tax and national insurance contributions processes where practicable to streamline employer processes.

## **Aligning the information provisions**

- 4.14 It is proposed to rationalise the current information provisions to minimise employer burdens and remove disparities, whilst ensuring that the workers get relevant information. Some provisions from the tailored information will be removed, the generic information will include the requirement for a signature on the joining/opt in notices and the signposting and continuity provisions on both sets of information will be aligned.

## **Non-technical amendments**

- 4.15 The following changes are non-technical amendments which align regulations with planned changes to private pension legislation.

## **Amending pay reference periods for the quality test**

- 4.16 Pay reference periods set a framework for contribution requirements for the quality test for money purchase schemes. To satisfy the qualifying scheme conditions the scheme must require contributions, however calculated, at least equal to a prescribed minimum over a 12-month period. Not everyone will have jobholder status for an entire 12-month period. The Regulations need to be flexible enough to allow schemes to maintain qualifying scheme status and set minimum contribution requirements only for periods when the

employer is liable in respect of the jobholder. An amendment is made so that pay reference periods for the quality test take account of waiting periods.

### **Amending the registration process to take account of waiting periods**

4.17 An amendment brings registration into line with waiting periods. This allows employers to register with the Pensions Regulator within 4 months of the staging date, rather than the 2 months currently specified.

4.18 An amendment allows new employers to register with the Pensions Regulator within 4 months starting from the day on which PAYE income becomes payable in respect of any worker, rather than the 3 months currently specified.

### **Multi-employer PAYE schemes**

4.19 It is proposed to amend the definition of PAYE schemes in the regulations to make it clear that employers within a multi-employer PAYE scheme are subject to the automatic enrolment provisions.

### **Due date for payment of contributions following an unpaid contribution notice**

4.20 This is a minor consequential amendment in order to prescribe a 'due date' for the purposes of unpaid contributions of the 22nd of the month following the month in which worker contributions were deducted or when employer contributions were due. This allows the Pensions Regulator to issue a notice without having to ask the pension scheme when contributions became overdue.

## **Technical amendments**

4.21 The following changes are minor technical amendments which correct oversights or errors in the existing legislation. These amendments are necessary to ensure the legislative framework better meets the policy intent. These have negligible impact.

4.22 These technical amendments are:

- Re-enrolment in cases where scheme membership is interrupted.
- Inducement time limits.
- Timing and content of the employer notice indicating deferral of automatic enrolment for defined benefit and hybrid schemes.
- Allowing employers to use a personal pension scheme as an alternative qualifying scheme where certain cases of deferral for defined benefit and hybrid schemes cease to apply.

- Changes to the pay reference period provisions for the purpose of identifying jobholders eligible for automatic enrolment.
- Change of reference in regulations concerning the term ‘provider’.
- Changes to the pay reference periods for the quality test in cases of opt in and re-enrolment.
- Amendments to regulations on non-UK schemes.
- Effect of accelerated increase in state pension age on the test scheme standard.

## IMPACT TESTS

### Competition

1. The changes discussed in this impact assessment will have a negligible effect on competition.

### Small firms

2. Some of the changes are expected to have larger benefits for smaller employers. These include:
  - Waiting periods which will benefit smaller firms with higher staff turnover more than larger firms.
  - The higher earnings threshold for automatic enrolment which will benefit smaller firms more than larger firms as smaller employers tend to have a higher proportion of relatively low wage workers than larger employers.
  - Flagging NEST to small and micro employers, so that small employers are clear that NEST has been designed to meet their needs.

The total administrative cost of providing a waiting period notice is estimated to be £4 million in the first year for micro firms and £8 million in the first year for small firms. This is compared with estimated contribution savings in the first year of £89 million for small firms and £32 million for micro firms in contributions for those employees who do not opt out<sup>26</sup>. Ongoing costs thereafter of providing the waiting period notice are estimated to be £1million. The value of employer contributions saved each year through operating a waiting period is estimated to be £20 million for micro firms and £40 million for small firms once contributions are fully phased in.

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<sup>26</sup> The contribution saving takes account of the fact that employer contributions are only 1% of qualifying earnings at this time due to phasing

### **Legal aid**

3. There are no implications for legal aid.

### **Sustainable development, carbon assessment, other environmental impact**

4. There are no implications.

### **Health**

5. There are no implications for health.

### **Human rights**

6. There are no implications for human rights.

### **Rural proofing**

7. There are no implications for policy on rural issues.

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed for the Department for Social Development



Anne McCleary  
1 June 2012

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