

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES
(AUTOMATIC ENROLMENT) (AMENDMENT) (NO. 2) REGULATIONS
2012

2012 No. 1477

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

This instrument exempts European employers from automatically enrolling ‘dual-status’ workers who are subject to the social and labour laws of European Economic Area (EEA) states relevant to the field of occupational pension schemes other than the UK.

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

None.

4. Legislative Context

4.1 Article 20 of the Institutions for Occupational Retirement Provision (IORP) Directive 2003/41/EC of the European Parliament is transposed into UK domestic legislation through Part 7 of the Pensions Act 2004 and the Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (SI No. 2005/3381).
(<http://www.legislation.gov.uk/ukxi/2005/3381/contents/made>)

4.2 The Directive aims to allow occupational pension schemes to accept sponsorship from employers located in other EEA states.

4.3 For the purposes of meeting this requirement, UK legislation defines a European employer as a person who employs a ‘qualifying person’ and makes or intends to make contributions to a pension scheme in respect of that individual. A qualifying person is defined as an individual employed under a contract of service and whose place of work under that contract is sufficiently located in an EEA state other than the UK so that the relationship with the employer is subject to the social and labour law relevant to the field of occupational pension schemes of the other EEA state.

4.4 The Pensions Act 2008 introduced a duty on all employers to automatically enrol ‘jobholders’ into a workplace pension scheme. The Act defines a jobholder as an individual aged at least 16 and under 75,

earning more than the lower limit of the qualifying earnings band and “who is working or ordinarily works in Great Britain under the worker’s contract”.

4.5 It is possible that a small number of individuals will have ‘dual-status’ – being both a qualifying person and a jobholder simultaneously. 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 them to do so.

4.6 Section 292A of the Pensions Act 2004 (inserted by section 18 of the Pensions Act 2011) allows regulations to be made exempting European employers from automatically enrolling ‘dual-status’ workers.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

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 These Regulations exempt European employers from automatically enrolling jobholders who are simultaneously qualifying persons - ‘dual-status’ workers.

7.2 The Government wants to ensure that all employers are able to comply with the employers’ duties imposed by the Pensions Act 2008.

7.3 To 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. Further, there is no obligation for them to do so.

7.4 On the other hand, the Pensions Act 2008 requires employers to automatically enrol all jobholders into a workplace pension scheme. Failure to do so could result in employers being in breach of the duties and subject to sanctions by the Pensions Regulator.

7.5 As a result, when automatic enrolment starts, employers may find it difficult to comply with the new duty for 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.

- **Consolidation**

7.6 These Regulations amend secondary legislation. Informal consolidation will be included in due course in the Department's "The Law Relating to Social Security" (the Blue Volumes), available on the internet at no extra cost: <http://www.dwp.gov.uk/advisers/docs/lawvols/blue/vol/> .

8. Consultation outcome

8.1 The Department undertook formal consultation between 20 February and 2 April 2012. The consultation was for less than 12 weeks because there had been continued informal consultation with stakeholders on this issue over a number of months and stakeholders were familiar with the subject matter.

8.2 There were 19 responses to the consultation. They came from a range of organisations including pension providers, adviser firms and representative bodies. A majority of respondents expressed support for the exemption, saying that it would provide more clarity for employers in deciding who should be automatically enrolled.

8.3 There were no objections to the exemption but some respondents wanted the exemption extended. However the regulations extend the exemption as widely as possible under Section 292A of the Pensions Act 2004. It is not possible to exempt any other groups without additional Primary legislation.

8.4 There were no changes made to the Regulations as a result of responses to the consultation.

8.5 The Government's response to the consultation is published at <http://www.dwp.gov.uk/consultations/2012/>

9. Guidance

To assist employers in meeting the employers' duty the Pensions Regulator has published downloadable guidance to enable employers to determine who should be automatically enrolled. The Regulator's guidance is available to the general public on its website <http://www.thepensionsregulator.gov.uk>

10. Impact

10.1 The impact on business and civil society organisations is beneficial. Removing the requirement for European employers 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.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment is attached to this memorandum and will be published alongside it on www.legislation.gov.uk

11. Regulating small business

11.1 These Regulations apply to small businesses. It is expected that the exemptions provided by these Regulations will benefit all employers regardless of their size.

11.2 The consultation on the draft Regulations did not highlight any specific issues about the effect of these Regulations on small businesses.

12. Monitoring & review

No formal post-implementation review is planned, but the operation of these Regulations will be monitored on an ongoing basis by means of feedback from the Pensions Regulator.

13. Contact

Heather Edmonds at the Department for Work and Pensions Tel: 020 7449 7265 or email: Heather.Edmonds@dwp.gsi.gov.uk can answer any queries regarding the instrument.