

EXPLANATORY MEMORANDUM TO
THE EMPLOYERS' DUTIES (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2017

2017 No. 868

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 The purpose of these regulations is to amend The Employers' Duties (Implementation) Regulations 2010¹, so that those regulations work as intended for newly created (PAYE and non-PAYE) employers.

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 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 The Pensions Act 2008² requires employers to automatically enrol and re-enrol workers who satisfy age and earnings criteria into a qualifying workplace pension scheme and make joining arrangements for workers who opt in or apply to join a pension arrangement.
- 4.2 These regulations amend The Employers' Duties (Implementation) Regulations 2010 (the 2010 Regulations) and concern the date on which the duties under the Pensions Act 2008, to automatically enrol a worker into a pension scheme, first apply to an employer outside the automatic enrolment (AE) staging profile. (The AE staging profile is a mechanism prescribed in the 2010 Regulations which gradually brought existing and certain newly created employers into AE between 2012 and 2018).
- 4.3 These regulations will allow The Employers' Duties (Implementation) (Amendment) Regulations 2017³ to work as originally intended (which is explained at paragraph 7). The regulations will reduce burdens on post-staging employers when automatically enrolling workers for the first time and support the Pensions Regulator in its enforcement of the AE duties.

¹ <http://www.legislation.gov.uk/ukxi/2010/4/contents/made>

² http://www.legislation.gov.uk/ukpga/2008/30/pdfs/ukpga_20080030_en.pdf

³ <http://www.legislation.gov.uk/ukxi/2017/347/contents/made>

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 The Employers' Duties (Implementation) (Amendment) Regulations 2017 made changes to the 2010 Regulations with regard to the date the duties under the Pensions Act 2008 (to automatically enrol a worker into a pension scheme) first apply to a post-staging employer.
- 7.2 Following publication of the above regulations, and in the course of ongoing dialogue with stakeholders, a need for further technical changes to the operation of the AE employer duties was identified by the Department, in order that the compliance framework (as set out in the government consultation⁴ on The Employers' Duties (Implementation) (Amendment) Regulations 2017) was given effect in AE legislation. These new regulations therefore make two further amendments to the 2010 Regulations to respectively:
 - i) align the timing of the deferral date with that specified in section 4 of the Pensions Act 2008 (so that for staging and post-staging employers, the period for which automatic enrolment can be deferred is the same); and
 - ii) ensure that employers whose first eligible worker is employed before 1 October 2017, but who first pays PAYE income tax on or after 1 October 2017, are able to defer automatic enrolment.
- 7.3 These regulations also make amendments to The Employers' Duties (Registration and Compliance) Regulations 2010⁵ consequential to the amendments to the Employers' Duties (Implementation) Regulations 2010. These consequential amendments ensure that the changes contained in the 2010 regulations are reflected in all of the relevant legislation governing employer AE duties.
- 7.4 The main amendment is to align the trigger date for the five month window for providing information with the date the employers' duties apply for both post-staging PAYE employers and non-PAYE employers first employing people from 1 October 2017. Much of regulation 2(1) has been amended to achieve this outcome but the trigger date for that five month window has not in effect been changed for non-PAYE new employers first employing a worker between 2 April and 30 September 2017.
- 7.5 The other amendments flow from the amendment described in paragraph 7.4.

⁴ <https://www.gov.uk/government/consultations/automatic-enrolment-technical-changes-2017>

⁵ <http://www.legislation.gov.uk/uksi/2010/5/contents/made>

- 7.6 This instrument will ensure that the AE duties will apply to post-staging employers in the way set out in the government response⁶ to the consultation on the draft of The Employers' Duties (Implementation) (Amendment) Regulations 2017, published on 10 March 2017.

Consolidation

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

8. Consultation

- 8.1 The Department for Work and Pensions did not carry out a public consultation on these regulations as they make minor, technical and consequential changes to AE legislation. These changes ensure that the AE legislation fulfils the policy intention set out in the government response to the public consultation on the AE duties for post-staging employers (see paragraph 7.4 of this memorandum).

9. Guidance

- 9.1 The Pensions Regulator produces detailed guidance on all aspects of automatic enrolment.

10. Impact

- 10.1 These amending regulations will ensure The Employers' Duties (Implementation) (Amendment) Regulations 2017 will work as intended, to apply the AE duties for post-staging (PAYE and non-PAYE) employers, from 1 October 2017.
- 10.2 No Impact Assessment was prepared as no new burdens are imposed by the changes to The Employers' Duties (Implementation) Regulations 2010.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses. However, there are no new burdens on small businesses.

12. Monitoring & review

- 12.1 It is not appropriate to include a review provision for this instrument because the costs of monitoring and review would be disproportionate to the level of impacts from these measures, and we want as much consistency between staging and post-staging employers as possible to ensure stability and equity. However, the AE 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 AE 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

⁶ <https://www.gov.uk/government/consultations/automatic-enrolment-technical-changes-2017>

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.