

## Response to the DWP Auto-Enrolment Processes Regulations

### Introduction

1. **The National Association of Pension Funds (NAPF) is the leading voice of workplace pensions in the UK. We speak for 1,200 pension schemes with some 15 million members and assets of around £800 billion. NAPF members also include over 400 businesses providing essential services to the pensions sector.**
2. The NAPF welcomes the opportunity to respond to the DWP's consultation on the draft Pensions (Automatic Enrolment) Regulations 2009, published on 12 March 2009. In writing this submission we have consulted widely with members and the proposals have been discussed at both our Retirement Policy Council and in our 2012 Regulations Working Group. Discussions have included employers operating all types of trust and contract-based workplace pensions.

### Executive Summary

3. The NAPF supports the 2012 pension reforms and the introduction of auto-enrolment. NAPF members are not unwilling to introduce auto-enrolment, however the proposed processes and timescales set out in the draft regulations are simply unfeasible. As currently drafted these proposals are needlessly inflexible, bureaucratic and costly to both implement and run. For some workplaces and industry sectors they are likely to be impossible to implement.
4. NAPF members have estimated the process set out in the draft regulations would incur an average cost of around £32 for each employee who opts out. For large employers these costs would total £100,000s in the first year. We estimate that changes proposed in this response would allow the cost incurred for each employee who opts out to be reduced by around 50%.
5. These unnecessary requirements will not only cause unnecessary cost, they will undermine the Government's policy intention of maintaining existing good pension provision, preventing levelling down and increasing overall savings levels.
6. But these problems are largely avoidable if the DWP radically alters its proposals to allow much more flexibility for employers to implement auto-

enrolment in a way that suits their processes. The DWP must make the following key changes:

- I. **Information from employers to members:** The 7/14 days deadline for employers to provide information to employees should be 30 days ahead of our proposed overarching deadline for completing the whole auto-enrolment process of 3 months. (If this approach is not adopted, at the very least, the proposed period should be extended to 1 calendar month.)
- II. **Information from employers to schemes:** The DWP should remove the requirement to provide information to schemes within 14 days, and any implied requirement to complete administration procedures within the same period. A simple agreement between the employer and scheme should be an adequate arrangement for meeting the Pension Act's requirement for 'active membership'. Employers and schemes should be set a date for completing the auto-enrolment process but allowed to design their own administration procedures within that.
- III. **End of opt-out period:** The 30 day deadline for the end of the opt-out period should be removed and replaced by a simple requirement to complete all auto-enrolment processes within 3 calendar months.
- IV. **Start of opt-out period:** To greatly reduce unnecessary cost to the employer and confusion to employees, the employee should be able to give notice of opt-out as soon as they have received the prescribed information. The 'opt-out notice period' can start as soon as information is provided and must last as a minimum until 30 days after this information is provide or till 14 days after active membership (whichever is the latest).
- V. **Handling of contributions:** The DWP and tPR must ensure that employers and schemes have flexibility over the handling of contributions during the opt-out period, so they can avoid unnecessary costs. This may well require an easement around the rules on passing contributions to schemes, and consideration of what help schemes will need to change their rules and processes.
- VI. **Postponement period:** The postponement period should be set flexibly to allow 3 full calendar months in all circumstances, rather than the 90 days proposed. The postponement period should allow employers 3 full calendar months, and allow contributions to start from the 1<sup>st</sup> of the calendar month. Therefore the postponement period should allow auto-enrolment to start on the 1<sup>st</sup> day of the 4<sup>th</sup> full month of employment.

- VII. **Postponement contribution criteria:** The DWP should set the postponement contribution criteria at 10% rather than 11%. The minimum employer contribution could be maintained at 6%.
- VIII. **Handling of opt-out forms:** The DWP should give flexibility to employers and schemes to dispense and handle the forms in the way that makes sense to them. (We recognise that the DWP may want to specify that opt-out forms should not be sent out unsolicited or automatically, for instance by being appended to employment contracts or to scheme literature.)
- IX. **Invalid opt-out forms:** The requirement for employers to alert employees within 5 days if their opt-out was invalid is unworkable, unenforceable and must be dropped. Employers should be able to use common sense and the handling of opt-outs and communicating with employees. If the DWP has concerns it should work with industry to produce good practice guidance for employers on how to handle and process opt-out requests.
- X. **Return of contributions:** The deadline for returning contributions to employees after opt-out should be equalised to 2 calendar months for all employees and employers.

7. The following table summarises the proposed different timescales:

Timescale	DWP proposal	Main NAPF proposal
Auto-enrolment date	Day that eligible employee starts work or that postponement period ends	No change
Deadline for completion of auto-enrolment process	Within 44 days (max) of auto-enrolment date	Up to 3 calendar months from auto-enrolment date
Deadline for information to be provided to employee (and for 'active membership' to be achieved)	Within 7 or 14 days of auto-enrolment date	30 days before 3 calendar months completion deadline
Deadline for information to be provided to scheme	Within 7 or 14 days of auto-enrolment date	Ahead of first contributions being passed to scheme
Opt-out period start	Fixed at date of 'active membership'	Flexible: can start as soon as information provided or at latest 30 days before 3 months completion deadline
Opt-out period end	Fixed at 30 days after 'active membership'	Flexible: earliest end is 14 days after 'active membership' or up to 3 calendar months from auto-enrolment date

Opt-out period length	Fixed at 30 days	Flexible: From 30 days to several months (depending on how early information is provided)
Postponement period	Fixed at 90 days	Can last up till end of 3 <sup>rd</sup> full calendar month following start (max 89-122 days depending on start date)
Deadline for return of contributions	Later of 2 pay days or 21 days from opt-out notice	2 calendar months from opt-out notice
Deadline for notifying employee of invalid opt-out	5 days	No deadline

8. **The DWP must act on all of these proposals to prevent unnecessary cost and avoidable levelling down. The lengthening or removal of the 5, 7, 14, 21 and 30 days deadlines for various tasks is absolutely essential as these timescales are unworkable for many employers.**

## General Comments

### Overall impact of proposed regulations

9. The NAPF supports the 2012 pension reforms and the introduction of auto-enrolment. NAPF members are not unwilling to introduce auto-enrolment, however the proposed processes and timescales set out in the draft regulations are simply unfeasible. As currently drafted these proposals are needlessly inflexible, bureaucratic and costly to both implement and run. For some workplaces and industry sectors they are likely to be impossible to implement.
10. We recognise that there are aspects to the proposals which are intended to make the reforms work by encouraging employees to remain opted-in to pension saving. Although expensive to implement we recognise these requirements may have benefits that are worth their high cost. Examples of requirements that fit in this category are:
- Contributions from day 1;
  - Overall time limits to the auto-enrolment process; and
  - Some limits on how employers can distribute opt-out forms.
11. But many of the proposals in the draft regulations go well beyond what is necessary to encourage employees to save. Examples of requirements that

will be difficult or costly to operate, yet will have no impact on saving levels are:

- Restrictions on who can hold forms and when they can be returned;
- The implied requirement for enrolment administration to be complete before opt-out allowed;
- Short time limits on providing information to employees and schemes; and
- Inflexible opt-out periods.

12. NAPF members have estimated the process set out in the draft regulations would incur an average cost of around £32 for each employee who opts out. For large employers these costs would total £100,000s in the first year. We estimate that changes we propose would allow the costs incurred on employees who opt out could be reduced by 50%. The details of how these costs were estimated are in the appendix.

13. These unnecessary requirements will not only cause unnecessary cost, they will undermine the Government's policy intention of maintaining existing good pension provision, preventing levelling down and increasing overall savings levels. Employers and schemes believe the regulations could start a 4 stage process towards levelling down.

I. The draft regulations will needlessly interfere in the established administration of schemes forcing them to adopt inefficient and burdensome processes due to the inflexibility of the proposals. **Employers and schemes have told the NAPF they will have to make complex changes to their established procedures, and will be forced to complete unnecessary enrolment administration for employees that have no intention of saving.**

II. As a result, employers and schemes will incur unnecessary costs, particularly regarding the administration of pensions for people who choose to opt out. These costs will have to be born by employers and scheme members, and will fall most heavily on workplaces with temporary or low paid workers. **NAPF members have estimated that the costs of system change for employers operating occupational schemes will be £50,000 to £100,000, with ongoing costs of around £25-£50 for each employee who has to be enrolled and then refunded (£32 average cost).**

III. To avoid the high costs of enrolling employees who opt out, many employers will feel compelled to create two-tier access to pensions, with some categories of employees (those thought more likely to opt-out) enrolled into personal accounts rather than their existing qualifying scheme. This will help them avoid administration costs. **Employers who**

**would otherwise be keen to keep their schemes open, have informed the NAPF they are more actively considering two-tier options as a result of the proposals.**

- IV. Once this two-tier access has been established, the levelling down of contributions to minimum levels for those in the 2<sup>nd</sup> tier is much more likely to occur.
14. So the prescriptive and bureaucratic nature of these regulations is likely to lead directly to levelling down, particularly for employees on lower incomes or short-term contracts. This reduction in access to existing schemes could also result in an even greater challenge for Personal Accounts administration.
15. For some employers and some sectors the regulations go beyond being costly and bureaucratic and instead – due to the nature of the workforce - will simply not be possible to fully implement. However, the changes proposed in this paper could make it feasible for these employers to implement the regulations. Our proposals would also reduce the impact of the regulations, making levelling down less likely by reducing the costs on employers and schemes.
16. The main costs and problems would be avoided if the draft regulations were radically altered to allow much more flexibility for employers to implement auto-enrolment in a way that suits their existing processes. The DWP must act on all of the NAPF proposals to prevent unnecessary cost and avoidable levelling down. But the lengthening or removal of the 5, 7, 14, 21 and 30 days deadlines for various tasks is absolutely essential as these timescales are unworkable for many employers.

## Detailed comments

### Provision of information to employees

17. Schemes and employers have set out a range of reasons why setting 7 and 14 day deadlines for the provision of information to employees is not realistic in many places:
- In smaller companies and sectors with seasonal work it is not always the case that people receive information and sign contracts before they start work. BERR recognise this and set 90 days for contracts to be signed.
  - Payroll and pension systems are very often geared up to collect and send out information on a calendar month basis

- Large companies with dispersed workforces will have great difficulty in guaranteeing information is provided within 7 or 14 days, as the HR function may be distant and have limited direct interaction with staff.
  - As the proposed limit is 7/14 calendar days (rather than working days), it will be particularly impractical to meet the deadline over Easter and Christmas, especially where workplaces close.
  - Some large employers provide information on the pension scheme to new employees through group presentations, so that information can be given by scheme experts. The proposed time limits would make such presentations unfeasible.
18. As most existing payroll and pension systems are set up to work on a calendar month basis, allowing a calendar month for information to be provided would be a better fit with existing administration and processes. However, it would be better if there was a more flexible and less prescriptive approach without specific deadlines for each individual process, such as providing information. An overarching deadline for completing the whole auto-enrolment process would make more sense (see the section on the 30 day opt out below). This would give employers the flexibility to decide how best to deliver auto-enrolment in their own workplace.
19. **The NAPF believes the 7/14 days deadline for providing information should either be removed in favour of an overarching deadline for completing the whole process (see paragraphs 23-25) or be amended to 1 calendar month.**

#### **Providing information to the scheme and setting up 'active membership'**

20. The regulations state that information on qualifying employees must be sent to the scheme and 'active membership' must be achieved within 14 days of auto-enrolment (before the employee has been allowed to opt out). This appears to force employers to implement expensive administration procedures for all employees regardless of whether they opt out, and even in cases where they opt out before contributions have been deducted.
21. However, it is unclear if there is any benefit or purpose to making employers complete this administration within 14 days. The cost of initial enrolment administration is an expensive part of providing pensions. NAPF members have estimated that the cost of entering this information will be around £20 per employee. Information on the employee only needs to be passed to the scheme at the point where contributions are passed on. Employers and schemes will know the best point in the process to set up the employee as an active member on their systems. The DWP should leave it to employers and schemes to decide how to organising their own administrative processes rather than imposing arbitrary deadlines. However, if necessary, the DWP

could set a deadline for information to be provided to the scheme when contributions are passed on or at the end of the opt-out period.

22. We understand that the Pension Act section 3(2) says that the ‘employer must make prescribed arrangements by which the employee becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date’. However, we believe this wording still gives the DWP enough leeway to allow greater flexibility than it is currently proposing. An ‘arrangement’ could simply be an agreement between the employer and the scheme that all eligible employees will automatically become scheme members on a certain date after employment begins. We believe this, together with the requirements on deducting contributions, would meet the requirement for a prescribed arrangement in the Act.
23. **The DWP should remove the requirement to provide information to schemes within 14 days, and any implied requirement to complete administration procedures within the same period. A simple agreement between the employer and scheme should be an adequate arrangement for meeting the Pension Act’s requirement for ‘active membership’. Employers and schemes should be set a date for completing the auto-enrolment process but allowed to design their own administration procedures within that.**

#### **Timing and length of opt out period**

24. Setting 30 days as the opt-out period is overly prescriptive. Some employers want short opt-out periods, whilst others believe they need longer periods to give employees time to get forms back. There is already quite compelling evidence that for some employers longer opt outs would be helpful.
- The Local Government Pension Scheme (LGPS) already operates auto-enrolment with a 3 month opt-out period, and LGPS administering authorities (who are NAPF members) have told NAPF they believe a shorter period is impractical.
  - The experience of many large employers is that any exercise in getting large numbers of employees to engage with a benefit choice and express a preference takes a number of months.
25. An inflexible opt-out period will cause employers the difficulty of having to deal with employees who try to opt out late. This will cause the expense of HR or management time, and of maintaining small pension pots that the employee did not want. Giving employers and schemes more flexibility would allow them to set opt-out periods that balance the different dynamics and costs involved meet their workplaces’ needs. All the DWP needs to do is set minimum standards on opt-out and a maximum period for completing the



auto-enrolment process. The evidence suggests that the most appropriate maximum limit for completing auto-enrolment processes is 3 calendar months.

26. **The 30 days deadline for the opt-out period should be removed and replaced by a simple requirement to complete all auto-enrolment processes within 3 calendar months.**
27. Despite it being inevitable that some employees will know they want to opt out and will find ways of obtaining opt-out forms, the DWP's intention seems to be that the employer cannot process that form until active membership has been achieved, and that forms dated earlier are invalid. Certain groups, such as short-term workers and those with high debts, will know they want to opt out in advance, and stopping them from making that request makes no sense. Invalidating early opt-out requests will cause confusion and bureaucracy and have no benefit, as it will be ineffective at discouraging the very small number of employers who decide to induce employees to opt-out.
28. The restriction on opting-out before 'active membership' is achieved is particularly nonsensical where a postponement period is being operated. One of the main attractions of postponing auto-enrolment is that it should give employers time to ensure employees have thought through the opt-out decision before auto-enrolment begins. Ensuring that most of those who want to opt out make that intention clear before auto-enrolment begins and deductions are made could produce huge potential reductions in cost and bureaucracy. Instead, the draft regulations create a bizarre situation where employers may communicate with the employees during postponement but employees cannot communicate back and tell the employer they want to opt-out. This will be very confusing for the employee, who will not understand why they cannot opt out before they have been enrolled.
29. The Pensions Act section 8(5) sets out that regulations may 'make provision as to the period within which notice may be given'. The Act does not restrict this notice period to after active membership has been achieved, so the regulations should allow for employees to give notice as soon as they receive the prescribed information. Giving notice of opt out is not necessarily the same as opting out, which (if the Act is entirely inflexible on this point) might only happen at the moment of active membership.
30. The regulations should set out that the 'opt-out notice period' can start as soon as information is provided and must last as a minimum until 30 days after this information is provide or till 14 days after active membership (whichever is the latest). Particular schemes might want to set out minimum standards on opt-out notice as part of their conditions to employers who choose to use the scheme, but that would be their choice.

31. **To greatly reduce unnecessary cost to the employer and confusion to employees, the employee should be able to give notice of opt-out as soon as they have received the prescribed information. The 'opt-out notice period' can start as soon as information is provided and must last as a minimum until 30 days after this information is provide or till 14 days after active membership (whichever is the latest).**

#### **Holding contributions during opt-out**

32. There is no easy answer to the challenge of collecting and holding contributions and making refunds that does not potentially cause large cost and bureaucracy. Firstly, there are significant one-off system change costs. Secondly, there are the ongoing costs of running a more complicated system and making refunds. Employers will need to separate new employees' pension contributions from other employees' contributions, hold them separately in cash and then automatically transfer them to other funds when the opt-out is complete.
33. For Personal Accounts these processes can be built into the design, but for existing schemes there is an additional cost of retro-fitting these processes. Employers have estimated these costs are between £50,000 and £100,000. The cost of administering refunds is estimated at around £25 a refund. We believe that allowing flexibility about how these contributions are handled during the opt-out period will allow employers and schemes to contain these costs, and therefore minimise the likelihood of levelling down.
34. Currently employers must pass on contributions to the scheme by the 19<sup>th</sup> of the following month. Some employers would like the option of delaying passing contributions on to the scheme until the opt-out period has finished. If the employer is holding onto contributions for long periods there is a case for them being ring fenced, for instance in an escrow account. However, we see no reason why this flexibility should not be given, and the DWP and tPR should look at how the rules can be updated.
35. Where the scheme needs to change their processes to hold new employees' contributions in cash there are concerns about whether scheme literature and rules need to be changed to allow this to happen. These issues needs to be explored further so that the DWP and tPR can ascertain whether any guidance or easements are required that enable schemes to avoid any unnecessary legal and regulatory costs from making essential changes.
36. **The DWP and tPR must ensure that employers and schemes have flexibility over the handling of contributions during the opt-out period, so they can avoid**

unnecessary costs. This may require an easement around the rules on passing contributions to schemes, and consideration of what help schemes will need to change their rules and processes.

### Rules on postponement

37. The postponement period should be set flexibly to allow 3 full calendar months in all circumstances, rather than the 90 days proposed. In most cases 90 days is not 3 calendar months, so the regulations fail to match the Government's stated intention. Existing schemes processes usually work on a calendar month basis, and are therefore aligned with the start of the month. The postponement period should be set to allow 3 clear calendar months and to allow employers to align with the start of the month. This would mean postponement up to the 1st day of the 4<sup>th</sup> full month of employment (i.e. if you join on 2<sup>nd</sup>-31<sup>st</sup> January, then February, March and April are the full month postponement period – and the employee must join by 1<sup>st</sup> May). The length of time after auto-enrolment which employers have to ensure they pay contributions at the higher level could be extended to match this more flexible postponement period.
38. **The postponement period should be set flexibly to allow 3 full calendar months in all circumstances, rather than the 90 days proposed. The deferment period should allow employers 3 full calendar months, and allow contributions to start from the 1<sup>st</sup> of the calendar month. Therefore the deferment period should allow auto-enrolment to start on the 1<sup>st</sup> day of the 4<sup>th</sup> full month of employment.**
39. We understand how the DWP has arrived at the postponement criteria of 11% contributions made up of 6% employer plus 5% employee contributions. However, this is not a common configuration in the workplace, and we believe it makes sense to set it at 10%, maintaining the minimum 6% employer contribution but reducing the potential employee contributions to 4%. After much deliberation and consultation, the NAPF have set this level as the contribution standard for our Pension Quality Mark as we believe it sets a clear but realistic quality standard above the 8% minimum.
40. **The DWP should set the postponement contribution criteria at 10% rather than 11%. The minimum employer contribution could be maintained at 6%.**

### Handling of opt-out Forms

41. The proposed distinction between the employer and the scheme on opt-out forms is nonsensical in many occupational schemes where the administration

is in house. For small employers with occupational schemes the same person will run the employer's human resources and the scheme's administration. For large employers the scheme administration may be very distant from the vast majority of workplaces. The proposal to stop employers holding opt-out forms is unworkable, and also unnecessary, as the DWP have given tPR adequate powers to stop coercion and should rely on them, rather than making opt-out administration difficult. The proposals on opt-out forms appear to be aimed at curtailing widespread employer abuse, when all the evidence is that the vast majority of employers will try to comply with the rules.

42. We recognised that the DWP may want to discourage forms being sent out unsolicited, but we believe that they should be freely available on websites, work intranets and in hard copy to anyone who requests it. We believe it would be impractical to put limits on who can hold forms and when they can be requested, as employees will be able to obtain forms from the internet anyway.
43. **The DWP may want to specify that opt-out forms should not be sent out unsolicited or automatically, for instance by being appended to employment contracts or to scheme literature. But apart from that they should give flexibility to employers and schemes to dispense and handle the forms in the way that makes sense to them.**

#### **Alerting employees where opt-out is invalid**

44. The proposed rule that employers must alert employees within 5 days if their opt-out request was invalid is overly-prescriptive and completely unrealistic. In many workplaces the employer will find it impossible to guarantee the form has been received by the right person within 5 days let alone that the employee has been contacted. This rule is not necessary if a less bureaucratic more common sense approach to opt-out forms is taken, as invalid opt-out requests will become much rarer.
45. **The requirement for employers to alert employees within 5 days if their opt-out was invalid is unworkable, unenforceable and must be dropped. Employers should be able to use common sense and the handling of opt-outs and communicating with employees. If the DWP has concerns it could work with industry to produce good practice guidance for employers on how to handle and process opt-out requests.**

### Time limits on refunding contributions to employees

46. Some NAPF members have expressed concern about the 21 day time limit on refunding contributions being too short for employers who pay weekly. Due to the way weekly pay cycles work it could leave employers only a few days to process contribution refunds. The alternative deadline of up to 2 pay days after the employee opts out, effectively gives employers a deadline of up to 2 calendar month deadline where pay is monthly. It would make sense to standardise the limit at 2 calendar months for all employees and employers, particularly as many employers operate a range of different payroll periods for different staff.
47. **The deadline for returning contributions to employees after opt-out should be equalised to 2 calendar months for all employees and employers.**

### Appendix – NAPF estimates of costs

#### The costs of auto-enrolment and refunds

- A. NAPF Members, (including employers, schemes and third party administrators) provided estimates of the key costs relating to the draft regulations, particularly the costs relating to members who opt out:
  - Most estimates for enrolling new members (inputting information on new members into the employer/scheme system) were in the £10 - £30 per member bracket. We have therefore taken £20 as our central estimate of enrolment administration.
  - Most estimates for the costs of refunding contributions were in the £15 - £40 per refund bracket. We have therefore taken £25 as our central estimate of the cost of each refund.
  - However, it should be noted we also received estimates of up to £150 a member for enrolling and un-enrolling someone from a contracted-out DB scheme due to the complexity involved.
  - Estimates for the one-off cost of system change were in the £50,000 to £100,000 bracket.
- B. We then estimated how these costs would apply in two scenarios:
  - If the **draft regulations** were implemented without change we assumed that employers would have to spend £20 on enrolment administration for 100% of those who opted out. We also assumed that for 50% of people who opt out the employer would have to spend a further £25 on refunds. This created an average cost per opt-out of £32.
  - If the **NAPF proposals** were implemented, we estimated that only 50% of opt outs would incur the £20 cost as half of employees would give

an opt-out notice before any admin took place. We also thought that enabling earlier opt-out notices would cut the proportion that needed refunds to 25%. These assumptions halved the cost of the average opt out to £16.

- C. Obviously, these figures are just intended to be indicative of the potential level of costs and savings that might be achieved. We also created an illustrative example of how one firm might be affected, based on the characteristics of existing NAPF members.

**Example: A large firm in the hospitality and leisure sector**

Firm A has 50,000 employees spread over 2,000 different sites. About 15,000 of its staff are already in its generous occupational DC scheme, which meets the DWP's postponement criteria. Staff turnover is around 40% a year, with 12,000 new staff recruited every 12 months. Most staff members are paid monthly.

The firm estimate that around 50% of staff will opt-out once auto-enrolment is introduced. If the cost per opt-out is £32 then the total cost will be £760,000 in year 1 and £195,000 each subsequent year. The costs of system change could add another £100,000 to year 1 costs

If the NAPF proposals were adopted then costs could be substantially reduced as many of those who opt out could do so during the deferment period before any admin costs have been accrued. If costs were halved to an average of £16 per opt out then Firm A would save £382,000 in year 1 and almost £100,000 in each subsequent year. It is also likely that existing processes would require less alteration – so the cost of system change could be cut too.

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