

**Completing the Legislative
Framework for Automatic
Enrolment: a response by the
National Association of Pension
Funds**

October 2011

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About the NAPF

The National Association of Pension Funds (NAPF) is the leading voice of workplace pensions in the UK. We speak for 1,200 Defined Benefit (DB) and Defined Contribution (DC) 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.

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Executive Summary

Summary

1. The NAPF is strongly supportive of the automatic enrolment reforms. To make the reforms a success, we believe it is essential that the rules and regulations are as simple and flexible as possible, so that they can be implemented effectively by employers for the benefit of employees.
2. The 'Making Auto-Enrolment Work Review' recommended some helpful changes to the auto-enrolment process, such as introducing waiting periods and simplifying the system of certification, which the NAPF is very supportive of. Overall, we are pleased with how these recommendations have been implemented by the DWP. However, there are a number of proposals in this consultation which could be improved to reflect the way employers and schemes operate in the real world:
 - Waiting periods. We believe a one week deadline for employers to issue the notice is simply unworkable in many cases. In order to guarantee that all types of employers will be able to comply, the deadline should be extended to one month, which will fit with existing payroll and HR department cycles. Our concerns are set out in more detail in answer to Question 3, with example case studies of employers who will not be able to meet the 1 week deadline.
 - Certification. We do not believe the definition of basic pay contained in the draft regulations should include non-pensionable allowances such as shift allowances, as this would force employers to make these allowances pensionable, which was not the intention of certification. The regulations should be improved to make it clear that employers will not have to include these types of allowances in their definitions of pensionable pay.
 - Re-enrolment. Regulation 21 gives employers a 6 month window for re-enrolment. However, for many employers this will not deliver the flexibility necessary to move to their preferred re-enrolment date. Therefore, Regulation 21 should be changed to allow employers to move their re-enrolment date forward or backwards by up to 6 months to give employers the flexibility they need with a 12 month window.
3. These are the three key areas we believe the DWP needs to focus on to really deliver on the objective of making auto-enrolment work, and to help keep the automatic enrolment rules simple and flexible to benefit employers and employees.

Introduction

4. The NAPF is strongly supportive of the 2012 reforms, which are designed to tackle the UK's pensions savings crisis by widening access to workplace pensions through auto-enrolment. Without action a large proportion of today's workers will face poverty in retirement, with only means-tested benefits to support them. As we enter the final stages of the legislative process, our members are now focusing on how automatic enrolment will work for them, so we welcome the opportunity to respond to the formal consultation on 'Completing the Legislative Framework for Automatic Enrolment'.
5. Throughout the policymaking process, the NAPF has worked closely with DWP to try to ensure that automatic enrolment will be implemented as flexibly as possible, with the key aim of ensuring that employers already offering good quality pension schemes can continue to do so. It is essential that the rules and regulations around auto-enrolment are as simple and flexible as possible. The vast majority of employers will do all they can to comply with auto-enrolment, and good employers should not be penalised with untargeted regulatory burdens designed to deal with a small minority of employers who might try to evade their responsibilities.
6. The 'Making Auto-Enrolment Work Review' recommended some helpful changes, which the NAPF had been pressing for. The NAPF is particularly supportive of the introduction of waiting periods and a simpler system of certification. Overall, we are pleased with how these recommendations have been implemented by the DWP. But, there are a number of proposals in this consultation which could be improved to reflect the way employers and schemes operate in the real world:
 - Waiting periods. We believe a one week deadline for employers to issue the notice is simply unworkable for many employers. In order to guarantee that all types of employers will be able to comply, the deadline should be extended to one month, which will fit with existing payroll and HR department cycles. Our concerns are set out in more detail in answer to Question 3, with example case studies of employers who will not be able to meet
 - Certification. Certification has been designed to ensure that employers do not have to change their definitions of pensionable pay in order to comply with the automatic enrolment quality requirements. We do not believe the definition of basic pay contained in the draft regulations should include non-pensionable allowances such as shift allowances, as this would force employers to make these allowances pensionable, which was not the intention of certification. The regulations should be improved to make it clear that employers will not have to include these types of allowances in their definitions of pensionable pay.
 - Re-enrolment. Re-enrolment dates should be flexible enough to allow employers to re-align their re-enrolment dates to best suit their existing processes. Under proposed

Regulation 21, employers are able to move their re-enrolment date forward or backwards by up to 3 months, creating a 6 month window. However, for many employers this 6 month window will not deliver the flexibility necessary to move to their preferred re-enrolment date, which may be in the different half of the year to their original staging date. Neither the DWP nor the 'Making automatic enrolment work review' has set out a justifiable reason for why the window needs to be 6 months rather than 12 months. Therefore, we think Regulation 21 should be changed to allow employers to move their re-enrolment date forward or backwards by up to 6 months to achieve the necessary flexibility. The rules as they stand allow the re-enrolment date to be moved forward or backwards 6 months over 2 re-enrolments. This seems needlessly restrictive and bureaucratic compared to just allowing full flexibility from the first re-enrolment date and risks adding to the administrative burden associated with this reform.

7. We are keen to continue working with the DWP to ensure that the auto-enrolment reforms are introduced in a way that maximises their chances of success and ensures those who are already offering good quality pensions can continue to do so with only limited additional administrative burden. The three key areas listed above are the issues we believe the DWP needs to focus on to really deliver on the objective of making auto-enrolment work, and to help keep the automatic enrolment rules simple and flexible to benefit employers and employees.

Answers to specific questions

Pay reference periods

1. We seek views on whether to abolition of the Person A rule is a sensible approach.

Our members remain concerned about employees with variable earnings and we recognise what the DWP was trying to achieve by introducing the Person A rule. However, the Making Automatic Enrolment Work (MAEW) Review recommendations for the new earnings trigger and a 3-month waiting reduces the likelihood that people with variable earnings will become eligible for auto-enrolment.

Because the earnings trigger is set at the income tax threshold (£7,450 in 2011) but qualifying earnings start at around £5,700, employees who do become eligible for auto-enrolment because of a spike in earnings will pay contributions on a greater proportion of their earnings – making saving for their retirement more worthwhile.

We therefore believe that abolishing the Person A rule is a sensible approach, especially as it will simplify communications with employees.

2. Are there any specific examples of where and how the Person A rule would otherwise be used?

We are not aware of any other examples of where and how the Person A rule would otherwise be used.

Waiting Periods

3. Is a period of one week from the day following the starting day sufficient time for all employers to issue a notice?

As we stated in our response to the informal consultation earlier this year, the deadline for issuing a notice is simply not achievable for many employers. Large employers with scattered workforces will not be able to guarantee that pension information will get to new employees within one week, especially if the location of the workplace is remote or if access to a computer is not available. According to ONS data there are 380,565 workplaces (VAT and/or PAYE local units) that are part of multi-site private sector organisations in England and Wales¹. These shops, restaurants, offices, petrol stations, bank branches and other sites make up 16% of workplaces.

Smaller employers where there is only one HR or payroll person will also struggle during busy periods or when that person is away. The NAPF has consistently argued that one month is the minimum amount of time needed for employers to guarantee that information is received as this fits within most types of payroll and human resource department cycles. The case studies on the following page demonstrate why it is simply not realistic or feasible to demand notices are received within 1 week. These examples are very closely based on three employers who are NAPF members.

We appreciate the Government's desire to alert employees of their right to opt in as soon as possible. But this must be balanced with a desire to encourage compliance amongst employers. This is why we welcome the fact that rules around the quantity and detail of information required in the waiting period notice has been made more flexible. However, we would welcome any further moves to simplify and reduce the information requirements in the different types of waiting period notices, to make them easier for employees to understand and for employers to provide.

4. Will employers use a second waiting period?

Yes, some employers will use a second waiting period, particularly if they have large numbers of employees who were not eligible for auto-enrolment during their initial waiting period following their staging date. We are aware of a number of our members who think a second waiting period would be useful.

¹ ONS Neighbourhood Statistics: Table Local Units by Public/Private Status: Single/Multi Site, 2009

Waiting Period Notices: Case Studies

Company A: A large national retailer

Every year Company A takes on over 6,000 temporary staff in the run up to Christmas. These temporary staff members are recruited across over 500 stores nationwide. Many of these stores have limited HR support on site and the company has considered how it could guarantee that all new members of staff receive a waiting period notice within 1 week of joining. The company aims to ensure all staff members receive full details of their employment arrangements before they start work, so including the waiting period notice within that information would in theory mean that all new recruits receive it within time. However, the reality is that during the busy period running up to Christmas it would be impossible for them to guarantee that across all 500 stores that this always happened, as delays occur. Company A is much more confident about guaranteeing notices are received within 1 month as staff members would have been paid within this period so the company's central HR and payroll departments could have processes to ensure notices are sent out.

Company B: A small employer

Company B is a small employer with less than 40 staff. It has a trust-based scheme with 100% take up. The Finance Director is also the Scheme Secretary and has a face-to-face induction meeting with all new members of staff to discuss the pension scheme and other staff benefits. At this meeting the Director hands over documentation about the scheme. Currently no other member of staff deals with the pension scheme (there is no dedicated human resources officer) and if the Finance Director is away on holiday or sick leave no induction meeting on the pension scheme occurs until he returns. Company B believes that this face-to-face communication is a large part of the schemes success in getting 100% take-up – but they cannot guarantee the induction meeting will always take place in an employee's first week. However, it is very unlikely the Finance Director would be away for a whole month and so Company B believes that a 1 month deadline is much more realistic and appropriate.

Company C: A food/drink outlet chain

Company C has a chain of over 1,500 food/drink outlets. Some of these are tiny and may not even have computer access. Stores alert the central personnel department when a new member of staff starts via computer or fax. Information is then posted out from central office to staff members. Information on pensions would always be sent out centrally to ensure it is correct and up-to-date. Although this information usually gets to employees within a week of them starting work this is not always the case, as it is reliant on the correct details being supplied accurately and promptly by the individual store. Company C strongly believes that a 1 week deadline for waiting period notices is not possible. Even significant and costly changes to its processes could not guarantee it is achieved.

- 5. For employers using a second waiting period, is a period of one week from the day following the starting day sufficient time for these employers to issue a notice?**

Although it might be easier for an employer to issue the notice during the second waiting period as employees would have already been confirmed in employment, we think it is important for the rules on waiting periods to be consistent. We therefore believe the deadline for issuing a notice for the second waiting period should also be one month.

Certification

- 6. Does the proposed approach to relevant earnings give the right balance between a workable definition for employers in using certification and protection of individuals?**

The NAPF has been working closely with the DWP to develop a simple system of certification for employers that use their existing definitions of pensionable pay, which are typically more generous than the DWP's definition of qualifying earnings. We are pleased that the certification regulations contained in this consultation will implement this important measure.

However, we have concerns about whether non-pensionable allowances such as shift allowances should be included in the proposed definition of basic pay contained in the draft regulations. Including these types of allowances will force employers to make such allowances pensionable. Forcing employers to change their definitions of pensionable pay goes against the intention of setting up certification altogether. It must be made clear in the regulations that this is not the Government's intention.

- 7. Does the 12 month period for certification seem reasonable given that it is to support an easement for employers?**

Although a case could be made for allowing longer periods of certification, for the sake of simplicity we are content with a 12 month period being set.