

**Technical changes to automatic enrolment:
Public consultation on draft regulations
and other proposed changes**

The NAPF's response

May 2013

Overview

The Pensions Act 2008, which introduced automatic enrolment, is a complex and prescriptive piece of legislation. It is, therefore, welcome that the Department for Work and Pensions is proposing a series of easements to make automatic enrolment easier to implement.

The NAPF broadly supports simplifications to the automatic enrolment rules where they are a genuine easement. The proposals set out in this consultation appear to be largely sensible and proportionate. In particular, the NAPF supports:

- Easements for employers who contractually enrol;
- Simpler and more flexible definitions of the pay reference period;
- Greater flexibility in the design of opt out notices; and
- Measures to remove the employer duty to automatically enrol certain groups who would not benefit from pension savings, such as individuals with enhanced or fixed tax protection.

The Government should be careful, however, that its proposals do not:

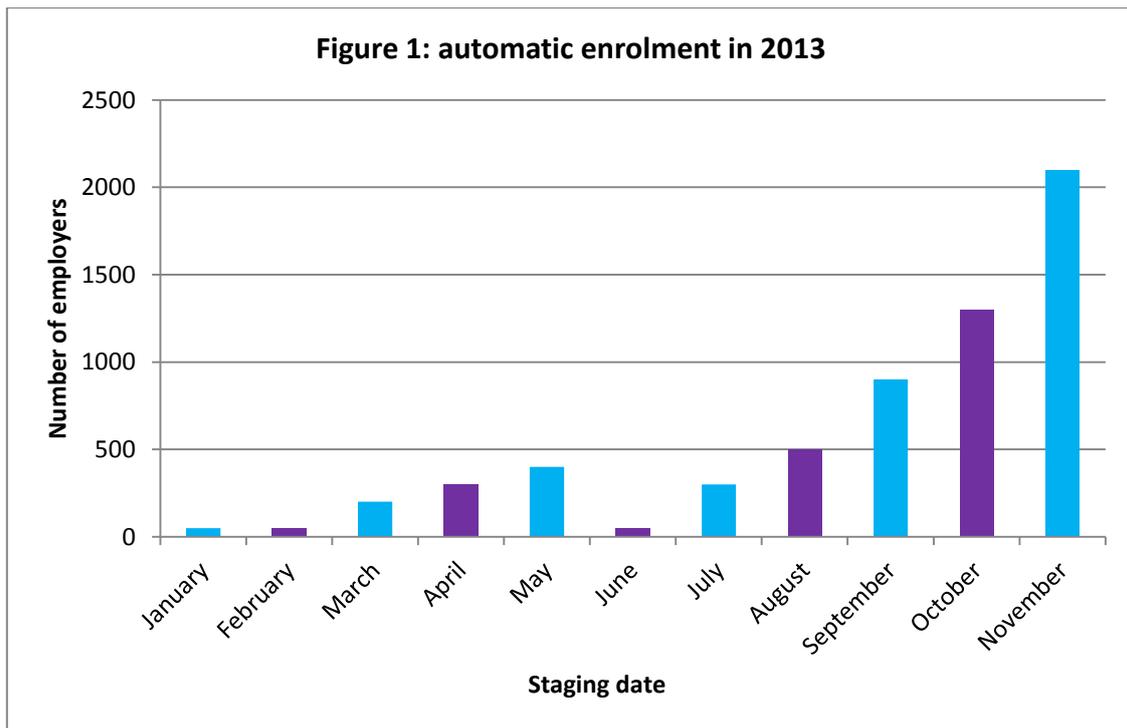
- Impact on employers who have already begun to automatically enroll their workforce. Changes should create additional options for employers and not replace current processes;
- Add to the burden on employers by introducing new monitoring requirements; or,
- Extend the number of groups excluded from automatic enrolment to the extent that it begins to undermine the Government's policy objectives.

About the NAPF

The NAPF is the leading voice of workplace pensions in the UK, speaking for 1,300 pension schemes with some 16 million members and assets of around £900 billion. NAPF members also include over 400 businesses providing essential services to the pensions sector. The NAPF represents both public and private sector schemes, including over 80% of the local authority pension funds.

Introduction

- Automatic enrolment came into effect from October 2012, and will continue to roll out over the next five years. In May 2013, automatic enrolment was extended to employers with between 4,100 and 5,099 employees. This covers an estimated 300 to 400 employers with between 1.5m and 1.75m workers. Over the course of 2013, as many as 6,000 employers could reach their staging date. Figure 1 estimates the numbers of employers reaching their automatic enrolment staging dates over 2013.



- As Figure 1 shows, the numbers of employers reaching their staging date increases sharply towards the end of the year. This is a pattern that is expected to continue in following years as more medium and small employers start to automatically enrol their workers.
- The introduction of automatic enrolment appears to have been notably successful. The NAPF's Workplace Pensions Survey showed that only 15% of those automatically enrolled had opted out of their workplace scheme. Confidence in pensions was also slightly higher than last year, and young people were especially enthusiastic about pension saving. Anecdotal evidence suggests that opt in rates by non-eligible jobholders or during waiting periods have been unexpectedly high.
- While these results are very encouraging, we have yet to reach the hardest part of automatic enrolment. Large employers have greater resources to cope with the burden of complying with their new duties and many already have experience of operating pension schemes. As we move into 2014 and beyond, medium and smaller employers will begin to face the challenges of automatic enrolment. Greater numbers of smaller employers will place pressure on provider and adviser capacity. It is welcome, therefore, that the Department for Work and Pensions (DWP) is considering easements to automatic enrolment rules.

5. The DWP has been very actively engaging with stakeholders over recent months, and the NAPF has been pleased to participate in that process. The proposals in this consultation are broadly welcome where they provide genuine easements. While it would be unhelpful to rewrite automatic enrolment rules at this stage, specific easements which make automatic enrolment easier to implement will help the Government to achieve its policy objectives.
6. The DWP should ensure that any new processes are introduced in addition to current processes and not as replacements for them. This will minimise the impact on employers who have already started to automatically enrol their employees. There are some areas where changes may impact on employers who are already automatically enrolling, such as the change to the length of pay reference periods for the purpose of assessing whether a scheme meets qualifying criteria. This change may impact on schemes that pay contributions in a large, annual payment and currently satisfy the conditions for scheme quality on an annual basis but may not in every pay reference period. We recommend that the shorter pay reference period for this purpose be allowed, but as an additional way of meeting the qualifying scheme requirements and not an alternative to current processes.
7. The NAPF welcomes the decision to take steps towards excluding certain groups from automatic enrolment. There are certain groups, such as those with fixed or enhanced tax protection, for whom automatic enrolment into a pension scheme would be detrimental. There are others, such as those about to retire or change jobs, for whom it is simply unnecessary. Employers should not have a duty to automatically enrol these groups.
8. However, the DWP should be very careful that these changes are merely an exemption from the employer duty, so that employers can avoid automatically enrolling those individuals who would not benefit from joining a pension scheme. It is important that these easements do not create a new burden on employers by introducing a monitoring requirement to identify which of their employees fits into the relevant categories. This would be a substantial new burden on employers and could make automatic enrolment more difficult to implement.
9. The consultation document lists a number of groups who could be excluded from automatic enrolment. The proposed exemptions are mostly sensible, as exempting these employees would generally help the employer with no substantial detriment to the individual. Indeed, in the case of those with fixed or enhanced tax protection, the exemption could help the affected individuals considerably. But the DWP should be careful that it does not extend the number of groups exempted so far that it begins to undermine the policy objectives of automatic enrolment.
10. The NAPF strongly supports the introduction of easements for over-compliance. Easements are especially welcome for employers who contractually enrol into a qualifying scheme. There is a discussion to be had over what form those easements might take.

Questions

Defining pay reference periods for assessing automatic enrolment duties

1. **Does the existing approach to Pay reference periods cause you any difficulties? If it does, can you explain how, if possible with specific examples?**

We are not aware of any difficulties other than the two outlined in the consultation.

2. **Will adding the proposed alternative method of determining a pay reference period to align with tax and NICS periods make assessing jobholder status more straightforward?**

This may simplify the process for employers, though adding an alternative method for determining a pay reference period may also create complications for scheme administrators. An alternative method would be for the definition of pay reference period to be further simplified so that it can start at any time, as long as it corresponds with the employee's pay period.

3. **Should both the old and the new definitions of a pay reference period remain in force? If so for how long?**

The old definition should remain in force, preferably without an end date. Many employers who have already started automatic enrolment have introduced expensive systems to comply with current regulations. It would require a considerable additional investment to redesign systems if the old definition expires.

4. **If we allow a period where both the old and new definitions of a pay reference period are in force, would it be useful to bring the new requirements as soon as possible.**

Yes, it would be sensible to introduce the additional definition as soon as possible.

Defining pay reference periods for assessing scheme quality

5. **Does adopting the revised definition of a payroll reference period for assessing scheme quality remove any possible need for annual reconciliation for automatic enrolment compliance?**

Possibly, though there are some employers that may prefer to pay contributions in one annual lump sum, or in some other manner that does not align with each pay period. A small number of employers who do not self-certify may currently pay contributions in this way.

6. Are there any potential difficulties with the proposed change you wish to highlight?

As currently written, the proposed change replaces rather than supplements the current requirement. The NAPF believes that employers who wish to reconcile on an annual basis should be allowed to continue to do so.

If, as the NAPF recommends, this change is added as an additional option, it may be helpful for it to be backdated so that employers who have already reach their staging date can benefit.

7. Is there any reason not to bring the revised definition of a payroll reference period for assessing scheme quality into force as soon as possible?

There is no reason, as long as it is introduced as an additional and optional measure rather than a replacement for current processes.

Introducing consistency for contribution payment deadlines for all joiners

8. Does extending the deadline for passing over employer contributions make administration easier?

This is a welcome change which will make administration easier.

The DWP should also consider whether it can further simplify these rules. The current proposals simplify processes by standardising contribution payments for all types of joiner, but do not remove the difference in timescales for ongoing members.

9. Are there any risks associated with extending the deadline in this way?

The NAPF is not aware of any substantial risks.

10. Is there any reason not to bring the change to contribution payment deadlines into force as soon as possible?

No.

Jobholders who opted out of pension saving before automatic enrolment

11. Should there be a prescribed period under section 3(4) of the Pensions Act 2008 to turn off the automatic enrolment duty? Please set out the reasons for your view.

This is a welcome easement for employers who contractually enrol.

However, the DWP should be careful that this measure does not create a monitoring requirement for employers. Employers should not have to automatically enrol the relevant individuals, but they should not have to monitor which of their employees have recently opted out of pension saving.

The main source of complexity here is the need for employers to constantly monitor workers' job categories. If a non-eligible jobholder opts out of contractual enrolment, but becomes an eligible jobholder shortly afterwards, they must be automatically enrolled. If this happens in a short space of time, it can be onerous for the employer and confusing for the employee. It would be helpful if the employer does not have to automatically enrol these employees until a prescribed period of time has elapsed.

12. If so, how long should that period be?

A one year period is appropriate.

13. Does the ongoing monitoring requirement limit how useful this would be as an easement?

Yes, the ongoing monitoring requirement could increase the burden on employers.

Clarifying the form and content of the opt out notice

14. Do the proposed changes on the form of opt out notices make it easier to design and use?

The NAPF broadly welcomes this change. Employers should be able to design opt out forms so that they are best suited to their workforce. As long as the core message of the form is substantially the same as that required by legislation, this seems to be a sensible proposal.

The opt out form is not currently suitable for online use, but online availability may be much easier for both employees and employers.

15. Is there any reason not to bring the clarification on the form of opt out notices into force as soon as possible?

This change should be introduced as soon as possible.

The joining window

16. Do you think extending the deadline from one month to six weeks strikes the right balance between the needs of employer and jobholders?

For employers without highly automated systems, this deadline may still be difficult to meet. It would help implementation of automatic enrolment if the joining window were extended further. This easement is likely to be particularly welcome for medium-sized and smaller employers.

17. Would the domino effect on, for example, refunds and the proposed disclosure requirements cause administrative difficulties?

It is unhelpful to review the joining window and not the disclosure requirements. Employers who struggle to enrol an employee in one month may also find it difficult to provide the appropriate information within this timeframe. It may also cause confusion for employees who receive information before they have been automatically enrolled.

Test scheme standard

18. Does the proposed amendment to the definition of appropriate age have the desired effect?

The policy intention of this amendment is sound. However, the draft regulations list projected state pension ages rather than simply referring to the State Pension Age in legislation. If the timetable for increasing the State Pension Age is altered in the future, the DWP will either have to amend these regulations separately or there will be confusing situation with two different timetables. The NAPF recommends that the draft regulations be amended to refer to the State Pension Age in legislation.

The definition of “normal retirement age” in Schedule 1 of the draft Local Government Pension Scheme regulations 2013 refers to Schedule 4 of the Pensions Act 1995. These regulations should also do this.

19. Does the proposed amendment to maximum service limit for lump sum schemes have the desired effect?

This amendment is sensible.

20. Does the proposed amendment to the revaluation requirement for certain lump sum schemes have the desired effect?

This amendment is sensible.

21. Is there any reason not to bring the changes to the test scheme requirements into force as soon as possible?

Provided the regulations are amended as detailed above, these changes can be implemented as soon as possible.

Excluding certain categories of worker from the automatic enrolment duty

22. Are there categories or descriptions of worker for whom automatic enrolment is inappropriate? If yes, can you say who they are and why?

The NAPF agrees that workers with fixed or enhanced tax protection, and any similar protections expected to arise from the Finance Bill, should not be automatically enrolled into a pension scheme. The employer duty to enrol this group should be removed. It is also unnecessary to automatically enrol workers who have given their notice of retirement or resignation.

It is important that these amendments do not result in an increased regulatory burden on employers through a monitoring requirement. The Government must be careful about the wording of these measures to avoid such a requirement. It would be most preferable to remove the duty to automatically enrol an employee if they have told their employer that they fall into a relevant group.

The Government should also consider how this amendment will affect employers who have already begun to automatically enrol their workforce. Many will have invested in new systems to meet their automatic enrolment duties, and a new duty to monitor workers' tax status or other factors will require further investment in these systems. Any changes should not place a monitoring requirement on employers, and employers should be able to continue automatic enrolment with current systems. Instead, employers should merely have an option not to automatically enrol these workers.

Other possible easements for employers providing good pension schemes

Employer duties

23. Would it be a good idea to allow employers contractually enrolling all workers into an automatic enrolment qualifying scheme to be certified or to self-certify that they are meeting the policy objectives and therefore are exempt from the explicit employer duties?

The NAPF supports the introduction of easements for employers who contractually enrol their workforce into a qualifying scheme. A number of the NAPF's members, including the local authority schemes, contractually enrol their employees into pension schemes. A further debate about this issue would be welcome, particularly around which policy objectives are essential and from which duties it is possible to exempt employers.

Rather than requiring employers to automatically enrol all workers for an easement to apply, the easements could instead apply in respect to those workers who have been contractually enrolled. Otherwise, the easements would only apply to employers who contractually enrol all of their workers.

24. What would employers need to demonstrate, beyond contractual enrolment of all workers into an automatic enrolment qualifying scheme in order to be certified or allowed to self-certify?

In addition to the contractual enrolment of all workers into a qualifying scheme, it may also be helpful to ensure that communications and administration meet a standard. The NAPF's Pension Quality Mark sets standards around communications to drive up participation rates.

DB Quality Requirement

25. For the purpose of automatic enrolment, is a quality requirement needed for DB schemes at all?

DB schemes do not inherently achieve better outcomes than DC schemes, although for long-term employees DB schemes can mitigate certain risks. Therefore it would seem odd that there should be no quality requirement at all. An employer who wishes to establish a DB scheme should be subject to minimal quality standards.

However, the NAPF expects few new DB schemes to be created and few existing DB schemes to level down for automatic enrolment. The DWP should concentrate its efforts on ensuring high standards for those in DC schemes rather than DB members.

26. Is there a simpler way of determining whether a DB scheme is "good enough" to be used for automatic enrolments?

A simple test that takes into account the level of risk the employer is taking is appropriate. This test could assess rate of accrual and indexation.