

**PENSIONS**

**THE PENSIONS (AUTOMATIC ENROLMENT) REGULATIONS 2009**

**GOVERNMENT RESPONSE TO THE CONSULTATION**

**September 2009**

**DWP** Department for  
Work and Pensions



# CONTENTS

<b>SECTION 1: INTRODUCTION .....</b>	<b>1</b>
<b>SECTION 2: CONTEXT .....</b>	<b>2</b>
<b>SECTION 3: RESPONSES TO THE CONSULTATION AND GOVERNMENT'S RESPONSE .....</b>	<b>3</b>
<b>SECTION 4: RESPONSES TO THE IMPACT ASSESSMENT.....</b>	<b>33</b>
<b>SECTION 5: SUMMARY OF PROPOSALS FOR CHANGE.....</b>	<b>36</b>
<b>SECTION 6: NEXT STEPS .....</b>	<b>39</b>
<b>ANNEX A: LIST OF RESPONDENTS .....</b>	<b>40</b>

## SECTION 1: INTRODUCTION

1. On 12 March 2009 we published the draft Pensions (Automatic Enrolment) Regulations 2009 for public consultation. This consultation closed on 3 June 2009.
2. The draft Pensions (Automatic Enrolment) Regulations 2009 cover (amongst other things) the practical arrangements by which employers will be required to:
  - automatically enrol workers into a workplace pension scheme;
  - provide a jobholder's personal data to the scheme to achieve active membership;
  - provide enrolment information to the jobholder, including arrangements by which an individual can opt out of pension saving;
  - give enrolment information to existing members of qualifying schemes and individuals affected by postponement.
3. We received 79 formal written responses to this consultation and we are grateful to everyone who replied. We also met with employer representatives, including organisations representing small and medium-sized businesses; employment agencies; trades unions and organisations speaking for individuals; pension providers and insurance companies; pension lawyers; accountants and payroll providers. We are grateful to all those who gave so generously of their time to discuss the issues and share ideas and suggestions. A list of organisations that responded to the consultation is at Annex A.
4. These regulations are subject to the affirmative resolution procedure and will require the approval of both Houses of Parliament before they come into force on the commencement of the employer duty, scheduled from 2012. These regulations may be subject to drafting and technical amendment.
5. The final regulations will be available on the Office of Public Sector information website at: <http://www.opsi.gov.uk/si/si-2010-index>

This document is available on the DWP website at: <http://www.dwp.gov.uk/consultations/2009/>

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## SECTION 2: CONTEXT

1. The Pensions Act 2008 (the Act) requires employers to automatically enrol eligible jobholders into qualifying workplace pension saving, with a minimum employer contribution. Individuals who decide that they do not want to participate in pension saving have the right to opt out. The Act sets out, amongst other things, which jobholders will be eligible for automatic enrolment. It also defines the ongoing requirements on employers in respect of individuals who remain in workplace pension saving and those who opt out. It sets out minimum scheme quality requirements and provides for a compliance regime and implementation of the employer duties.
2. The draft Pensions (Automatic Enrolment) Regulations 2009 (March 2009) set out the prescribed practical arrangements underpinning automatic enrolment, including information flows between employers, pension schemes and jobholders; the arrangements for postponement of automatic enrolment; and the arrangements should a jobholder choose to opt out (including the refund rules).
3. The automatic enrolment, opt out and refund processes are linked and inter-dependent. The processes have to be flexible and sufficiently straightforward for employers, pension schemes and pension providers to be able to operate them and provide protection to jobholders.
4. Stakeholders broadly supported the 2012 reforms and the introduction of automatic enrolment, but expressed strong reservations about the regulations which were seen as too prescriptive and burdensome and the timescales too short.
5. As a result of the consultation we plan to simplify the processes and remove unnecessary prescription, lengthen the timescales for the joining window and align processes for workplace personal pensions (WPPs) and occupational pensions. We are satisfied that we have redesigned the processes to meet stakeholder concerns without compromising our headline policy intentions or undermining protection for individuals. Our aim remains to establish the minimum level of effective regulation without over-specifying process steps which might place unnecessary burdens on employers or the pensions industry.
6. This document reprises our policy intention for each regulation, summarises the responses to the draft regulations and the consultation questions and outlines our proposals for change.

## SECTION 3: RESPONSES TO THE CONSULTATION AND GOVERNMENT'S RESPONSE

*NOTE: References to the draft regulations are references to the draft Pensions (Automatic Enrolment) Regulations 2009 published on 12 March 2009.*

### Draft regulation 2 - Automatic enrolment into an occupational pension scheme

#### Background and policy intent

7. The Act requires employers to automatically enrol eligible jobholders into a qualifying workplace pension scheme with effect from the automatic enrolment date – **Day One**<sup>1</sup> within a set **joining window**. To do this we require employers to:
  - achieve active membership for the jobholder;
  - provide personal data on the jobholder to the scheme;
  - provide enrolment information to tell the jobholder, among other things, which scheme they will be put into and the how much it will cost.
8. All these activities must be completed within the set period - the joining window which starts on Day One (see above paragraph 7)
9. Automatic enrolment is compulsory but on-going membership of a pension is not. The core policy principle of the Act is that an individual cannot opt out of scheme membership until they are a scheme member. The opt out right is a right to opt out of scheme membership not a right to opt out of automatic enrolment.
10. Contributions accrue from Day One and must be calculated with effect from Day One (the automatic enrolment date) and deducted on the first occasion an individual is paid after that date. The jobholder has a right to opt out (with a full refund of contributions) within a defined **opt out period** provided their employer has made arrangements with a scheme to achieve active membership and the jobholder has received the enrolment information.

#### What the draft regulations said

11. Draft regulation 2 sets out the proposed automatic enrolment joining process and the length of the joining window for an employer using a trust based occupational pension scheme.

The employer must:

- enter into arrangements with the trustees or managers of a scheme so that a jobholder becomes an active member within 14 days after the automatic enrolment date (regulation 2(1));
- provide information to the jobholder about automatic enrolment and the cost of pension saving (enrolment information) within 14 days after the automatic enrolment date. (regulation 2(2)).

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<sup>1</sup> *Day One – the automatic enrolment date - for the period of implementation* is most likely to be the date the employer duty goes live for that employer (their staging date). Once implementation is complete Day One would be the date a worker becomes eligible for auto-enrolment - either by starting work for an employer, or the date a worker earns over the qualifying earnings threshold and is eligible for automatic enrolment, or a jobholder's 22<sup>nd</sup> birthday.

12. As drafted the regulations are silent on the order in which these two actions have to be done, although both actions have to be completed before the jobholder can opt out.

### **Stakeholder response to consultation**

13. Respondents felt that a blanket joining window of 14 calendar days was too short and too inflexible to enable all employers and all schemes to guarantee completing the joining process within the deadline. The window does not take into account weekends, non-working days and Bank Holidays; Easter and Christmas shutdowns; annual peak holiday periods; factory shutdowns for peak summer holiday weeks or wakes weeks. Nor, for smaller employers does it allow for the unexpected absence of key administrative staff – the wages clerk for example. The popular call was for a one month joining window, (although some stakeholders wanted a longer period). Stakeholders seemed prepared to accept the trade off that increasing the joining window to a month could increase refunds.
14. Employers asked for confirmation that enrolment information could be issued to the jobholder in advance of the start of the joining window – i.e. before Day One. Some respondents believed that the regulations as drafted prescribed this.

### **Government response and proposals**

15. A short joining window of 14 days was chosen to minimise refunds. It allows a jobholder who is determined not to save in a pension (possibly for very good personal or financial reasons) to opt out as soon as possible and it minimises the number of paydays that pass before they can opt out. Nevertheless, the arrangements have to work in practice to put employers in the best possible position to get their workforce in to (and out of) pension saving as quickly and as simply as possible.
16. We agree the joining window should be longer to cater for non-working days, bank holidays, holiday closures and employers with a geographically diverse organisation or peripatetic workers, but should not be so long as to create an unreasonable amount of time before a jobholder could request to opt out.
17. We propose to extend the joining window to one month from and including the automatic enrolment date. The window is a maximum, a deadline. This would not affect the core policy principle - contributions would still accrue from Day One and be deducted immediately from the first pay packet after Day One to avoid a contributions cliff edge<sup>2</sup>. Those employers who wish to complete the joining process more quickly will still be able to do so to minimise refunds.
18. As the Act and (draft) regulations are written there is nothing to stop employers issuing enrolment information to the jobholder in advance of the start of the joining window – i.e. before Day One.
19. However, jobholder personal data may not be passed to the scheme under the auto-enrolment provisions in advance of Day One. Jobholder personal data may only be passed to the scheme before Day One with the jobholder's active consent<sup>3</sup> in accordance with the Data Protection Act 1998.

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<sup>2</sup> When active membership is achieved (and the definition of what has to happen for “active membership” will vary from scheme to scheme) it is the active membership that is backdated to Day One, not the contributions.

<sup>3</sup> For example, under current streamlined joining arrangements where the consent is covered in the contract of employment.

20. Active membership can not start before Day One and an opt out notice may not be actioned before Day One.

## **Automatic enrolment into an occupational pension scheme**

### **Proposal for change**

We propose that the automatic enrolment joining window will be one month from and including the automatic enrolment date.

## **Draft regulations 3 and 8 - Automatic enrolment into a personal pension and key features information**

### **Background and policy intent**

21. In 2008 the UK Government came to an agreement with the European Commission that automatic enrolment into WPPs<sup>4</sup> would not fall within the scope of the Distance Marketing Directive or the Unfair Commercial Practices Directive, because the jobholder's membership of the scheme would be part of the employment relationship rather than a consumer relationship.
22. This means that employers may use qualifying WPPs (as well as trust based occupational schemes) for automatic enrolment from 2012. A crucial part of that agreement with Europe was that a jobholder would not be put in an unbalanced economic position. This means that jobholders going into a WPP must receive a minimum employer pension contribution, information about the scheme, information about pension saving and the right to opt out just like their "occupational pension" counterparts.
23. Automatic enrolment changes the basic premise of WPPs from a consent base to automatic participation. The Act allows the contract to be deemed on terms and conditions determined in accordance with regulations. As with occupational pensions automatic enrolment is underpinned by the flow of information about the product from the provider to the jobholder and personal information about the jobholder from the employer to the provider.
24. Under our proposals the arrangements the employer must make are similar for WPPs and occupational pensions. For both types of schemes employers must provide the jobholder's personal information to the scheme and give the jobholder the enrolment information.
25. For WPPs the draft regulations prescribed different timescales and an extra process within the overall joining window because WPPs operate on a contractual basis. Currently a consumer is given scheme specific information (known as *key features information*) about a personal pension (including stakeholder) scheme which includes the primary terms and conditions of the contract. The consumer then decides whether to apply for the product so the contract depends on the active consent of the individual. For the purpose of automatic enrolment post 2012, instead of the jobholder having to sign a contract we developed a proposition to deem a contract.

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<sup>4</sup> 'Workplace personal pension' is an umbrella term covering Group Personal Pensions, Stakeholder Pensions and Group Self-Invested Personal Pensions.

26. The proposed extra step in the WPP joining process requires the provider to give the jobholder information about certain terms and conditions of the contract so that something exists to be deemed. As the regulations are drafted the provider must send both the specified terms and conditions and other product information to the jobholder within seven days of the automatic enrolment date. The jobholder would then have seven days to consider this information before the contract is deemed (the consideration period). Therefore for WPPs the original proposition for a joining window of 14 days was split into two periods of seven days. The contract (i.e. membership of the pension) would be deemed after the end of the consideration period rather than, under current legislation, when the individual signs and returns the contract.

### **What the draft regulations said**

27. Using the powers in section 3 of the Act, draft regulations 3 and 4 set out the automatic enrolment process for an employer using a WPP. The employer must:
- ensure a jobholder receives information about the pension product (the key features information) within seven days of the automatic enrolment date. (regulation 3(1))
  - provide information to the jobholder about automatic enrolment (enrolment information) within seven days of the automatic enrolment date. (regulation 3(2))
  - provide the provider with personal information regarding the jobholder within seven days. (regulation 4(2))
28. The contract is deemed seven days later. The jobholder is then considered to be an active member of the scheme. This second seven-day period was intended to align with the Financial Services Authority (FSA) requirement that consumers receive information about the product in good time before the business is carried out. The purpose of this rule is to ensure consumers have had sufficient time to consider the terms and conditions to decide whether to sign the contract (the consideration period).
29. Regulation 8 is designed to ensure the jobholder receives sufficient information about the pension product so that the contract can be deemed and the jobholder can make an informed decision on opt out. It prescribes the content of the key features information about the pension which must include:
- the aim and principal features of the product (including its nature and complexity, charges and the impact of charges, investment strategy for the default fund and investment choices);
  - generic projections to age 65;
  - that investments can fall as well as rise;
  - the age jobholders can realise investments;
  - that the jobholder can choose to contribute more;
  - the services provided by the scheme and where to get full details of the product.

### **Consultation questions**

30. We asked to what extent the terms and conditions proposed for deeming the contract differ from the current joining process and what impact this is likely to have.
31. We asked whether the proposed key features information requirements allow people to make an informed decision about whether to remain within the personal pension contract and the extent to which modifications would need to be made to existing information provision processes.

## Stakeholder response to consultation

32. Pension providers, actuaries and accountants were critical of the timescales and the enrolment processes for WPPs which are shorter, with more steps than for trust-based occupational pension schemes. Their views, in summary, were that:
- seven days is not enough time to provide all the prescribed information;
  - the process is too cumbersome and should be streamlined;
  - the requirements for key features information (regulation 8) duplicate existing FSA rules but are not completely consistent with them;
  - product information goes to the individual anyway under FSA rules and they felt this should suffice.
33. Providers were particularly concerned that the regulations meant they would need to change existing disclosure information. Many respondents also felt these requirements created a disparity between occupational and personal pensions information provision, as the draft Pensions (Automatic Enrolment) Regulations 2009 are silent on scheme-specific information for occupational schemes.

## Government response and proposals

34. We propose to remove the seven-day *consideration* period before the contract can be deemed<sup>5</sup>. This was intended to follow FSA requirements that a pension provider must supply a key features document in good time before carrying on the relevant business so that the individual can decide whether or not to purchase the product. For automatic enrolment there is no choice: the individual automatically becomes a member of the scheme and can then opt out. It is important that consumers receive sufficient information to make an informed decision about pension saving. The opt out period provides a sufficient safeguard for jobholders not wishing to make pension savings. We have worked closely with the FSA to ensure that consumers are appropriately protected in the automatic enrolment process. We and the FSA are satisfied that a consideration period does not need to be legislated for in DWP regulations as it does not necessarily add any protection in the case of automatic enrolment.
35. The removal of this consideration step will simplify the WPP joining process and enable us to align it with the joining process and the joining window for occupational schemes. So we propose to increase the overall joining window for WPPs from 14 days to one month from and including the automatic enrolment date. This would mean that all processes - providing enrolment information to the jobholder and passing personal data on the jobholder to the scheme and ensuring terms and conditions of the contract are supplied to the jobholder - must be completed within a one month time frame from and including Day One whatever type of pension product the employer is using.
36. Regulation 8 lists what constitutes scheme key features information and largely replicates FSA provisions. We propose to remove regulation 8 altogether and rely on the existing FSA key features document. We still propose to require employers to make arrangements with their provider so that information regarding the four terms and conditions (that we propose to include in draft regulations – see para 37) is sent to the jobholder with the key features document. We propose to extend this so the nature and aim of the product includes details of the default fund.

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<sup>5</sup> The contract must still be deemed because WPPs are a financial services product. The process for deeming the contract will be dependent on the provision of information on terms and conditions and the enrolment information so that the contract is deemed and active membership occurs concurrently. It is envisaged that the terms and conditions will be included in existing key features documents and this will avoid any gap between the triggering of cancellation rights under FSA rules and the opt out period, as the policy intent is for these to be synonymous.

37. The contract must still be deemed (as a replacement for active consent) because WPPs are a financial product and it will still be necessary to require providers to send information concerning the key terms and conditions of the contract to the jobholder. We still require that such information will cover:
- the nature and aim of the product, including information about the default fund;
  - the services that will be provided by the pension provider;
  - the value of the contributions paid by the jobholder;
  - the deductions (especially charges).
38. We have had discussions with FSA colleagues to understand the detail around the application, content and timescales of their Conduct of Business Rules on information provision and how these would apply in the automatic enrolment process. We need to ensure that, overall, the objectives of the Act and (draft) regulation 3(3) are fulfilled and that a jobholder has sufficient information to hand to be able to make an informed decision on opt out in accordance with the European Commission agreement. The FSA has a statutory objective to protect consumers of financial services and this includes those consumers automatically enrolled into WPPs. We are working closely with FSA colleagues as they consider whether there are any areas where they may need to make changes to ensure that those automatically enrolled into WPPs are appropriately protected. We plan to align the provision of occupational pension scheme information for individuals who are auto enrolled to a one month automatic enrolment timeline.

#### **Automatic enrolment into a personal pension and key features information**

##### **Proposals for change**

We propose to remove the separate seven day consideration period before the contract can be deemed.

We propose to change the 14 day automatic enrolment joining window to one month from and including the automatic enrolment date in line with the recommended change for trust based occupational pension schemes

We propose to remove duplicate scheme key features information requirements

#### **Draft regulations 4 and 5 - Information provided by the employer to the scheme**

##### **Background and policy intent**

39. The Act does not deem jobholders to be active members of a scheme. Section 3(2) and 3(5) of the Act requires employers to make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme.
40. One of the features of an automatic enrolment scheme is that the jobholder must not be required to provide information to the scheme in order to become (or remain) a member. Membership must be truly automatic.
41. It will be for employers and schemes to communicate in order to achieve active membership for the jobholder. So the provision of sufficient personal information from the employer to enable the scheme to set up an active membership account for the jobholder and to maintain the contribution records is a vital step in this process.

42. We want to set a clear standard requirement of essential personal information that employers must provide to a scheme for the purposes of achieving active membership. Given this legislative obligation the processing of personal data by the employer will be in accordance with paragraph 3 of schedule 2 of the Data Protection Act 1998. We will also make provision so that employers will not need to pass across certain personal information if a scheme indicates that it does not need it to establish active membership. The requirements apply equally to both trust-based occupational schemes and WPPs

### **What the draft regulations said**

43. Regulation 4 prescribes the minimum information that an employer must provide to the scheme to achieve active membership. Regulation 5 lists information that may be given to achieve active membership.
44. Regulation 4 prescribes that an employer must provide:
- Jobholder's name;
  - date of birth;
  - automatic enrolment date;
  - details of the jobholders remuneration;
  - postal or electronic work address;
  - national insurance number;
  - gender.
45. Regulation 5 lists information that the employer may be required to send to the scheme, which are:
- the jobholder's postal or electronic personal address;
  - the jobholder's work telephone number;
  - the value, if any, of contributions payable by the employer and the jobholder.
46. Regulation 4(2) also inserts a subsidiary time limit. It prescribes that for WPPs the employer must provide personal information to the scheme within seven days (rather than 14 days for occupational pensions) of the automatic enrolment date. This was to ensure that the scheme is aware of the jobholder's existence before the jobholder had considered the terms of the contract and before the contract is deemed.

### **Consultation questions**

47. We asked whether there is other essential information that should be included or moved into the "must be provided" category and whether there is further information that should be included or moved to the "may be provided" category.

### **Stakeholder response to consultation**

48. Stakeholders felt that the information requirements as drafted are too prescriptive and do not fit with scheme requirements. Not every scheme will require the information that the employer is obliged to provide so providing it would be nugatory effort for the employer. Other schemes will require information in what they see as an "optional list".
49. Stakeholders expressed significant concerns around the number of prescriptive timelines in the regulations – especially the short seven-day time limit for employers using WPPs to pass a jobholder's personal details to the scheme.

50. There was no controversy about the core items of personal information required to achieve active membership. Information requirements over and above basic personal data are diverse and vary depending on the type of scheme: money purchase, defined benefit or WPP. Some respondents said they require the member's residential address because their schemes use it as proxy for residence to operate tax relief at source (RAS). Pension schemes operating RAS need details of contributions split between employer and jobholder to claim tax relief on the jobholder's contributions. Some schemes require details of the jobholder's remuneration to the extent that it is relevant to the calculation of contributions or benefits under the scheme. Some stakeholders asked for the selected retirement age to be mandatory and schemes providing death benefits require information about marital or civil partnership status.
51. Employers and providers advised against making the jobholder's postal or electronic work address mandatory. If used as a means of identifying the employer the information is available from the employer's business agreement with the scheme and the contributions payment schedules. If it is used as a way to communicate with the jobholder then not all employers allow their workers to take private e-mails on the employer's networks: on factory production lines for example it may not be allowed or even possible.

### **Government response and proposals**

52. In response to stakeholder views we plan to consolidate the information requirements and make them more flexible. We propose that employers will be required to provide core personal information to the scheme to achieve active membership with provision so that employers will not need to pass across certain personal information if the scheme indicates that it does not need it.
53. We also propose to remove the shorter seven-day timescale for employers using WPPs to provide mandatory personal information. With the planned removal of the consideration period in the joining process for WPPs and the proposed extension of the joining window to one month this is no longer needed.
54. Name, date of birth and gender along with the automatic enrolment date, will remain a standard requirement. Jobholder's residential address will be mandatory. We propose to add a rider to National Insurance Number (NINO) that this must be provided only where the employer already holds it because often it is not and a NINO is no longer a prerequisite to work in Great Britain.
55. Some schemes use the NINO as a unique client identifier and we want the employer to pass the NINO onto the scheme when the employer subsequently gets it. We propose that the employer should be required to pass the NINO onto the scheme within a month from and including the day they get it.
56. Not all schemes will need details of remuneration and some employers (particularly those where workers are employed on a zero-hours contract basis) may not be able to provide a figure that is meaningful going forward. We propose to change the requirements that details of remuneration should only be provided where the scheme requires the information and we propose to define remuneration for the purpose of these regulations as the value of gross earnings in any pay reference period if the information is available to the employer. This is also the case with regards to the value of contributions (employer/jobholder split), which will also only be required where the scheme requires it and where the employer is able to provide it.
57. Then there will be information which employers will only provide if required by the scheme including the jobholder's postal work address and the jobholder's personal electronic address, but only where the employer already holds it.

58. We propose that employers should be required to provide the jobholder's individual electronic work address (not a company generic e-mail address) to the scheme but only if the scheme requires the information and the jobholder has an individual e-mail address at work. [i.e. Mary.Smith@widgets.com]
59. Retirement age and marital (or civil partnership) status is not essential information to achieve active membership and so we do not propose to include these in the information supplied by the employer to the scheme for that purpose.

### **Information provided by the employer to the scheme**

#### **Proposals for change**

We propose that a jobholder's residential address will be mandatory personal information which the employer must pass to the scheme.

We propose that employers should only be required to provide details of remuneration where the scheme requires the information. We propose to define remuneration for the purpose of these regulations as the value of gross earnings in any pay reference period if the information is available to the employer.

We propose that employers should only be required to pass the jobholder's National Insurance Number (NINO) to the scheme to achieve active membership where they already hold it.

If not immediately available, we propose that employers should be required to pass the NINO to the scheme within a month of receiving it.

We propose that the value of contributions (and the employer / jobholder split) should be provided where the scheme requires the information and the employer can provide it.

We propose that a jobholder's postal work address should be provided where the scheme requires the information.

We propose that a jobholder's electronic work address should be provided where the scheme requires the information and the jobholder has an individual e-mail address at work (not the generic company e-mail address).

We propose that a jobholder's personal electronic address should be provided where the scheme requires the information and the employer already holds it.

We propose to remove the requirement for the employer to provide jobholder personal information to the scheme within seven days for WPPs.

## **Draft regulation 7 – Enrolment information to jobholders on automatic enrolment**

### **Background and policy intent**

60. Employers will be required to give prescribed written information to a jobholder who is auto enrolled into either an occupational pension or a workplace personal pension arrangement. Enrolment information is simple factual information about automatic enrolment to explain to the jobholder what has happened, how it will affect them, that they have the right to opt out of saving and what will happen if they make the decision to opt out. It also signposts them to further information about pensions and saving for retirement.

### **What the draft regulations said**

61. Paragraphs (a) – (c) require the employer to provide the jobholder with information about the objective of automatic enrolment which is to encourage pension saving; the effective date of automatic enrolment and details about the scheme.
62. Paragraphs (d)–(f) require the employer to provide the jobholder with details of the value of contributions being made to pension saving.
63. Paragraphs (g)–(m) ensure the jobholder is given information about the right to opt out of the scheme; the time period in which to exercise the right to opt out; the process to be followed; where to obtain an opt out form; the consequences of opting out and that the jobholder is considered not to have been a member of the scheme on that occasion and that any contributions deducted from wages will be refunded.
64. Information provided under paragraph (n) tells the jobholder that they have a right to opt back into pension saving after opting out but that their employer will only be required to honour this right once in any 12-month period.
65. Information provided under paragraph (o) tells the jobholder that if they do opt out they will, in certain circumstances, be auto re-enrolled in accordance with regulations to be made under sections 5 and 6 of the Act.
66. Paragraph (p) ensures that the employer tells the jobholder where to access information about pensions and saving for retirement.

### **Stakeholder response to consultation**

67. Stakeholders supported the basic principle that new members should have written detailed information about scheme membership on automatic enrolment as part of the joining process but raised issues about the proposed timescales and the potential employer burden.
68. Stakeholders were concerned that the proposed 14 day deadline to provide enrolment information is too short and wanted these provisions and the requirements for scheme specific information for occupational pension schemes under the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 No.1655 to be aligned.
69. Some stakeholders felt that enrolment information should be provided on Day One itself rather than within a joining window because a joining window could allow employers to encourage opt out before the jobholder understands what they are giving up.
70. Employers wanted flexibility to provide the information to the jobholder in advance of the automatic enrolment date. Some wanted an opt out form to be issued with enrolment

information and to enable this to be done on their behalf by their scheme or payroll bureau for example.

71. Other views and comments on enrolment information were:
- it should provide the actual start and end dates of the opt out period rather than the length of the opt out period;
  - regulation 7(m) should make clear that a refund is only available if the jobholder opts out within the opt out period;
  - jobholders should be made aware they can leave pension saving after the opt out period;
  - the meaning of “value” of contributions in regulation (7(d) and (e)) needs to be clarified and whether this can be expressed as a percentage figure or an amount;
  - information on accrual rates for people in defined benefit schemes should be included;
  - a statement about the effect of automatic enrolment on enhanced protection should be included;
  - signposting to further information about pensions and retirement saving should be expanded by including a statement about sources of help, including independent financial advisors (IFAs)
72. A few stakeholders were critical of the requirement to include a statement about the purpose of automatic enrolment. As drafted they saw it as a Government statement about the purpose of the reforms and suggested it should be re-worded or removed. Representatives of small businesses questioned whether providing the statement is really a role for employers.

### **Government response and proposals**

73. Enrolment information on automatic enrolment underpins the jobholder’s ability to make a choice about pension saving depending on upon their financial situation. The provision of enrolment information is one of the core activities in the joining window although there is nothing to stop the employer from issuing it before the start of the joining window. We noted stakeholders’ concerns that a joining window might allow employers to encourage opt out but we believe that the prohibition on coercion and inducement in the Act addresses this issue. We plan to change the joining window from 14 days to one month from and including the automatic enrolment date. This should respond to stakeholders’ concerns about the tight deadline by which the employer must provide enrolment information. Employers may issue automatic enrolment information before the automatic enrolment date.
74. We propose to make clear that employers should provide the actual start and end dates of the opt out period rather than the length of the opt out period where this is known prior to the issue of information. Employers will know when they have given the jobholder the enrolment information. Employers will also know what has to happen to achieve active membership for the scheme that they are using and will know when they have done or will do this. The opt out period starts when both these activities are completed. Having discharged both these duties employers will be in a position to tell the jobholder when the opt out period starts and ends. However, we recognise this might not be possible: for instance, when enrolment information is issued in advance of the start of employment, or for employment agencies who may wish to issue the information routinely when the individual “signs on” with the agency.
75. As the legislation is drafted enrolment information to the jobholder may be provided before the automatic enrolment date and there is nothing to prohibit third parties providing information to jobholders on the employer’s behalf. That said the duty and the liability will always rest with the employer.

76. The Act prescribes what information must be given to jobholders, in what circumstances, how, when and by whom. At various times in consultation discussions employers and advisors have asked whether information can be displayed on a notice board or sent by e-mail. "Giving" information to jobholders could mean providing them (personally) with a hard copy, by hand or by post, or sending an e-mail to the jobholder's e-mail address. The information must be "written" which is defined in the Interpretation Act 1978 as formats including paper and e-mail. However, an employer cannot fulfil their duty by signposting a jobholder to information on a website or displaying a poster in the workplace.
77. We plan to put the statement about the purpose of automatic enrolment in to plain English and make it neutral.
78. The "value" of contributions (7(d) and (e)) can be expressed as a percentage or an amount for money purchase schemes and the money purchase portion of hybrid schemes. Employers need only provide this information at the point of enrolment. For defined benefit schemes (including the defined benefit portion of hybrid schemes) we have adjusted the regulation to recognise such schemes may not be able to provide this information. We do not plan to include the accrual rate for defined benefit or hybrid schemes in the enrolment information. The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 already requires scheme information to include the rate at which rights accrue.
79. Following a parallel public consultation on the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 we plan to align the timeline for schemes used for automatic enrolment to one month. This means members will receive scheme information in the same timeframe regardless of the type of pension arrangement. We plan to publish our response to the consultation on the Disclosure Regulations with proposals in the Autumn.
80. People also need to be told that if their employer does something to eject them from a scheme, or changes the scheme so that it is no longer a qualifying scheme the employer must take steps so the jobholder may become a member of a replacement qualifying scheme. We propose to extend the enrolment information provisions to cover this.
81. We propose to extend the enrolment information requirements to make clear that jobholders can still leave pension saving after the opt out period has ended. The terms and conditions of their departure may differ depending on the rules of the scheme in which they are a member. For example, their contributions may remain invested rather than returned.
82. We propose to extend the enrolment information requirements during implementation to cover the phasing-in of contributions. If an employer chooses to phase contributions they will need to reflect this.
83. We recognise that more information is needed for employers to be able to signpost workers to information about pensions and saving for retirement. Accordingly, we will make this available via an information hub<sup>6</sup>, which will provide such information and have links to other providers. We will publicise how to access the hub extensively and details on how to access it will also be included in the guidance for employers provided by the Pensions Regulator. We carefully considered whether we should name either the hub or other providers in the regulations but decided against this as the regulations would need to be amended whenever an organisation changed names.

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<sup>6</sup> The 'hub' has yet to be named but will be a source of information that may be accessed via a number of channels including the internet.

84. Enhanced protection from the lifetime allowance tax charge on pension pots applies to a small number of individuals who have elected to protect their pension rights built up before 6 April 2006.
85. Automatic enrolment will jeopardise enhanced protection. To avoid this anyone with enhanced protection who is auto-enrolled will need to opt out of pensions saving within the opt out period so that they are treated for all purposes as not having become an active member of the scheme on that occasion. As enhanced protection applies to such a small number of people we think it would be confusing routinely to include this in enrolment information. Instead we are considering how best this can be brought to the attention of those affected.

## **Enrolment information to jobholders**

### **Proposals for change**

We propose to put the statement about the objective of automatic enrolment into plain English and ensure neutrality.

We will make more information available to employers to enable them to signpost to information about pensions and saving for retirement. It will be available via an information hub. How to access the hub will be publicised and included in guidance for employers.

We will clarify that employers should provide the actual start and end dates of the opt out period rather than the length of the opt out period where this is known prior to the issue of information.

We propose to extend the enrolment information requirements to make clear that jobholders can still leave pension saving after the opt out period has ended. [The terms and conditions of their departure may differ depending on the rules of the scheme in which they are a member.]

We will adjust the regulation to clarify the 'value of contributions' requirement. This will include a requirement for employers who choose to phase in contributions to reflect their choice in the enrolment information to jobholders during implementation.

For defined benefit schemes (including the defined benefit portion of hybrid schemes) we do not plan to include accrual rate information in the enrolment information. Instead we plan to revise the timescale for the provision of scheme information to align with that for enrolment information.

We propose to tell jobholders that if their employer does something to eject them from a scheme, or changes the scheme so that it is no longer a qualifying scheme, the employer must take steps so the jobholder may become a member of a replacement qualifying scheme. We propose to extend the enrolment information provisions to cover this

## **Draft regulation 9 - Information to existing active members of schemes**

### **Background and policy intent**

86. Employers will be required to give a jobholder who is already an active member of a qualifying scheme information that they are a member of such a scheme and provide details of the scheme again. The purpose is to manage expectation and minimise confusion during implementation so that individuals who are already in a qualifying scheme do not expect to be auto-enrolled.
87. Existing active members will also need to be told about their new rights under the continuity of scheme membership provisions. The employer has a duty to auto-enrol jobholders in a scheme

and keep them in a scheme. If their employer does something to eject them from a scheme, or changes the scheme so that it is no longer a qualifying scheme the employer must take steps so the jobholder may become a member of a replacement qualifying scheme.

### **What the draft regulations said**

88. This sets out the written information that the employer must give a jobholder who is already an active member of a qualifying scheme. It prescribes that information must be provided within 30 days after the employer duty applies and must consist of details of the scheme or which they are a member, contact details for the scheme and confirmation that the scheme meets the requirements for a qualifying scheme.

### **Stakeholder response to consultation**

89. Employers opposed this provision which they believe adds a nugatory extra burden and cost. If the provision remains, they want to be able to provide the information through an existing mechanism such as a payslip, benefit statement or scheme newsletter - whichever comes first after the employer duty applies - or to provide the information on a company website and signpost workers to the site.
90. Trades unions emphasised that people must be told about their rights. An organisation representing pension lawyers was not convinced that this requirement is necessary but again, if it remains, felt that the timescale of 30 days is too short because it excludes the wholesale use of pay slips. Respondents generally criticised the 30-day window as inflexible.

### **Government response and proposals**

91. We propose to retain this requirement because we consider it to be required by the Act and we believe that it is important that people who are existing members of schemes are told what is going on and that they are in a qualifying scheme. People also need to be told that if their employer does something to eject them from a scheme, or changes the scheme so that it is no longer a qualifying scheme the employer must take steps so the jobholder may become a member of a replacement qualifying scheme. We propose to extend the information provisions to cover this.
92. The provisions as drafted do not prevent employers from using existing mechanisms. Employers have the flexibility to choose the method that best suits them and the individual concerned. They can include the information on payslips, emails or other statements being sent directly to the jobholder. Employers may also provide the information before the enrolment date (Day One). However, signposting to a website does not comply with the legal interpretation of "given" (See paragraph 75).
93. In the light of the response we accept the timeline of 30 days is unnecessarily restrictive. To provide greater flexibility we propose to extend the date by when information must be provided to two months. This should always cover a pay period and will allow information to be included either on or with a payslip.

### **Provision of information to active members of qualifying scheme**

#### **Proposal for change**

We propose to extend the window within which information must be provided from 30 days to two months from and including the notional automatic enrolment date (i.e. the date the employer duty goes live for that employer)

We propose to tell jobholders that if their employer does something to eject them from a scheme, or changes the scheme so that it is no longer a qualifying scheme, the employer must take steps so the jobholder may become a member of a replacement qualifying scheme. We propose to extend the enrolment information provisions to cover this.

## **Draft regulation 10 - Information to jobholders affected by postponement<sup>7</sup>**

### **Background and policy intent**

94. Employers with a higher quality scheme (paying an overall 11 per cent of which at least 6 per cent must be from the employer) are entitled to postpone automatic enrolment for a period of time. Employers who use postponement are required to give jobholders specific information about the effect of postponement. This is in addition to enrolment information the jobholder will receive when automatic enrolment actually takes place. The intent is to minimise jobholder confusion and reduce queries about why some people are being auto-enrolled earlier than they are. The information should highlight that they will be in a scheme with higher employer contributions.

### **What the draft regulations said**

95. Regulation 10 requires employers who postpone automatic enrolment to inform jobholders, in writing, about the effect of this decision on them; the reasons for postponing automatic enrolment; the date automatic enrolment will take place and where they may obtain further information on pensions and saving for retirement.
96. The combined effect of regulations 7 (enrolment information to the jobholder) and regulation 10 is to require two pulses of information. The first pulse about the effect of postponement is to be issued within 14 days, from and including the notional automatic enrolment date (i.e. the date the employer duty goes live for that employer). The second pulse, which is the standard enrolment information, should be issued within 14 days from and including the actual automatic enrolment date three months later. The enrolment information at 7(d) and (e) would reflect the higher percentage of contributions payable where postponement is used.

### **Consultation question**

97. We asked whether any information to jobholders affected by postponement of automatic enrolment is missing and needs to be included.

### **Stakeholder response to consultation**

98. The key issue to emerge was the point at which postponement information should be supplied and the point at which automatic enrolment information is supplied. Some wanted automatic enrolment information to be provided with the postponement information within the first 14 days from and including the notional automatic enrolment date – i.e. from the employer's staged go-live date. A minority wanted greater flexibility around timescales, with one respondent suggesting a period of two months before implementation and one month afterwards. One provider questioned the requirement for written information and lawyers suggested that information should be targeted at those who are not saving instead.
99. Trades unions respondents suggested that all workers have the same information at the start of employment and that postponement information should also highlight to jobholders that they have the right to opt out.

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<sup>7</sup> For more detailed information on postponement and the response to the detailed regulatory proposals see the section in this report in draft regulation 17 - *Postponement of the automatic enrolment date*.

100. Organisations representing small businesses advised against specifying how this information is given.
101. Providers suggested that scheme specific information should also be given, or workers advised they can request scheme information, before the end of the postponement period. They also suggested that the information should cover the reasons for and benefits of postponement and the higher employer contributions.
102. Stakeholders wanted better signposting for jobholders looking for more information about pension saving. The Pensions Advisory Service suggested that workers should be signposted to them for further information.

### **Government response and proposals**

103. We plan to retain the provision that jobholders should receive two pulses of information. The first will advise that enrolment will be delayed and why. The second will be the standard enrolment information sent on the automatic enrolment timeline but reflecting the higher rate of contributions payable.
104. We plan to extend the window within which the first pulse of information must be provided to a jobholder affected by postponement from 14 days to one month from and including the notional automatic enrolment date – i.e. the date the employer duty goes live for that employer.
105. We have considered carefully whether the enrolment information and postponement specific information should be given to a jobholder at the same time. While it would be advantageous for employers to have one process and issue all the information once at the start, it is important that jobholders are aware of their right to opt out when they are actually enrolled. We do not consider that the jobholder's rights would be sufficiently protected if the opt out right had been highlighted three months before automatic enrolment. Two pulses of information will ensure that the information is fresh and pertinent.
106. We still believe that postponement information upfront is necessary to reassure jobholders that if their circumstances do not change and their employment continues without a break they will be auto-enrolled - albeit later than some other people - but with an higher employer contribution.
107. We are proposing that the second pulse of information, provided after the end of the postponement period following automatic enrolment should be provided no later than one month after enrolment, increased from 14 days.

#### **Jobholders affected by postponement of automatic enrolment**

##### **Proposal for change**

We propose to extend the window within which the first pulse of information must be provided to a jobholder affected by postponement to one month from and including the notional automatic enrolment date.

See paragraph 73 in relation to extension to timescales for enrolment information.

## Draft regulations 11 and 12 - Opting out of workplace and occupational pension schemes

### Background and policy intent

108. Automatic enrolment is compulsory but ongoing membership of a pension scheme is not. The jobholder has a right to opt out (with a full refund) within a defined *opt out period*. The core policy principle is that a jobholder cannot *opt out of scheme membership before they are scheme members*.
109. The jobholder's right to opt out starts only when the employer has achieved active membership and the jobholder has been given the enrolment information in writing, whichever is later. The joining window ends when both of these are done. The jobholder then has a further period to opt out. If employers complete the joining arrangements more quickly, then jobholders may opt out more quickly if that is what they want to do. Prompt actions all round will minimise refunds.
110. For occupational pension schemes, it will be a matter for scheme rules to determine when active membership occurs<sup>8</sup>. For WPPs active membership will occur when the contract is deemed.

### What the draft regulations said

111. Regulation 11 refers to occupational pension schemes and prescribes that an opt out notice (sourced and completed in accordance with draft regulations 14 and 15) must be given by the jobholder to the employer. It also sets the time limit for giving notice by prescribing that a 30 day opt out period runs from the date the jobholder becomes an active member of the scheme *or the date the jobholder receives the enrolment information whichever is the later*. In other words the opt out period starts when the joining window is complete.
112. Regulation 12 provides that the opt out period starts for WPPs when the contract is deemed. This occurs when the jobholder receives the key features information about the scheme and the enrolment information from their employer and runs for 30 days after the receipt of the last.

### Stakeholder response to consultation

113. Stakeholders wanted clearer global rules to clarify the start and end of the opt out period. Views were polarised – some wanted rules to make this clear for the scheme while others wanted rules to make this clear for the jobholder.
114. Stakeholders wanted a simpler and cheaper process.
115. Most stakeholders suggested that would be broadly content with a 30 day opt out period but that it should be expressed as one month.
116. One employment sector with a fast-moving high-volume staff turnover wanted a much shorter opt out period to minimise refunds, or a change in the rules which govern when contributions must be passed to schemes. We address this latter issue - the 19 day rule - in paragraphs 183 to 185.

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<sup>8</sup> Arrangements between the scheme and the participating employer(s) could also require, for example, that within the joining window, active membership will occur once an employer confirms to the scheme that they have given the enrolment information to the jobholder.

117. One consultancy suggested an overall two month joining and opt out window; another suggested a combined seven week joining and opt out window and a provider organisation suggested three months to opt out.

### **Government response and proposals**

118. We plan to change the opt out period to one month from and including the day the joining window ends for both occupational pension schemes and WPPs. *Months* then become a common currency, with a maximum joining window of one month followed by a maximum opt out period of one month<sup>9</sup>.
119. The jobholder's right to opt out starts when active membership is achieved<sup>10</sup> and the jobholder has been given the enrolment information in writing. This is firstly because, as we intended in the Act, the jobholder must be a scheme member before they can opt out of the scheme. The jobholder is not opting out of automatic enrolment: they are opting out of scheme membership. A person can not opt out of membership of something if they are not actually a member of it. Secondly we want the jobholder to be in a position to make a choice about their pension saving having seen the effect on their pay packet so they do not opt out as a reflex action. So we want them to have the enrolment information – to see how much it will cost them in contributions.
120. We deliberately did not prescribe the order in which the employer has to achieve active membership and give the jobholder enrolment information but the right to opt out starts when both are done. We deliberately did not prescribe rules for every employer and every scheme to fix the start (and hence the end) of the opt out period. This was to provide maximum flexibility for employers to carry out the process in the way that best suits them.
121. The definition of active membership varies from scheme to scheme. Some employers will complete the joining process and achieve active membership very quickly, say in the first week. Some employers may take the whole month. We believe that the jobholder has the right to give notice of opt out immediately the employer has put them in to the scheme and they have been given all the relevant information. We do not accept that jobholders should be made to wait, paying into a scheme that they do not want to be in for ease of administration.
122. If we were to prescribe the order in which the employer takes the two key actions (achieving active membership and giving the jobholder enrolment information) to fix the start and end date of the opt out period we could provide absolute certainty for the start of the opt out period for either the scheme or the jobholder (depending which we prescribed had to be done first) but not both.
123. As was the case in the draft regulations, for WPPs active membership will start when the contract is deemed, which is dependent on the provision of the minimum terms and conditions and the enrolment information from the employer.
124. As with occupational schemes, we deliberately did not prescribe the order in which the employer has to ensure the jobholder receives the minimum terms and conditions and the enrolment information and which piece of information therefore triggers the deeming of the contract and active membership for WPPs. It is envisaged that the information on minimum terms and conditions is likely to already be included in existing key features documents and should keep administrative burdens on schemes to a minimum. In most cases the employer will probably

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<sup>9</sup> Moving from 30 days to one month for the op-out period will take our rules slightly out of line with the FSA's cancellation rules which are mainly derived from the Consolidate Life Directive. We are satisfied that there are no conflicts with the Consolidated Life directive from our approach. We have discussed this change with the FSA and they do not feel that this small, technical inconsistency should be a driver of our policy decision and should be able to be reconciled.

<sup>10</sup> The definition of active membership differs from scheme to scheme.

have copies of the key features documents from the provider and will pass them over to the jobholder at the same time as they pass over the enrolment information. The contract will then be deemed and active membership achieved. However, in some cases the provider may wish to send the terms and conditions directly to the jobholder whilst the employer will still need to pass over the enrolment information themselves. In this case which piece of information triggers the deeming of the contract and active membership depends on which is passed over last.

125. We conclude that for both occupational pensions and WPPs no prescribed solution to clarify the start and end of the opt out period will suit all stakeholders and all circumstances and that a one-size-fits-all rule would involve a trade-off of stakeholder interests and cut across current scheme rules or provider processes. A prescribed solution will not suit all schemes because they already have perfectly good rules in place which determine when active memberships starts and/or what sponsoring employers have to do to put workers into the scheme. For WPPs they may already have mechanisms in place for providing scheme information to the jobholder, and may not wish to use the employer as a conduit.
126. Employers and schemes (or providers) will already have established a relationship in order to achieve automatic enrolment. Rather than trying to force a legislative option on all schemes (which may not suit all schemes and could skew the market) we believe the solution rests with scheme rules – the “way we do things around here”. For example, the trustees / provider could prescribe the order of activities making active membership the last step of the process. Some schemes have a rule that says that active membership starts when a new worker walks through the factory gate. A scheme could choose to say that active membership is “achieved” when the scheme gets the jobholder’s personal data.
127. We do not propose to prescribe what exactly has to happen to achieve active membership. We believe this is a matter for scheme rules.

## **Opting out from workplace and occupational pension schemes**

### **Proposal for change**

We propose to prescribe the opt out period as a maximum of one month from and including the day the joining window ends.

## **Draft regulations 13 and 14 - Process of opting out**

### **Background and policy intent**

128. The policy intent behind the opt out process is to safeguard the interests of the jobholder to ensure that they are protected from pressure from employers to opt out whilst ensuring that their right to cease pension saving is not hindered by an overly prescriptive and difficult opt out process. We also wish to create a process that minimises the burden on employers.
129. The decision to opt out should be a considered one. The jobholder should be aware of the consequences of opting out. The Act requires that the opt out notice must include information about the effect of opting out.

130. The process should be a formal process but not a complicated one. We considered that opt out notices should be sourced from the scheme to minimise the risk of coercion and should be returned to the employer to enable deductions to be stopped as soon as possible.

### **What the draft regulations said**

131. Regulation 13 states that once an opt out notice is sourced it should be completed, signed and returned to the employer. Opt out occurs on the day that an opt out notice is received by the jobholder's employer.

132. Regulation 14 states a jobholder can only obtain an opt out notice from the scheme into which the jobholder has been automatically enrolled. The scheme must provide an opt out notice on request from a jobholder. Under the current draft regulations an employer must not provide the jobholder with an opt out notice.

133. Regulation 13(2) places a duty on the employer to inform the jobholder within five days if the notice is not valid. An invalid opt out form is one that for example does not contain the prescribed minimum wording, or does not have the full information outlined in the schedule in regulations or is not completed and signed by the jobholder.

134. Regulation 13(3) requires the employer to send the completed opt out notice to the scheme within seven days of receipt.

### **Consultation questions**

135. We asked for views on the five-day time limit within which the employer is obliged to tell the jobholder if an opt out notice is not properly given, completed or signed.

136. We proposed that opt out notices should be sourced only from pension schemes. We considered that a requirement to obtain the opt out notice from the scheme would help protect jobholders from outside influences without establishing so rigid an opt out process that the ability of the jobholder to opt out is undermined. We welcomed views on whether we had struck the right balance or whether we should relax our approach.

137. We asked if we should prescribe a time limit for schemes to provide an opt out notice.

138. We welcomed views on whether the scheme or the employer should hold the original opt out notice.

### **Stakeholder response to consultation**

139. The majority of stakeholders were concerned about the requirement for employers to check opt out forms and return them to the jobholder within five days if they are considered invalid. All respondents thought the timescale too short and unworkable and the general tenor of responses was either that the timescale should be two weeks or it should be left to the discretion of employers supported by guidance.

140. Views on the source of the opt out notice were polarised. A significant number of stakeholders felt that allowing the notice to be sourced only from the scheme was burdensome and over complicated. They recognised that forms should not be issued along side joining packs or enrolment information but believed it is essential that employers should be able to dispense the opt out form to give them flexibility to manage opt outs quickly and easily. Other stakeholders welcomed the fact that the employer was removed from the opt out process as a way of minimising the risk of inducement.

141. A number of stakeholders said the draft regulations fail to recognise the dual role of employers who also administer schemes. Many thought the notice could be provided by the employer because there is already provision in the Act to deal with inducement and coercion. Others said it should be available from both schemes and employers as the risk of coercion if the employer provides the form is overstated and the restriction disproportionate.
142. Respondents felt that there could be a prescribed time limit for schemes to provide an opt out form and the suggestions ranged from seven days to 30.
143. On the whole stakeholders were satisfied that the opt out notice should be returned to the employer because the employer is responsible for stopping the deduction of contributions.
144. Respondents were critical of the additional requirement on employers to pass the opt out notice to the scheme within seven days which they saw as micro-management of information flows between employer and scheme.
145. Views were polarised about whether employers or scheme providers should retain the completed original opt out form. Employers and providers felt that a more flexible process is more important to suit individual schemes or employers. Employee organisations and individual respondents preferred schemes to hold the original and a copy to be retained by the employer.

### **Government response and proposals**

146. If the jobholder tries to opt out without following the formal process, we believe it is reasonable and in the interest of the jobholder to impose a duty on the employer to inform the jobholder that their attempt to opt out has failed so as not to keep them in the dark. A short time scale for returning invalid forms was felt necessary to avoid a jobholder's opt out period running out where the employer was trying to contact the jobholder to resolve an invalid form.
147. We recognise that five calendar days may be too short for employers with multiple-sites or a peripatetic workforce. An extra week for employers trying to contact a jobholder to resolve an invalid opt out notice would make the arrangements significantly more flexible overall which is what stakeholders wanted. However we need a solution that does not risk the opt out period running out while the form is being dealt with.
148. In cases where an employer informs a jobholder that an invalid opt out notice has been received we propose that the total opt out period should be six weeks (from and including the day the joining window ends.) This provides the one month opt out period and an extra two weeks to resolve any problems with the notice rather than five calendar days. We believe this would make the regulations work better from the jobholder's and the employer's perspective. It would prevent the jobholder's opt out period being eaten up by any delays in the employer contacting the jobholder.
149. We are keen to strike the right balance with regards to the opt out process and it is important that the process should be simple and practical. There is a trade-off between creating a workable solution supported by employers and industry and a solution which offers a sufficient degree of protection for individuals and that supports the policy intent.
150. We have considered alternative suggestions to give more flexibility and we have weighed up the protection the current arrangements confer on jobholders, the level of consideration required by a jobholder to opt out and the practicality of the proposed processes.
151. We understand that there are cases where the administration of the scheme is delegated to the sponsoring employer in the trust deed and there is a dedicated person within the employer's office who carries out the administration on behalf of the scheme. We believe that the

regulations as drafted allow this practice to continue and for the dedicated person to be the source of the opt out form.

152. We believe that allowing all employers to control the opt out process creates a risk both that employers have greater opportunity to place undue influence on the opt out decision and that jobholders may opt out without having to make a formal or considered decision to do so.
153. Allowing all employers to issue the opt out notice could mean that opt out processes are created that undermine the requirement for the opt out decision to be a formal and considered one. This may not be deliberate action by the employer or necessarily illegal but would nevertheless not be within the spirit of the policy and could have a negative impact on the number of people in pension saving.
154. Schemes and providers tell us that in their experience, if scheme members are provided with forms in joining packs they will complete and sign them irrespective of whether they are relevant. We therefore propose as a safeguard against this, that the opt out notice may not be issued to the jobholder with scheme information, key features information or enrolment information.
155. We do not propose to prescribe a time limit for the form to be provided. Stakeholders were either lukewarm about the idea or did not think it was appropriate to legislate. There was no consensus on what such a limit might be.
156. We propose to remove the requirement which requires employers to pass the opt out notice onto the scheme within seven days of receipt. Employers will be required to tell the scheme that a scheme member has opted out but we propose to leave how and when to the arrangements made between employers and schemes.

### **Process of opting out**

#### **Proposals for change**

We propose to retain the requirement that the opt out notice may only be sourced from schemes. In cases where the administration of the scheme is delegated to the sponsoring employer in the trust deed, existing practices may continue and the dedicated person within the employer's office can be the source of the opt out form.

We propose to prescribe the opt out period as six weeks from and including the day the joining window ends in cases where an employer informs a jobholder that an invalid opt out notice has been received.

We propose to remove the requirement on employers to pass the opt out notice on to the scheme within seven days of receipt. Employers will be required to tell the scheme that a scheme member has opted out but we propose to leave how and when to the arrangements made between employers and schemes.

## **Draft regulation 15 - content of opt out notice**

### **Background and policy intent**

157. Before a jobholder opts out they must be given information about the potential effect of opting out on income in retirement and alerted to the loss of the employer contribution. The Act reflects this commitment and requires information on this issue to be included in the opt out notice.

### **What the draft regulation said**

158. Regulation 15 as drafted enables schemes to use a standard form set out in the Schedule or to devise their own form provided they use, as a minimum, prescribed wording for the opt out provisions.

### **Consultation question**

159. We asked whether schemes preferred a standard mandatory out notice or prescribed wording and whether prescribed wording should be a minimum or a maximum.

### **Stakeholder response to consultation**

160. Stakeholder responses were mixed, with some wanting the certainty of a mandatory form and others wanting to have the flexibility to adapt existing processes. All were critical of the formal wording in the draft standard notice provided in the schedule to the regulations which required an advanced reading age and an understanding of the references to the Act. There was a unanimous plea for plain English.

### **Government response and proposals**

161. We propose to prescribe the use of plain English wording in the form which will be set out in legislation. This approach provides maximum flexibility and certainty for those who require it.

162. We plan to remove the references to the Act from the specimen notice, write it in plain English and require minimal information from the jobholder to minimise the risk of an “invalid” opt out notice.

### **Content of the opt out notice**

#### **Proposals for change**

We will re-write the specimen opt out notice in plain English

We will remove references to the Pensions Act 2008 from the specimen opt out notice

## **Draft regulation 16 - opt out refunds**

### **Background and policy intent**

163. Under the new employer duty, a jobholder must become an active member of a qualifying scheme with effect from Day One (the automatic enrolment date). Contributions accrue from Day One and must be deducted on the first occasion an individual is paid after that date.

164. Where a jobholder chooses to opt out the effect is that they were never members of the scheme and therefore any contributions paid by the jobholder (and the employer on behalf of the jobholder) must be refunded. We require the employer to make the refund, because the employer can most efficiently achieve a refund through its payroll arrangements.
165. As there are time limits in existing pensions legislation for passing contributions on to the pension scheme, there will be times when contributions are received by the scheme during the joining and opt out window, which must be refunded to the employer if the jobholder subsequently opts out. Refunds to the jobholder are not predicated on the employer receiving a refund from the scheme first.

### **What the draft regulations said**

166. Regulation 16 of the draft regulations currently states that where a jobholder gives an employer a completed opt out notice the employer must refund all contributions deducted from the jobholders pay within 21 days after the day the notice is given or by the second pay day after notice is given.
167. Regulation 16 also requires that a scheme must refund any contributions received to the employer within 21 days after the opt out notice is received by the scheme. On receipt of the notice the employer has seven days to pass it to the scheme.

### **Consultation question**

168. We asked if 21 days is a sufficient period for schemes to refund monies to employers and a fair period for employers.

### **Stakeholder response to consultation**

169. Employers and schemes saw refunds as a significant burden. Some of their objections and solutions went straight to the root of the core policy. They wanted to be able to facilitate the process before Day One so that either a worker can opt out before contributions are taken to pre-empt refunds or delay the deduction of contributions until after the end of the opt out period.
170. Stakeholders were concerned about timescales for refunds which they believed were too tight, too confusing and did not take into account payroll deadlines or holiday periods.
171. Providers said we should make the rule simple. The current practice is that refunds must be made within 30 days. Employers said they wanted a more straightforward rule of one month as the draft rules made no allowances for Christmas or Easter. One industrial sector was content with the timescales as proposed.
172. There was a marked difference in the views of larger stakeholders and representatives of small and micro businesses. Smaller businesses were concerned about cash-flow if they had to refund contributions to jobholders before they got money back from the scheme. They wanted to see a provision that employers do not have to refund the money until it has been returned by the pension scheme.
173. A large cross section of employers and providers sought more flexibility about how contributions are treated during the opt out period. They asked whether contributions will still have to be passed to the scheme before the end of the opt out period. On the other hand some pension schemes flagged a possible late payments effect as employers deliberately held back contributions from the scheme to simplify the refunds process.

174. Stakeholders flagged an issue for schemes with immediate vesting. If the value of the investment went down just as the original contribution had to be refunded, schemes would lose out.

### **Government response and proposals**

175. The opt out right, as we intentionally framed it in the Act, is a right to opt out of scheme membership, not a right to opt out of automatic enrolment. An individual can not opt out of membership before they are members of a scheme. We believe automatic enrolment is the only way to achieve a step change in the levels of pension saving. By definition, once an individual has been automatically enrolled, their employer will start deducting and paying pension contributions on their behalf. though the individual can still opt out and get a refund for a short period after automatic enrolment. Refunds are therefore an inevitable side effect of automatic enrolment.
176. The Act would not prevent employers delaying the deduction of contributions until after the end of the opt out period although the regulations as drafted do prohibit this. We do not support delaying contributions as a way of meeting stakeholder concerns about the refund process. The scheme would still need to meet the quality requirements, and so would require a jobholder contribution over the period of a year of up to five per cent of their qualifying earnings. This means that where contributions were not taken during the opt out period, the contributions for the remainder of the year would be higher or employers would deduct two month's worth of deductions in one big bite. We believe this would cause some jobholders unexpected hardship due to the sudden reduction in their take home pay and lead them to question the affordability of pension saving and leave the scheme soon afterwards.
177. We believe employers should still be obliged to refund contributions to the jobholder within a set relatively short timescale. The jobholder should not be out of pocket. As drafted, employers currently have either 21 days or two pay days to do this because we attempted to be fair to both weekly and monthly paid individuals and to employers who run these pay cycles. However, responses indicate that the rules as drafted do not achieve this and are in any case too complicated. We therefore propose to simplify the prescribed arrangements and remove the separate seven day time limit for employers to send the opt out notice to schemes. And we propose that the refund period should be one month or two pay days whichever is the later.
178. We will leave it to schemes and employers to decide how they manage this between them. The one month will apply to all refunds: from employer to jobholder and scheme to employer. This responds to stakeholders' request for one simple 30-day rule, and objections to regulations that prescribed the administrative arrangements between scheme and employer. We propose that regulations prescribe this as one month in keeping with our plans to base all deadlines on a common currency of *months* rather than days. The option of refunding by the second payday if this is later will cover those circumstances where the month falls between two payroll runs.
179. We have looked carefully at the cash flow objections raised by small business organisations and the concerns from all employers that monies could be sent to pension schemes only to have to flow back very shortly after.
180. The suggestion from small business that employers should not have to refund the money until it has been returned by the pension scheme is not possible under the Act. We can not predicate one upon the other. We considered legislating for a similar outcome by reducing the prescribed time limit for schemes to return money to the employer to two weeks. This would mean that employers would, in theory, receive money back from the scheme before they had to refund the jobholder.

181. We believe this route would firstly place an unreasonable burden on schemes. Schemes may miss their deadline. Secondly, such an arrangement may tacitly encourage employers to keep jobholders waiting for their refund, the effect of which would be to transfer cash flow risks to jobholders who would bear the brunt of any delays.
182. We believe there is an alternative way of addressing stakeholder concerns over refunds.
183. There is the potential to provide a more flexible approach for how contributions are treated during the joining window and opt out period. We intend to consult on a proposed change to the Occupational Pension Schemes (Scheme Administration) Regulations 1996 and the Personal Pension Schemes (Payments by Employers) Regulations 2000 which outline the timescales within which employers must pass over contributions to a pension scheme (the 19 day rule).
184. This proposed change is intended to extend the timescale that employers have to pay employee contributions over to schemes for those contributions deducted during the joining window and opt out period. The effect of this change is that money does not have to be paid over until after the opt out period has passed, so minimising the need for refunds where a jobholder opts out. These changes are subject to a separate consultation (to be issued in September 2009) where full details of the change can be found.
185. While we recognise stakeholders concerns around investment shortfalls where a refund is required, we intend to keep the requirement that all contributions passed over to the scheme during the joining and opt out window must be refunded following opt out. This is a core requirement of the Act. However we will consult on a change to the 19 day rule to ascertain if this is the most effective way to address stakeholder concerns in relation to refunds.

### **Opt out refunds**

#### **Proposal for change**

We propose that employers and schemes will have to refund contributions within one month or by the second payday from and including the day the jobholder gives notice to refund contributions, whichever is later.

We propose to remove the separate seven day time limit for employers to get the opt out notice to the scheme.

We will consult on proposals to amend the 19-day rule to minimise the need for refunds from pension schemes during the opt out period.

### **Draft regulation 17 - Postponement of the automatic enrolment date**

#### **Background and policy intent**

186. The Act allows employers to postpone automatic enrolment for a period of time where they offer high-quality schemes. The intention of this provision is to encourage employers offering higher-quality schemes to continue to do so.

## **What the draft regulations said**

187. The regulations allow employers to postpone automatic enrolment of an individual jobholder into an occupational defined contribution scheme, a workplace personal pension scheme or any qualifying defined benefit or hybrid scheme<sup>11</sup> that meet certain criteria for a period of 90 calendar days. For defined contribution schemes and WPPs, the criteria are that the employer contribution under the scheme rules must be at least six per cent of qualifying earnings and the total contributions must be at least 11 per cent of qualifying earnings on an enduring basis. Any qualifying defined benefit or hybrid scheme can also be used for postponement.
188. Once the 90 day postponement period has ended and an individual worker is automatically enrolled into a scheme, the employer must not do anything by which the jobholder ceases to be an active member of the scheme by which the scheme ceases to require a 6 per cent employer contribution and 11 per cent total contribution for a further 90-day period. This is designed to allow individuals to catch-up with their contributions following the postponement period to at least the minimum three per cent level quality requirement, ensuring that individuals receive full employer contributions and minimising the number of individuals who will lose out following a postponement period.
189. The scheme rules must set out the level of contributions required in order to trigger postponement. An employer whose scheme prescribed a contribution of 11 per cent for the first 90 days or 180 days of employment / membership and then a reduced contribution applying thereafter would not meet the enduring test of higher-quality provision. That employer would not be able to use the postponement provisions.
190. An employer who operated a pension scheme that met the postponement criteria and took on a worker on a short-term contract (e.g. two months) would be able to use postponement in relation to that worker and never enrol them into the pension scheme.
191. Employers using the personal accounts scheme will not be able to use postponement.

## **Stakeholder response to consultation**

192. The majority of stakeholders welcomed the underlying principles of our proposals, but some were concerned that employers with high-quality schemes could use postponement to avoid enrolling short-term workers and the proposals as drafted would advantage large employers who could afford to operate a higher quality scheme.
193. We also received numerous suggestions from employers and the pensions industry on how the proposals could be changed or improved to ease administration for employers and how the minimum contribution levels and the period of postponement could be changed.
194. Some stakeholders wanted flexibility to allow employers to revert to lower contribution models, equivalent to the eight per cent qualifying earnings criteria and allow providers to pay a lump sum later on to make up the shortfall. Others suggested different criteria for postponement: for example, that the contribution rate should be 10 per cent rather than 11 per cent (with a six per cent minimum employer contribution); or a total of 10 per cent split in half with contributions phased – four per cent (two per cent plus two per cent) in year one; eight per cent (four plus four) in year two; 10 per cent (five plus five) in year three.

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<sup>11</sup> Except for those employers who delay auto enrolment of jobholders into defined benefits or hybrid schemes under section 30 of the Act (see consultation on remaining regulations for further information).

195. A significant mix of providers, employers and advisors suggested three months instead of 90 days, particularly if schemes wish to operate from the first day of the month: and that the automatic enrolment date should be the first day of the fourth *full* month of employment following the “original”<sup>12</sup> automatic enrolment date to tie in with payroll.
196. One employers’ organisation, a major high street retailer and a major pension provider suggested a postponement period of six months. A firm of city lawyers suggested employers should be able to postpone for *up to* 90 days.
197. Stakeholders were divided on whether employers using the personal accounts scheme should be able to use postponement.
198. Employers wanted to be able to process opt outs during the postponement period;

### **Government response and proposals**

199. The regulations we consulted on would enable employers to use postponement for workers short-term contracts and therefore never enrol workers with contracts of less than 90 days. The issue of postponement and the implications for short-term workers is a finely balanced one and we were interested to hear responses on this to assess whether we had the right balance between ensuring individuals are saving in a pension and minimising burdens on business.
200. Given that agency workers are explicitly within the scope of the Act and any workers on a temporary contract are likely to be within our target group, we are concerned that enabling employers to use postponement never to enrol short-term workers has the potential to prevent a group of workers from ever saving in a pension. We therefore believe that it would be preferable to change the regulations to prevent employers using postponement for workers on short-term contracts to ensure that all short-term workers are able to benefit from pension saving. However, this is not a proposal on which we consulted and we propose to seek views on this alternative approach in a separate consultation in September 2009.
201. Postponement is intended to encourage employers offering higher quality schemes to continue to do so. (Employers must pay contributions at or above six per cent of qualifying earnings.) Requiring contributions to be paid at a rate of six per cent for a period of at least 90 days after the postponement period has ended is designed to allow individuals to catch-up with their contributions to at least the minimum 3 per cent level quality requirement.
202. We do not agree that employers should be able to make up the additional contributions in a lump sum at the end of the first three months or at the end of the year. This would undermine the requirement that postponement may only be used where a higher-quality scheme is being offered on an enduring basis. We believe that reducing the amount of contributions required goes against our overall intention of encouraging employers to provide higher quality schemes for the benefit of individuals.
203. Reducing the level of contributions required from an employer to three per cent would mean that the provision would be extended to all employers using any qualifying scheme. This would undermine the policy intent of encouraging those employers offering higher quality schemes to continue to do so. It would also mean that jobholders would never make up contributions foregone during the postponement period. In effect, it would just delay automatic enrolment by three months.

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<sup>12</sup> That is *Day One* – the commencement of the employer duty for this employer, or a jobholder’s 22<sup>nd</sup> birthday or the day the jobholder exceeds the qualifying earnings threshold.

204. Both the “lump sum” and the “three per cent” scenarios would undermine the policy intent of encouraging the provision of high-quality schemes. We do not consider that aligning the approach with existing contribution rates is a strong enough rationale for reducing the scheme quality.
205. Further, we believe that setting the employer’s minimum contribution rate at six per cent (out of a total required pot of 11 per cent) will help incentivise the majority of employers providing higher-contribution schemes to continue to do so. Analysis demonstrates that just over half of existing defined contribution scheme members today receive contributions of six per cent of qualifying earnings or better. Adopting this as the benchmark for the postponement period will also allow individuals to catch up with contributions foregone in the postponement period to at least the minimum three per cent level quality requirement, ensuring that individuals receive full employer contributions and minimising the number of individuals who will lose out.
206. We propose that the levels of contributions required to fulfil draft regulation 17 (six percent for employers and total contributions of 11 per cent) should remain the same.
207. The period of 90 days was originally chosen as this is the average number of days within any given three month period. We plan to change the postponement period to three months and the second minimum period to three months. This change would align with our recommendation that the automatic enrolment joining window is extended from 14 days to one month and the opt out window is amended from 30 days to one month. *Months* become the simple common currency.
208. We believe that extending the postponement period to six months does not achieve the correct balance between minimising the burden to employers offering high-quality schemes and ensuring that jobholders are not excluded from pension saving for a substantial period of time.
209. We can not provide for a shorter postponement period using an ‘up to’ provision so that employers could make an open choice about the period they use as this would not be possible under section 4 of the Act.
210. A number of consultation responses asked for the postponement period to extend from the employer’s original automatic enrolment date until the first day of the fourth month following that date to align automatic enrolment with normal working and salary payment patterns.
211. Given that we are amending the length of the joining window from 14 days to one month, we are planning to retain a set period for the postponement period but change this from 90 days to three months. This combination should enable employers using postponement to use the flexible joining window to enrol jobholders on the first day of a month or whichever day in the month best aligns with their payroll practices.
212. We do not propose that the personal accounts scheme should be able to use postponement as the policy intent is to encourage employers already offering higher-quality schemes to continue to do so and the personal accounts scheme will be a new scheme. However, given that we do not have the vires in the Act to explicitly exclude the personal accounts scheme from using postponement in the regulations, draft regulation 17(4) will be removed from the final version.
213. Employers may not action opt outs during the postponement period because it is before automatic enrolment and before they have achieved active membership for the jobholder. Under the Act, opt out cannot take place until a jobholder becomes an active member of a scheme which, in the case of postponement, can happen only at the earliest on Day One of month four after the notional automatic enrolment date.

**Postponement of the automatic enrolment date****Proposals for change**

We propose to change the postponement period and the second minimum period to three months.

We propose to consult on proposals to remove the provisions that allow employers with workers on a contract of three months or less to use postponement for those short-term workers. This is subject to further consultation in September 2009.

## SECTION 4: RESPONSES TO THE IMPACT ASSESSMENT

### Background on the Impact Assessment

1. The draft Pensions (Automatic Enrolment) Regulations 2009<sup>13</sup> set out the details of how employers are expected to meet some of the requirements under the duties described in the Act. The Impact Assessment published alongside the draft regulations presented the impact on administrative costs to employers of complying with the automatic enrolment processes set out in the draft Pensions (Automatic Enrolment) Regulations, March 2009. The participation estimates and contribution costs were consistent with those presented in the Pensions Bill – Impact Assessment published April 2008. They do not estimate the costs of the total reform package.
2. A further Impact Assessment will be published alongside the draft Workplace Pension Reform (Completing the Picture) Regulations 2010, due to be published for consultation in September 2009. This will present the evidence and estimates associated with the remaining regulations including outstanding automatic enrolment processes, implementation, registration and compliance and changes to the 19-day rule. A full Impact Assessment will be published by Spring 2010, and will present a complete update of the costs and benefits resulting from all of the reforms since the Pensions Bill - Impact Assessment (April 2008).

### Stakeholder response to consultation

3. Key stakeholders provided responses on the Impact Assessment. There were three main themes:
  - o How have the administrative costs for the draft Pensions (Automatic Enrolment) Regulations 2009 been calculated?
  - o When will total administrative costs be updated?
  - o Which estimates reflect those in the Pensions Bill – Impact Assessment (published April 2008)?
4. The Governments response below aims to clarify and explain these issues.

### Government response

#### How have the administrative costs for the draft Pensions (Automatic Enrolment) Regulations 2009 been calculated?

5. The estimates of the overall administrative costs of reform, published in the Pensions Bill - Impact Assessment (published April 2008) resulted from a cross government working group comprising economists from DWP, the Enterprise Directorate at the Department for Business, Enterprise and Regulatory Reform (BERR)<sup>14</sup> and the Better Regulation Executive. The group systematically reviewed all of the assumptions underlying the estimates, incorporated evidence from the latest data sources, and commissioned two new research projects on the costs to employers. Many of the principles agreed at the working group are still valid and have been carried forward.

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<sup>13</sup><http://www.dwp.gov.uk/consultations/2009/>

<sup>14</sup> Now known as the Department for Business, Innovation and Skills.

6. The Standard Cost Model<sup>15</sup> approach has been used to estimate the administrative costs resulting from the draft Pensions (Automatic Enrolment) Regulations 2009, with consideration being given to the activities involved for each employer, who in the firm will carry out each activity, how frequently, how much they get paid and how long it will take.
7. The assumptions used in the costing represented the available data and evidence about the likely number of employers and individuals who would be affected by each of the requirements in the regulations, the time taken for each task and data on wages<sup>16</sup>.
8. Small firms are likely to have a number of structural differences compared with their larger counterparts. The Government recognises the challenges faced by small firms and is keen to ensure that such firms are not disadvantaged by the reforms and are able to fulfil their duties in the same way as larger firms.
9. DWP has estimated that the additional administrative costs to employers resulting from the specific processes in the draft Pensions (Automatic Enrolment) Regulations 2009 are £152 million in year one and £98 million in ongoing years thereafter<sup>17</sup>. These costs result from that specific set of regulations, not the overall reform. Further costs resulting from the remaining regulations will be set out in the Impact Assessment accompanying the consultation on those regulations. Estimates of the administrative costs will continue to be updated and reviewed in light of new evidence received.
10. The proposed changes as a result of the consultation on the draft Pensions (Automatic Enrolment) Regulations 2009 reduce the complexity of the automatic enrolment process and increase flexibility for employers to comply with their duties. Employers will still be required to carry out the same automatic enrolment process, but there is less prescription about how and when. The changes therefore minimise the overall employer burden whilst also ensuring that the needs of individuals are protected.

#### When will total administrative costs be updated?

11. The previously published estimates of the total administrative costs to employers of pension reform were in the Pensions Bill - Impact Assessment.
12. The total costs and benefits arising out of the Act, the costs and benefits of the draft Pensions (Automatic Enrolment) Regulations 2009 and the draft Workplace Pension Reform (Completing the Picture) Regulations 2010 will be reviewed and updated in a full Impact Assessment in Spring 2010. This is because each set of figures have been produced at different times, and revised in the light of the best available evidence. Each Impact Assessment is underpinned by different assumptions in line with current policy thinking around the reforms at the time.

#### Which estimates reflect those in the Pensions Bill – Impact Assessment?

13. The additional cost of contributions is an impact of the overall reforms as set out in the Act, and is not specifically related to the details described in the draft Pensions (Automatic Enrolment) Regulations 2009. This additional cost was included in the Impact Assessment in order to present a more complete picture of the impact of pension reform, and was estimated to be £2.5 billion per year based on the three per cent minimum contributions once employers are full phased in, consistent with the costs presented previously. Further detail on the methodology

<sup>15</sup> <http://www.berr.gov.uk/files/file44503.pdf>

<sup>16</sup> The methodology behind administrative cost estimates is detailed in Annex G of the Pensions Bill - Impact Assessment (published April 2008).

<sup>17</sup> DWP modelling.

behind the contribution costs and a breakdown by firm size is presented in the Pensions Bill - Impact Assessment (published April 2008). An update of the cost of contributions as a result of the changes in participation estimates and new data on earnings is included in the Impact Assessment published alongside the draft Workplace Pension Reform (Completing the Picture) Regulations 2010.

14. Most employers expect to use a range of mechanisms for managing any additional costs of pension reform. DWP survey evidence collected in 2007, suggests that employers would be most likely to absorb the increase as part of overhead costs (28 per cent), through increased prices (21 per cent), or through lower wage increases (14 per cent)<sup>18</sup>.
15. The views expressed in the 2007 employers' attitudes surveys may have reflected the prevailing economic conditions at the time. Government recognises that under the present economic conditions employers are more concerned about the potential impacts of these reforms. Estimates will continue to be updated in light of new evidence received, in particular the employers' and individuals' surveys.
16. DWP believe that the provisions set out in the draft Pensions (Automatic Enrolment) Regulations 2009, including the changes proposed in the response and the draft Workplace Pension Reform (Completing the Picture) Regulations 2010 provide a coherent and low cost package for overall reform; and balance the needs of savers and the burdens on employers and schemes in the most effective way.

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<sup>18</sup> Grant C, Fitzpatrick A, Sinclair P and Donovan JL, 2008, Employers' attitudes and likely reactions to the workplace pension reforms 2007: Report of a quantitative survey. DWP Research Report No. 546.

## **SECTION 5: SUMMARY OF PROPOSALS FOR CHANGE**

### **Automatic enrolment - occupational pension schemes and workplace personal pensions**

1. We propose that the automatic enrolment joining window will become one month from and including the automatic enrolment date.

### **Automatic enrolment into a personal pension and key features information**

2. We propose to remove the separate seven-day consideration period before the contract can be deemed.
3. We propose to change the 14 day automatic enrolment joining window to one month from and including the automatic enrolment date in line with the recommended change for trust-based occupational pension schemes.
4. We propose to remove duplicate scheme key features information requirements.

### **Jobholder information provided by the employer to the scheme for the purpose of achieving active membership**

5. We propose that a jobholder's residential address will be mandatory personal information which the employer must pass to the scheme.
6. We propose that employers should only be required to provide details of remuneration where the scheme requires the information. We propose to define remuneration for the purpose of these regulations as the value of gross earnings in any pay reference period if the information is available to the employer.
7. We propose that employers should only be required to pass the jobholder's National Insurance Number (NINO) to the scheme to achieve active membership where they already hold it.
8. If not immediately available, we propose that employers should be required to pass the NINO to the scheme within a month of receiving it.
9. We propose that the value of contributions (and the employer / jobholder split) should be provided where the scheme requires the information and the employer can provide it.
10. We propose that a jobholder's postal work address should be provided where the scheme requires the information.
11. We propose that a jobholder's electronic work address should be provided where the scheme requires the information and the jobholder has an individual e-mail address at work (not the generic company e-mail address).
12. We propose that a jobholder's personal electronic address should be provided where the scheme requires the information and the employer already holds it.
13. We propose to remove the requirement for the employer to provide jobholder personal information to the scheme within seven days for WPPs.

## **Enrolment information to jobholders**

14. We propose to put the statement about the objective of automatic enrolment into plain English and ensure neutrality.
15. We will make more information available to employers to enable them to signpost to information about pensions and saving for retirement. It will be available via an information hub. How to access the hub will be publicised and included in guidance for employers.
16. We will clarify that employers should provide the actual start and end dates of the opt out period rather than the length of the opt out period where this is known prior to the issue of information.
17. We propose to extend the enrolment information requirements to make clear that jobholders can still leave pension saving after the opt out period has ended. [The terms and conditions of their departure may differ depending on the rules of the scheme in which they are a member.]
18. We will adjust the regulation to clarify the 'value of contributions' requirement. This will include a requirement for employers who choose to phase in contributions to reflect their choice in the enrolment information to jobholders during implementation.
19. For defined benefit schemes (including the defined benefit portion of hybrid schemes) we do not plan to include accrual rate information in the enrolment information. Instead we plan to revise the timescale for the provision of scheme information to align with that for enrolment information.
20. We propose to tell jobholders that if their employer does something to eject them from a scheme, or changes the scheme so that it is no longer a qualifying scheme, the employer must take steps so the jobholder may become a member of a replacement qualifying scheme. We propose to extend the enrolment information provisions to cover this

## **Provision of information to existing active members of a qualifying scheme**

21. We propose to extend the window within which information must be provided from 30 days to two months from and including the notional automatic enrolment date (i.e. the date the employer duty goes live for that employer).
22. People need to be told that if their employer does something to eject them from a scheme, or changes the scheme so that it is no longer a qualifying scheme the employer must take steps so the jobholder may become a member of a replacement qualifying scheme. We propose to extend the enrolment information provisions to cover this.

## **Jobholders affected by postponement of automatic enrolment**

23. We propose to extend the window within which the first pulse of information must be provided to a jobholder affected by postponement to one month after the notional automatic enrolment date.
24. See paragraph 73 in relation to extension to timescales for enrolment information.

## **Opting out from workplace and occupational pension schemes**

25. We will prescribe the opt out period as a maximum of one month from and including the day the joining window ends.

### **Process of opting out**

26. We propose to retain the requirement that the opt out notice may only be sourced from schemes. In cases where the administration of the scheme is delegated to the sponsoring employer in the trust deed, existing practices may continue and the dedicated person within the employer's office can be the source of the opt out form.
27. We will prescribe the opt out period as six weeks from and including the day the joining window ends in cases where an employer informs a jobholder that an invalid opt out notice has been received.
28. We propose to remove the requirement on employers to pass the opt out notice on to the scheme within seven days of receipt. Employers will be required to tell the scheme that a scheme member has opted out but we propose to leave how and when to the arrangements made between employers and schemes.

### **Content of the opt out notice**

29. We will re-write the specimen opt out notice in plain English
30. We will remove reference to the Pensions Act 2008 from the specimen opt out notice

### **Opt out refunds**

31. Employers and schemes will have to refund contributions within one month or the second payday from and including the day the jobholder gives notice to refund contributions, whichever is later.
32. We propose to remove the separate seven day time limit for employers to get the opt out notice to the scheme.
33. We will consult on proposals to amend the 19 day rule to minimise the need for refunds from pension schemes.

### **Postponement of the automatic enrolment date**

34. We propose to change the postponement period and the second period to three months.
35. We propose to consult on proposals to remove the provisions that allow employers with workers on a contract of three months or less to use postponement for those short-term workers. This is subject to further consultation in September 2009.

## **SECTION 6: NEXT STEPS**

Having given full consideration to all the responses to the consultation and taken a substantial number of suggestions and recommended changes on board, we now plan to lay the draft Pensions (Automatic Enrolment) Regulations 2009 for approval by both Houses of Parliament by Spring 2010.

## Annex A: List of respondents

Adecco  
Aegon  
Age Concern and Help the Aged  
Allen & Overy LLP  
Aon Consulting  
Arc Benefits Limited  
Association of British Insurers  
Association of Consulting Actuaries  
Association of Pension Lawyers  
Aviva  
B&CE Benefit Schemes  
Bluefin  
British Broadcasting Corporation  
British Chambers of Commerce  
Buck Consultants Limited  
Business in Sport and Leisure Limited  
Business Service Plus Limited  
Capita Hartshead  
CBI  
Civil Service Pensions (NI)  
Clarks International  
Communities and Local Government  
EEF  
Evershed LLP  
Federation of Small Businesses  
Fidelity International  
First Actuarial plc  
Friends Provident  
Gissings Consultancy Services Limited  
GMB  
Hamish Wilson  
Hewitt Associates Limited  
Hymans Robertson  
Institute of Directors  
Investment & Life Assurance Group  
Investment Management Association  
Jardine Lloyd Thompson  
Kerstine Lawley  
Legal & General  
Lloyds Banking Group  
Local Government Employers  
Logica in association with IFDS  
Lovells LLP  
Marks and Spencers plc  
Mayer Brown International LLP  
Mercer Limited  
NAAFI  
NAPF  
NFU  
Northern Rock plc  
PricewaterhouseCoopers LLP  
Professional Contractors Group  
Prudential UK  
Punter Southall  
Recruitment and Employment Confederation  
RPMI  
J Sainsbury plc  
Saul Trustee Company  
Scottish Public Pensions Agency  
Simon Baggott  
Standard Life Assurance Limited  
Tax Incentivised Savings Association  
Tesco plc  
Tessella plc  
The Co-operative  
The ICAEW  
The ICAS  
The Institute of Payroll Professionals  
The Law Society of Scotland  
The Newspaper Society  
The Pensions Advisory Service  
The Pensions Trust  
The Society of Pension Consultants  
The University of Sheffield  
TLT LLP  
Towers Perrin  
TUC  
Watson Wyatt  
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