EXPLANATORY MEMORANDUM TO

THE AUTOMATIC ENROLMENT (MISCELLANEOUS AMENDMENTS) REGULATIONS 2013

2013 No. 2556

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The regulations simplify the process of automatically enrolling eligible jobholders into workplace pension saving.

2.2 The changes made by these Regulations:

- Provide an alternative definition of a pay reference period for the purpose of assessing whether a jobholder has earnings over the threshold to be automatically enrolled into pension saving.
- Provide an alternative definition of a pay reference period for the purpose of assessing whether a pension scheme can be used for automatic enrolment.
- Introduce consistent contribution payment deadlines for everyone joining a pension scheme.
- Clarify the form and content of the notice jobholders submit if they want to opt out of pension saving.
- Extend the window employers have to enrol eligible jobholders into a pension scheme from one month to six weeks, together with some minor and technical consequential amendments.
- Implement minor changes to the quality requirements defined benefit pension schemes have to meet if they are used for automatic enrolment.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The Pensions Act 2008 (http://www.legislation.gov.uk/ukpga/2008/30/contents) (the Act) provides powers to the Secretary of State to make regulations that underpin the employer duties outlined in the Act.

4.2 Chapter 1 of Part 1 of the Pensions Act 2008 provides powers to the Secretary of State to make regulations setting out the arrangements an employer must make to automatically enrol an eligible jobholder into a qualifying scheme and pay at least a minimum contribution. The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (S.I. 2010/772) (http://www.legislation.gov.uk/uksi/2010/772/contents/made) set out the processes and timings for automatic enrolment, opt out, automatic re-enrolment, voluntary opt in, the provision of certain information and the minimum quality requirements for certain schemes.

4.3 In addition there are regulations under the Pensions Act 1995 (http://www.legislation.gov.uk/ukpga/1995/26/contents/enacted) and the Pension Schemes Act 1993 (http://www.legislation.gov.uk/ukpga/1993/48/contents/enacted) that underpin the wider duties of employers and trustees in relation to the running of workplace pension schemes. This includes the time limits for handing over deductions from pay to a pension scheme.

4.4 Since the start of automatic enrolment in October 2012, the Department and The Pensions Regulator (TPR) have been engaging closely with employers and others to identify areas for improvement. As a result the Government has identified a package of techincal improvements designed to make the automatic enrolment process more straightforward.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The intention of these Regulations is to make the process of automatic enrolment easier. This is achieved with a package of technical changes to existing regulations governing automatic enrolment and the running of workplace pension schemes.

7.2 The changes to the definition of a pay reference period will make assessing whether a jobholder is to be automatically enrolled into a pension easier. With the current definition it is difficult for existing payroll software to make an assessment automatically because payroll information generally uses tax periods whereas jobholder assessment uses pay periods which may be slightly different. In future employers will be able to use a pay reference period aligned with tax periods, which will make it much easier to utilise

payroll systems to perform jobholder assessment automatically. Employers will have the option to stay with the existing definition if they are already using it, so no-one will be forced to incur the cost of switching to something new.

7.3 The regulations provide a new definition of a pay reference period for the purpose of assessing whether an occupational money purchase or personal pension scheme can be used for automatic enrolment. This will make it easier for a scheme to be certain it has received the minimum contributions necessary for such a scheme to be a qualifying scheme for automatic enrolment purposes. It does this by aligning the pay reference period used for determining the quality standard for such schemes with the periods already used by payroll. Again there will be the option to stay with the existing definition, so no-one will be forced to incur the cost of switching to something new.

7.4 The Regulations also introduce consistent contribution payment deadlines. At the moment the deadlines for passing over deductions from pay are different if the pension scheme member joined as a result of automatic enrolment or re-enrolment. In future the time limit will be the same regardless of how or why the member joined. This will make administration easier for some employers and pension schemes.

7.5 The Regulations clarify the form and content of the notice jobholders submit if they want to opt out of pension saving following automatic enrolment or re-enrolment. At the moment there is some doubt about the extent to which the form and content of the notice can be adapted, for example to include branding or additional information, or to make it easier to complete using a web site. These Regulations will clarify that a flexible approach can be taken to ease administration.

7.6 The Regulations extend the window employers have to enrol eligible jobholders into a pension scheme from one month to six weeks, together with some minor and technical consequential amendments. This extra time will help employers avoid inadvertently breaching their duties.

7.7 Pension schemes must meet certain qualifying conditions before they can be used for automatic enrolment. One method a defined benefit pension scheme can use to meet the qualifying conditions is show it meets a defined test scheme standard. The Regulations implement technical changes to the definition of a test scheme to ensure it works as intended.

Consolidation

7.8 Consolidation of the regulations included within this instrument will be included in due course in the Department's "The Law Relating to Social Security" (the Blue Volumes), which are available at no cost to the public on the internet at - http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/

8. Consultation outcome

8.1 The Government consulted for six weeks from 25th March to 7th May and 112 formal responses were received.

8.2 Responses were broadly supportive of the aims of the proposed changes, but raised a large number of detailed and technical issues. The Department has worked with stakeholders to address these issues, and the final regulations include a number of detailed changes, in particular on changes to the definitions of pay reference periods and the test scheme standard.

8.3 The consultation included a proposal to turn off the employer duty to automatically enrol a jobholder who had ceased to be an active member of a qualifying scheme in a set period. Responses to the consultation highlighted a number of practical issues with the approach and this has therefore not been taken forward at this stage.

9. Guidance

The Pensions Regulator produces detailed guidance on all aspects of automatic enrolment which can be accessed at http://www.thepensionsregulator.gov.uk/automatic-enrolment.aspx.

10. Impact

10.1 There is no impact on business and civil society organisations.

10.2 There is no impact on the public sector.

10.3 There is no Impact Assessment associated with these regulations as the changes proposed do not affect policy which has been previously agreed and supported by an Impact Assessment. The Regulations make technical and mechanical changes or allow more flexibility about how the automatic enrolment requirements can be met. A summary of the net impact of the workplace pension reforms was published in July 2012 at https://www.gov.uk/government/publications/workplace-pension-reform-summary-of-net-impact-on-business-july-2012.

11. Regulating small business

11.1 The legislation applies to small business. Automatic enrolment duties are, however, being introduced in stages, and will not apply to small businesses until June 2015 at the earliest.

11.2 The changes are all aimed at making the automatic enrolment process more straightforward. This will benefit small business.

12. Monitoring & review

12.1 The workplace pension reform programme is fully evaluating the effects of the reforms against the policy objective of getting more people to save more for retirement.

12.2 We are also continuing to assess the impact of the reforms on employers and the pensions industry to evaluate the extent to which we meet this policy objective whilst putting minimal burden on employers and maintaining current good pension provision.

12.3 The effect of the reforms is evaluated through analysing a range of data, including Management Information from the Pensions Regulator and the National Employment Savings Trust pension scheme, existing continuous surveys of individuals and employers run by DWP and other government departments such as the Office for National Statistics and where appropriate, research commissioned by DWP. As such, the evaluation is being conducted by a combination of external research organisations, academics and DWP analysts. The evaluation will be carried out on an on-going basis to gauge progress throughout the implementation of the reforms and beyond, and findings will be available publicly at key stages.

13. Contact

For any queries regarding this instrument, please contact David Hone at the Department for Work and Pensions Telephone number: 020 7449 7376 or e-mail: david.hone@dwp.gsi.gov.uk