EXPLANATORY MEMORANDUM TO

THE EMPLOYERS' DUTIES (IMPLEMENTATION) (AMENDMENT) REGULATIONS 2012

2012 No. 1813

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

This instrument amends the Employers' Duties (Implementation) Regulations 2010 - http://www.legislation.gov.uk/uksi/2010/4/contents/made - so that employers with fewer than 50 workers are not subject to the duties in the Pensions Act 2008 to automatically enrol qualifying workers into a workplace pension until June 2015 at the earliest.

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

None.

4. Legislative Context

4.1 The Pensions Act 2008 places a duty on employers to automatically enrol qualifying workers into a workplace pension. The Employers' Duties (Implementation) Regulations 2010 are part of a package of instruments which underpin those reforms and provide the arrangements for employers to be brought incrementally into the reforms according to their size (determined by the number of people in their Pay as you Earn (PAYE) scheme). The table at regulation 4 of the Employers' Duties (Implementation) Regulations 2010 provides the date from which employers of different sizes are required to begin automatic enrolment activity.

4.2 Under the existing instrument, employers with fewer than 50 workers will be brought into the reforms from August 2014 onwards. The amendments in this instrument, in particular the amendments to the table of dates at regulation 4, ensure that employers with fewer than 50 workers are not brought into the reforms until June 2015 at the earliest.

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 On 28 November 2011, the Government announced changes to the implementation of the automatic enrolment duties in the Pensions Act 2008 to allow employers with fewer than 50 workers more time to adjust to the reforms in light of the economic circumstances. This instrument implements that commitment by making amendments to the Employers' Duties (Implementation) Regulations 2010 - http://www.legislation.gov.uk/uksi/2010/4/contents/made - so that employers with fewer than 50 workers are not required to automatically enrol their workforce into a workplace pension until June 2015 at the earliest. This is achieved mainly by amendments to the table of dates at regulation 4 of the Employers' Duties (Implementation) Regulations 2010.

7.2 Currently, the regulations provide that employers are allocated a staging date by reference to the size of their PAYE scheme. There are some employers with fewer than 50 workers who cannot be identified from PAYE data and, hence, would otherwise be allocated a date before June 2015 in the table at regulation 4. These are employers who share a PAYE scheme with other employers or employers with fewer than 50 workers who pay former employees a company pension via the same PAYE scheme as they pay their current workforce. The regulations make provision so that employers who meet this description can identify that they are not required to automatically enrol their workers before June 2012. If one of these employers has been allocated a duty date before June 2015 in the table at regulation 4, they may choose whether to begin automatic enrolment from that date or from an alternative date after June 2015, as prescribed in regulation 4A.

- ***Consolidation***

7.3 An informal consolidated text will be available to the public free of charge via "The Law Relating to Social Security" (Blue Volumes), on the Department for Work and Pensions website at: http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/

8. Consultation outcome

8.1 Consultation on a draft of the proposed changes took place for a period of six weeks between 23 March and 4 May 2012. A six week consultation was considered appropriate because of the nature of the proposed amendments and because of the need to give all employers certainty through legislation about when the duties would apply to them in time for the onset of employer duties in October 2012. The Department received 24 responses from employers, lawyers, accountants, the pensions industry and consumer representatives.

8.2 The consultation responses highlighted that there is still strong support for automatic enrolment. However, the vast majority of respondents called for certainty and for the legislative framework to be finalised as soon as possible without further change. Very few respondents were in outright favour of the changes. Whilst some respondents recognised the benefits of the longer staging timetable for small and micro employers they, and many others, did not necessarily agree with other aspects of the proposals. For example, around one third of respondents thought that the changes would be detrimental to individuals' savings. Around one quarter thought that the definition of small employer in the draft instrument was too complex and would be

difficult for employers to understand and to operate. In recognition of the comments received on this issue, the description of small and micro employers, defined in the instrument as sent out for consultation as 'small employer', has been simplified.

8.3 Other comments ranged from a view that the extended timetable would exacerbate the period of market distortion already created by staging by employer size rather than sector, through to the suggestion that the Government had failed to consider the longer-term wider effects on the economy and a suggestion that the start date of the reforms should be delayed. There were also suggestions that extending the timetable could undermine confidence in and the success of the reforms and does not help with the aspiration to get individuals into pension saving as quickly as possible

8.4 The Government response to the consultation is available here: http://www.dwp.gov.uk/consultations/2012/wpr-rev-implementation.shtml

9. Guidance

The Pensions Regulator provides guidance for employers and will revise its guidance to reflect the amendments contained within this instrument.

10. Impact

10.1 These regulations reduce costs to the private sector and civil society organisations by providing that employers with fewer than 50 workers are not required to automatically enrol their workforce into a workplace pension until June 2015 at the earliest.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment is attached to this memorandum and will be published alongside it on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business

11.2 The policy implemented by the instrument reduces the impact of the reforms on firms employing fewer than 50 workers.

11.3 The basis for the final decision on this legislation was specifically to assist small business.

12. Monitoring & review

12.1 The effects of the reforms will be fully evaluated against the overarching policy objectives of getting more people to save more for their retirement. The impact on employers and the pensions industry will be assessed to evaluate the extent to which this policy objective is met, whilst minimising the regulatory burden on employers and maintaining current good pension provision.

12.2 Annual reports will monitor impacts and outcomes at different stages and by a range of employer characteristics, including analysis by employer size. It will

be captured using the Department's qualitative research with employers, quantitative Employer Pension Provision Surveys, the Pension Regulator's quarterly employer research and the ONS Annual Business Survey.

13. Contact

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