EXPLANATORY MEMORANDUM TO

THE EMPLOYERS' DUTIES (IMPLEMENTATION) (AMENDMENT) REGULATIONS 2017

2017 No. 347

1. Introduction

1.1 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 purpose of these regulations is to make clear when the automatic enrolment (AE) duties apply to newly created employers from April 2017 and to reduce burdens on them. The instrument amends the start date of the AE duties trigger for new employers outside the AE staging profile (the profile sets out the timetable for gradually bringing existing employers into the AE duties between October 2012 and February 2018)); and to give such employers the option to defer automatic enrolment, for up to 3 months, from the date they take on a new worker.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Pensions Act 2008[1] requires employers to automatically enrol and re-enrol workers who satisfy age and earnings criteria into a qualifying workplace pension scheme and make joining arrangements for workers who opt in or apply to join a pension arrangement.

4.2 These amending Regulations relate to the date on which the duties under the Pensions Act 2008, to automatically enrol a worker into a pension scheme, first apply to an employer outside the AE staging profile. The Regulations also make provision for post-staging employers to defer automatic enrolment for new workers by up to 3 months.

4.3 This will have the effect of reducing burdens on this group of employers when automatically enrolling workers for the first time and support the Pensions Regulator in their enforcement of the duties.

[1] http://www.legislation.gov.uk/ukpga/2008/30/pdfs/ukpga_20080030_en.pdf

5. Extent and Territorial Application

5.1 The extent of this instrument is Great Britain.

5.2 The territorial application of this instrument is Great Britain.

5.3 Separate but corresponding provision will be made for Northern Ireland.

6. European Convention on Human Rights

6.1 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

Change to employers' AE duties start date

7.1 Since October 2012, employers have been brought into workplace pensions gradually with each employer knowing in advance when their AE duties will start. This process is set out in the AE Employers' Duties (Implementation) Regulations 2010[2] and referred to as the staging profile. The AE staging profile ends for non-PAYE employers on 1 April 2017, and for PAYE employers on 30 September 2017.

7.2 After 1 April 2017 (for non-PAYE employers) and from 1 October 2017 (for PAYE employers), the trigger date for the AE duties applying to employers outside the staging profile is the pay date of a worker. This instrument amends this trigger date for both PAYE and non-PAYE employers to the date on which an employer's first worker starts work.

7.3 The new date will provide certainty about when the AE duties trigger applies to newly created employers. It will also enable the Pensions Regulator to enforce the duties.

Deferral of automatic enrolment for post-staging employers

7.4 Existing employers can defer automatic enrolment of new workers by up to three months. This is known as 'postponement' for employers within the AE staging profile. It was introduced following the Making Automatic Enrolment Work (MAEW) Review in 2010[3], which found that many employers expressed concern that the AE duties could lead to significant costs associated with large numbers of employees who might remain with an employer for only short periods of time. The MAEW review recommended the introduction of a postponement period to help alleviate these problems.

7.5 This instrument extends an existing deregulatory measure to employers created from 1 April 2017, allowing them to defer automatic enrolment of new workers for up to 3 months.

7.6 This will have the effect of reducing burdens for this group of employers when automatically enrolling workers for the first time.

[2] http://www.legislation.gov.uk/uksi/2010/4/contents/made

[3] https://www.gov.uk/government/publications/making-automatic-enrolment-work-a-review-for-the-department-for-work-and-pensions

Consolidation

7.7 Informal consolidated text of instruments is available to the public free of charge via the National Archive website legislation.gov.uk.

8. Consultation outcome

8.1 The Department for Work and Pensions carried out a public consultation on a package of amendments to AE legislation which included discussion of these measures. The consultation ran for three weeks from 10 February until 3 March 2017.

8.2 We received 17 formal written responses to the consultation from employer organisations, pension providers, lawyers, accountants and pensions' professionals.

8.3 The majority of respondents welcomed the changes to AE legislation set-out in the draft Statutory Instrument (SI) in the consultation document. Several expert stakeholders offered minor and technical drafting comments on the SI which were helpful in preparing the final version. Two respondents asked DWP to consider alternative AE duties start dates, with the aim of giving affected employers more time to meet the duties, and improve administration. We considered these requests but these proposals would not achieve the policy objective to make clear when the AE duties apply to newly created employers from April 2017. We also concluded that an alternative approach would not support the Government's objective of ensuring that employees are brought into pensions saving at the earliest possible point of their employment. One of these respondents also asked us to further consider the operational implications for payroll providers and the Pensions Regulator. We have worked extensively with the Regulator on the development of the post-staging AE duties trigger. The Regulator is confident, through its engagement with employers and others that the regulations will operate effectively. In addition, the Regulator will be working with payroll providers and others so that operational guidance for the new AE duties trigger date provides appropriate support. The government response to the consultation on the draft regulations was published on 10 March 2017 and can be found at: https://www.gov.uk/government/consultations/automatic-enrolment-technical-changes-2017.

9. Guidance

9.1 The Pensions Regulator produces detailed guidance on all aspects of automatic enrolment.

10. Impact

10.1 These regulations will impact on business, charities and the voluntary sector resulting in an Equivalent Annual Net Direct Cost to Business (EANDCB) saving worth £2.7 million to UK organisations affected by AE.

10.2 There is an impact on the public sector. The Exchequer will benefit from savings of £10.3 million over the period 2017/18 to 2026/27 (in 2017/18 terms), as a result of reduced tax relief on individual contributions, resulting from the take up of the deferral measure.

10.3 An Impact Assessment has been prepared for this instrument and is published alongside this statutory instrument on legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses. However, there are no new burdens on small businesses.

12. Monitoring & review

12.1 It is not appropriate to include a review provision for this instrument because the costs of monitoring and review would be disproportionate to the level of impacts from these measures, and we want as much consistency between staging and post-staging employers as possible to ensure stability and equity. However, the automatic enrolment programme is fully evaluating its effects 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 AE 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

13.1 James Newman at the Department for Work and Pensions, email: james.newman@dwp.gsi.gov.uk can answer any queries regarding the instrument.