Workplace pensions reform

On 12 January 2010, the Department for Work and Pensions (DWP) issued in final form the package of regulations that cover the pension reforms due to commence in October 2012.

Background

The Pensions Act 2008 (the Act) provided a basic outline of the new 'employer duties' framework, but left the detail to follow in regulations. The DWP consulted in March 2009 and again in September 2009 on draft regulations. It has now published a full set of regulations which are in final form, although one tranche is subject to parliamentary approval, so it is possible that we will see some further changes, but these should be insubstantial.

The key differences from the draft regulations relate to the implementation of the new regime, the certification process for defined contribution (DC) schemes and the requirements for the postponement of automatic enrolment. In addition there are a number of minor amendments.

At the same time as publishing these regulations, the DWP has also released a set of regulations which provide the final framework for the new personal accounts scheme (although, again, some regulations are subject to parliamentary approval). The personal accounts scheme will be available from 2012 as a means of helping employers to comply with their duties.

Implementation of the new regime

The DWP originally proposed that the reforms would be introduced over a four year period from October 2012 to October 2016. This period has now been extended up to October 2017, in order to give smaller employers and new businesses more breathing space.

Over the first four years, employers will be brought into the new regime in stages by scheme size, as measured by the number of workers to whom PAYE income is payable. The largest employers will be staged in first. The regulations specify the 'staging date' applicable to each size of employer, with, broadly, one group of employers being staged in on the first day of every month during the four year period. Table 1 opposite shows the staging date for certain sizes of employer.

During the four year implementation period, the contribution requirement will be 1% of qualifying earnings for employers and 2% in total. In the fifth year, the required contributions will be 2% for employers (5% in total). The full contribution rates of 3% for employers and 8% in total will operate from October 2017.

In brief

- The DWP has issued final regulations setting out the detail of the new regime of employer duties that will apply from 2012.

Next steps

- Employers need to be aware of the proposals, and start considering any changes that may need to be made in order to comply.
- Trustees should discuss with employers whether they are planning to use their scheme to meet the employer duties requirements.

Table 1

Number of employees	Staging date
120,000 or more	1 October 2012
6,000 to 9,999	1 April 2013
800 to 1,249	1 October 2013
240 to 249	1 April 2014
50 to 89	1 July 2014
Test group of employers with less than 50 employees	1 March 2014
Less than 50	Between 1 August 2014 and 1 February 2016*
New employers setting up between 1 April 2012 and 31 March 2016	Between 1 March 2016 and 1 September 2016**

* The regulations split all employers with less than 50 employees into tranches by PAYE number, and the staging date within this period will depend on the PAYE number.

** Depending on the date PAYE income is first payable.

Employers with defined benefit (DB) or hybrid schemes will be able to defer auto-enrolment until October 2016 so long as the scheme remains open until that date. If the scheme closes, then jobholders who were not active members of the scheme must be enrolled into an alternative qualifying scheme (an approved scheme which operates automatic enrolment and meets certain minimum quality requirements).

If that scheme is defined contribution then the employer will need to pay contributions back to its original staging date (potentially four years' worth of contributions).

The employer duties

As mentioned above, the final regulations are broadly the same as the proposals set out in our October 2009 briefing note 'Completing the Picture: the DWP's second auto-enrolment consultation'. The operation of automatic enrolment, re-enrolment, opting out and opting in will therefore be largely as expected.

However, the proposal to prevent the postponement of automatic enrolment for a jobholder on a contract of less than three months has been removed. The intention behind this was to ensure that even jobholders on short term contracts have the opportunity to save for a pension, but responses to the consultation suggested that this proposal would not achieve its aim. Instead, a new requirement has been introduced, whereby an employer will not be able to postpone automatic enrolment for a jobholder who has already been subject to postponement by that employer within the previous 12 months.

Other, less significant, changes from the draft regulations are set out below.

- **Re-enrolment:** for each three-yearly re-enrolment, the re-enrolment date will be a date within a one month period following the original staging date (or previous re-enrolment date). The exact date within this one month window will be at the employer's discretion. This should give some flexibility in aligning payroll cycles with the enrolment process.
- **Registration:** the requirements for registering with the Pensions Regulator (TPR) to confirm that the duties have been met have been simplified, and the requirements for re-registration following each re-enrolment have also been made easier.
- **Record-keeping:** there have been some simplifications to the requirements for keeping data, in particular data relating to those jobholders who have opted out.
- **The '19 day' rule:** for contributions deducted during the one month joining window, the due date will be the final day of the second month following the month during which automatic enrolment occurs (the original proposal was the 19th day of the second month). So, for example, if automatic enrolment occurs on 1 February, contributions deducted for the month of February would not need to be paid across until 30 April (currently contributions would need to be paid across by 19 March). This rule is intended to simplify the administration process for opt-outs, but employers and trustees will need to be aware of the different payment deadline for the contributions deducted during the one month joining window.
- **Compliance:** some minor changes have been proposed to the elements of the compliance regime that TPR has been charged with, for example, the interest rate that can be levied on unpaid contributions.

Certification of qualifying schemes

Probably the most welcome change from the draft regulations is that the proposals for the certification of qualifying DC schemes have been withdrawn as a result of feedback received during the consultation process. The DWP will be consulting further with industry and stakeholders in order to develop a more workable set of proposals.

The proposals for the certification of defined benefit and hybrid schemes will go ahead largely as planned, although there have been some minor amendments to the proposals for the certification of hybrid schemes. The final guidance for employers and actuaries on certifying DB and hybrid schemes has not yet been published, but it is to be hoped that it is more usable than the draft guidance.

Personal Accounts rebranded 'NEST'

Prior to the publication of the regulations, the Personal Accounts Delivery Authority, the body charged with setting up the personal accounts scheme, announced that the permanent name for the scheme would be the National Employment Savings Trust, or NEST. NEST will go live in 2012 but will launch on a low volume voluntary basis in 2011.

Commentary

It is clear that the DWP has faced a difficult task in achieving a regime which encourages pension saving but minimises the administration burden on pension schemes and employers. Small employers in particular are likely to find the new regime very difficult, and the DWP has committed to providing effective support to this group. More generally, TPR has been tasked with providing guidance to employers on their new duties.

Finally, with a general election on the horizon there remains a large question mark over the regime – will we see further changes proposed as a result of any change in government, especially as the Conservative party has promised a 'fast and dirty' review of the new regime if they come into power?

Where can I get further information?

For specific advice, please get in touch with Lindsay Heeley on 01483 540 300 or by email on lindsay.heeley@puntersouthall.com

For further information, visit our website at www.puntersouthall.com

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