

Ms Lillian Coulson
Department for Work and Pensions
Enabling Retirement Savings Programme
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The Adelphi
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3 June 2009

Dear Ms Coulson

Pensions – Automatic Enrolment Consultation HamishWilson & Co LLP's Response

This letter contains the response of HamishWilson & Co LLP to the consultation on draft pensions regulations issued by the DWP on 12 March 2009 concerning The Pensions (Automatic Enrolment) Regulations 2009 (and The Pensions Regulator (Delegation of Powers) Regulations 2009).

About HamishWilson

We are a young and growing, specialist actuarial and pension consultancy. We currently have four qualified actuaries.

Our client base mainly comprises trustee boards and/or sponsoring employers of small to medium-sized occupational pension schemes.

Detailed responses

Our detailed responses to the specific questions raised in the consultation paper are set out in the Appendix.

General comments

In addition to our detailed response to the questions, we would like to make some general comments.

Opt-out process

The draft Automatic Enrolment Regulations require jobholders to be automatically enrolled into a qualifying scheme before they can be given the opportunity to opt out. We believe this goes further than the Pensions Act 2008, which appears merely to require employers to put arrangements in place by which jobholders are to become active members of such a scheme.

We see little reason for forcing new recruits into active membership of a scheme, even if it is the Personal Accounts Scheme, only for them to opt out a few days later. It will place an unnecessary burden on employers to require them to go through the hoop of automatic enrolment (and possibly deducting contributions only for them to be refunded a few weeks down the line) before the recruit has had the chance to opt out.

The Government may be keen to maximise take-up of membership of the Personal Accounts Scheme (or pension saving in general) and minimise the risk of employers coercing employees into opting out, but we suggest this can be addressed through regulating what is said to employees, not when.

Postponement of automatic enrolment

We welcome the ability for employers to postpone automatic enrolment, particularly where they experience a high turnover of staff.

We suggest many employers would find it more helpful to be postpone automatic enrolment by up to 3 calendar months (so up to 92 days) rather than 90 days, particularly if they have a policy of recruiting new staff and admitting new entrants to scheme membership on the 1st day of the relevant month.

Particular problems for small employers

The regulations contain prescriptive time limits. Whilst these may be achievable for larger employers with an adequately resourced and experienced payroll department, they would be unrealistic for small employers who may rely on a single employee to attend to payroll matters on a part-time basis or outsource payroll to a third party. We suggest such employers should be afforded greater flexibility. This could be achieved by requiring actions to be completed within a reasonable period, supported by guidance from The Pensions Regulator which could take account of employers' resources.

An extreme example of this is a private individual with disabilities who (with council funding) directly employs carers to come into their home. Although many carers will not earn enough (from any one job) to qualify for automatic enrolment into a qualifying scheme, many others will. Individuals who employ carers cannot be expected to be familiar with their responsibilities as an employer and will require assistance from a third-party payroll provider; sufficient time should be allowed for liaison between the two.

Yours sincerely

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For and on behalf of HamishWilson

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Appendix

Detailed Responses

THE PENSIONS (AUTOMATIC ENROLMENT) REGULATIONS 2009

Regulation 3 Automatic enrolment into a personal pension scheme

Q.1: To what extent would the terms and condition proposed for deeming the contract differ from the current joining processes and what impact is this likely to have?

No comment.

Regulations 4 and 5 Information provided by the employer to the scheme

Q.2: Is there other essential information that should be included, or moved into regulation 4?

Details of the contributions payable by the employer and jobholder should be moved from regulation 5(c) into regulation 4.

Q.3: Is there further information that is likely to be needed or should be moved into regulation 5?

No comment.

Regulation 8 key Features Information

Q.4: Will the key features information requirements proposed allow people to make an informed decision about whether to remain within the personal pension contract?

No comment.

Q.5: To what extent would modifications need to be made to existing information provision processes?

No comment.

Regulation 10 Jobholders affected by postponement of automatic enrolment

Q.6: Is there any other information to jobholders affected by postponement of automatic enrolment that is missing and needs to be included?

No.

Regulations 13 and 14 Process of opting out

Q.7: Regulation 13 - We would welcome views on the 5 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.

Throughout the regulations we would prefer to see “within a reasonable period” (supported by guidance from The Pensions Regulator) rather than strict time limits.

The proposed time limit of 5 days may be achievable for larger employers with an adequately resourced and experienced payroll department, but would be unrealistic for small employers who may rely on a single employee to attend to payroll matters on a part-time basis or outsource payroll to a third party. (See covering letter for further comment.)

Q.8: Regulation 13 - We would welcome views on whether the scheme or the employer should hold the original opt out notice.

The original opt-out notice should be held by the employer as evidence that they had not failed in their duty to contribute to the scheme.

Q.9: Regulation 14 - We propose that opt out forms should be sourced from pension schemes. We consider that a requirement to obtain the opt out notice from the scheme balances the need to protect jobholders from outside influences without establishing so rigid an opt out process that the ability of the jobholder to opt out are undermined. We would welcome your views on whether we have struck the right balance or whether we should relax our approach.

We see little benefit in requiring jobholders to obtain opt-out forms from the scheme rather than their employer. Indeed, we believe much costly and unnecessary administration could be avoided if jobholders were able to obtain opt-out notices from their employer in advance of the automatic enrolment date (eg before their job commences).

The focus of regulation should be on what is said to the jobholder by the employer and not on when and from whom a jobholder can obtain an opt-out notice.

Q.10: Regulation 14 - Schemes are required to provide an opt out form on request. Should we prescribe a time limit for schemes to do this?

As indicated above, we would prefer to see references to “within a reasonable period”.

Regulation 15 (and Schedule) Content of opt out notice

Q.11: Do schemes welcome a standard mandatory [opt] out form, or would prescribed minimum wording suffice?

We think a standard mandatory opt-out form would make sense.

Q.12: Should prescribed wording be a minimum or a maximum?

See response to Q.11.

Regulation 16 Opt out refunds

Q.13: Is 21 days a sufficient period for schemes to refund monies to employers and a fair period for employers?

Again, we would prefer to see references to “within a reasonable period”.