

**Technical Changes to Automatic Enrolment – Consultation on draft regulations
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 For many employers, auto enrolment is a new and unfamiliar event. We understand that many, particularly small and micro employers about to hit their staging dates, may have concerns about the complexity of the regime and we understand why this has resulted in the Department for Work and Pensions (DWP) consulting on technical changes to auto enrolment in order to ease their burden.
- 1.2 For workers, auto enrolment is equally – if indeed not more – unfamiliar. Employers may well have received some communications from Government about its introduction, but we are not aware of information having been specifically targeted at workers. The role of worker information has been shown to be key to the success of the policy – particularly for those who know little or nothing about the subject and have low confidence.
- 1.3 The needs of employers and workers in the information process must therefore be carefully balanced, but arguably the greater need falls on the side of workers.
- 1.4 We therefore query the wisdom of proposing to provide **less** information to workers about what is happening to them under auto enrolment. In particular, we are concerned about the changes that further limit communications to jobholders who are entitled to opt in and to workers without qualifying earnings who are entitled to join a pension scheme.
- 1.5 We think the proposed one-size-fits all communication to both of these groups of workers could result in them becoming confused and disengaged. We are also baffled by the notion that a low-paid worker, probably with fluctuating earnings, is supposed to be able to decide into which category they fit by reference to their ‘qualifying earnings’ – when one of the reasons behind the move to the generic style of letter in the first place was that employers

find the whole process of assessing, categorising and calculating workers' qualifying earnings so complex.

- 1.6 A mistake as to their correct 'category' might see a worker overlooking the incentive of an employer contribution, and staying out of pension saving – even if they might otherwise have engaged. Yet the Government's aim with auto enrolment should be to encourage people to save where they can afford to do so.
- 1.7 We therefore do not think the new information proposals facilitate this and, in fact, they seem to work directly against promises made in the recent consultation on the auto enrolment threshold that those with opt in rights would receive information about those rights from their employers¹. These measures may even be counterproductive in terms of lifting the burden on employers, if the result of being provided with less tailored information at the outset is that it will lead to more questions from workers down the line. If anything, we would propose that there should be **more** supporting information, not less, so that people can properly understand how auto enrolment will affect them.
- 1.8 We wholeheartedly disagree with the notion that individuals should be expected to research their own pension position further without any signpost from employers to trusted sources of information. This leaves people open to the risk of fraud and misinformation – and quite unnecessarily if the only alleviation of employer burden would be the exclusion of a simple signposting message in an otherwise 'standard' letter which in itself is provided by The Pensions Regulator. There is also a major risk that people will be lured into inappropriate pensions products if they are not directed to a trusted source. It would be a great shame if auto enrolment's reputation is damaged by a further spate of pensions mis-selling 'scandals' in a few years' time.
- 1.9 We recommend that if employers are struggling to comply with the existing requirements for provision of information to employees then the guidance and tools available to employers be reviewed and improved, rather than limiting the information for workers.

2 About Us

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to

¹ See page 24 of the DWP's 'Consultation on revision proposals for the automatic enrolment earnings trigger and the qualifying earnings band':

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/363705/automatic-enrolment-earnings-thresholds-2015-2016.pdf

This says: 'Furthermore, anyone who is not automatically enrolled because of an increase in the earnings trigger will retain the right to opt in with an employer contribution. **Employers will be required to provide information about these opt in rights.**' [Emphasis in bold added]

improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.

- 2.2 LITRG works extensively with HM Revenue and Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Our approach to this consultation

- 3.1 We are disappointed in the short time frame given to respond to what is a very important consultation, particularly as it has **56 questions** and the six weeks allocated to it span Christmas and New Year.
- 3.2 Respondents and potential respondents are unlikely to have had sufficient time to digest the document, to establish whether they have an interest and what that interest might be and to respond to the consultation in any meaningful way.
- 3.3 We have had to confine our comments to certain areas. Our points relate mainly to questions 10 to 12 and 21 to 23, but we have not been able to format this response into question and answer format given the time constraints.

4 Introductory comments

- 4.1 Firstly we would like to make some comments about the consultation process rather than the issues which are the subject of the consultation.
- 4.2 This consultation is on draft regulations, some of which aim to simplify the requirements on employers regarding the provision of information about auto enrolment to their employees. It seems from our research that there has been no consultation on the fundamental principle of this measure.

- 4.3 Whilst we acknowledge that there was a consultation on technical changes to auto enrolment in early 2013¹ (alluded to on page 6 as the precursor to these draft regulations), that consultation covered alternative quality requirements for defined benefits schemes and exceptions to employer duty but it did not expressly speak of or elicit comments on the information requirements.
- 4.4 Rather, it seems that some of the respondents at that time took the opportunity to submit unsolicited comments about the burden of auto enrolment, prompting the following comment and, in turn, the draft regulations on simplifying the information requirements that we have before us today:
- ‘We note the points about the complexity and burden of information requirements. The Pensions Bill (Automatic enrolment: powers to create general exceptions) provides for a more flexible approach and we plan to review the information provisions. Any regulations would be subject to Royal Assent.’²
- 4.5 Presumably the Government decided that the comments submitted were sufficiently representative that no further evidence of ‘problems’ with the current regime needed to be sought out. We would argue that there may have been other interested parties – workers, voluntary groups, trade unions – perhaps, carrying alternative perspectives about the role of worker information, who may have had an important contribution to make.
- 4.6 In essence, we do not think that the Government has adhered to its consultation principles to improve ‘policy making and implementation with a greater focus on robust evidence, transparency and engaging with key groups earlier in the process’³ which we find disappointing.

5 Specific comments

- 5.1 The Government’s aim with auto enrolment is to encourage people to provide their own meaningful top-up to the state pension, where they can afford to do so. The current suite of rules around provision of information have been laid down after what seems to have been extensive research into what works well and what works less well for individuals – with the

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221419/ae-technical-changes-consultation.pdf

² See page 14 of the Government response to the consultation on exceptions to the employer duties, February 2014:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279225/automatic-enrolment-exceptions-to-employer-duties-government-response.pdf

³ <https://www.gov.uk/government/publications/consultation-principles-guidance>

consensus being that the objectives of auto enrolment are best met when the information provided is customer centred.¹

- 5.2 Currently, employers must inform non-eligible jobholders that they have the opportunity to opt in to a pension scheme and receive an employer contribution if they so choose by writing a personalised, tailored letter to the worker explaining their situation. The same process applies to entitled workers, with the difference that in this case the employer may choose whether to make a contribution themselves in respect of the entitled worker.
- 5.3 Many low-paid workers would no doubt freely admit that they do not read everything 'official', but because this auto enrolment letter is addressed to them and is concise and individualised, it seems this is one piece of communication they might read and engage with. Furthermore, we understand that there are various letter templates² and guidance on The Pensions Regulator's website that can be used so that employers do not have to start from scratch, with the aim of minimising the work load and effort required of the employer. This therefore seems to be a logical means of ensuring correct guidance reaches workers, ie that employers are being helped to provide the right information to workers.
- 5.4 Yet the draft regulations under consultation seek to amend these requirements so that in future a consolidated letter will be sent to both types of employee, meaning that the employer no longer needs to work out into which category the worker falls in order to send them the appropriate letter. Instead, having been provided with information about what will happen in set of circumstances A or set of circumstances B, it will be for the worker to distinguish where they fit in order to progress and extract any meaningful information from the letter. We have a number of concerns about the approach of combining the information to be given.
- 5.5 Firstly, someone's attention can be won or lost by the smallest detail. We think that having to pick through information that is not relevant to them may mean that a worker will become confused, switch off or become disheartened and stay out of pension saving. It seems to us that this would introduce an element of 'providing the worker access to the information but not giving the actual information to the worker', which is strange considering that The Pensions Regulator's guidance currently deems such practice to be unacceptable³:

¹ See for example worker responses to letters, page 28 of Automatic Enrolment Information Materials Research, report dated April 2012:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/187699/comms-res-auto-enrol-0412.pdf

² See <http://www.thepensionsregulator.gov.uk/employers/letter-templates-for-employers.aspx>

³ See page 2, point 8 of The Pensions Regulator's guide 'Detailed Guidance for Employers (resource: information for workers)' <http://www.thepensionsregulator.gov.uk/docs/resource-info-to-workers.pdf>.

“Giving’ information does not include merely signposting to an internet or intranet site, attaching a URL or displaying a poster in the workplace. In these circumstances the employer is providing the worker access to the information but not giving the actual information to the worker.’

- 5.6 Furthermore, we understand that the identification and assessment process for non-eligible jobholders and entitled workers can be complex. This is because employers must first identify the relevant pay reference period to be applied (for example, monthly or weekly) then identify which payable earnings are to be measured during that period (these consist essentially of a worker’s wage or salary plus other components such as commission, bonuses, overtime and statutory maternity pay); finally they must compare these earnings, which are payable during the specified pay reference period, against the various thresholds for auto enrolment.
- 5.7 We would think that this burden falls more heavily to larger employers as although small and micro employers might find the rules difficult to follow, they are unlikely to have a large number of workers. This means that the process may not be all that time-consuming and resource intensive and, even if it is, it is arguable that an employer is better placed to sort his workers into the different categories for auto enrolment than his employees. Indeed, The Pensions Regulator guidance helps employers to do so. We wonder therefore whether the problem is more to do with the adequacy of the guidance for employers than with the requirement to provide information itself.
- 5.8 If the proposals were to go ahead, it could be argued that some workers with steady wages will not be put off joining a pension scheme as it may be reasonably straightforward for them to self-identify as either a non-eligible jobholder or worker. But many of those on the lowest incomes and with the greatest need for support (due to factors such as poor educational background, language difficulties due to English not being their first language and so forth) will be transient employees for whom the process of calculating qualifying earnings will be complex. These would include those working in industry sectors like retail, hospitality, leisure, and employment agencies with fluctuating earnings patterns. The same can be said for those on temporary, short-term, zero-hour or casual contracts. How will they know how to apply their pay to the threshold in any one week?
- 5.9 For some people, their employer is likely to be a first ‘port of call’ for information if they get stuck. This could mean that the outcome of the proposed change in the regulations is counter-productive, ie that it actually drives up the employer burden from dealing with queries. The alternative and equally unacceptable outcome is that workers may make an incorrect assumption based on that week’s pay as to which category of worker they are with the result that they do not understand they may be eligible for an employer contribution if they do not opt into a scheme, and therefore miss out on valuable savings.
- 5.10 The employer contribution is likely to be an incentive for many workers to join a pension and there is a danger that if there is insufficient information, inaccurate assumptions could potentially have a negative impact on the take up. Younger workers are likely to be lower paid (and thus either a non-eligible jobholder or entitled worker), as are women and

disabled people. These people are likely to be part of the core target market and their 'accidental' self-exclusion would therefore undermine the policy.

- 5.11 Our conclusion would therefore be that workers must continue to be given at least the same tailored and individual information that they are now.

6 Final Comments

- 6.1 If the changes to the information requirements proposed in this consultation document are to go ahead, which we do not support from a low-income worker perspective, there is a minimum level of information that they should still be given. For example, we absolutely do not agree that communications to workers should exclude the actual figure for qualifying earnings, as suggested by question 23 of the consultation. Many workers would stand no chance at all of understanding their situation without being helped in this way to understand the figures relevant to them.
- 6.2 We also note that the draft regulations would remove the requirement for an employer to provide a link to further information on pension savings in any worker communications (including in those to non-eligible jobholders and entitled workers) on the basis that 'it should be a matter for the employee to conduct their own searches for more information about pension saving' (per page 16 of the consultation document).
- 6.3 We are unsure of why the insertion of a one-line signpost to further information on pension saving at the bottom of a letter is considered such a burden on employers, particularly as the letters are mostly put together from templates. Additionally, while it is all very well to say that employees should conduct their own searches, many will be clueless as to where to start in finding out more information about pension saving. It is likely that many of the people concerned will not have English as a first language, may have literacy or numeracy problems or lack confidence digitally. A quick search on Google for 'pensions' returns a bewildering page cluttered with news about pensions and advertisements selling pensions. Pensions are complicated; for someone who is not familiar with what to look for, it could be hard to pick out the sources of independent and objective advice.¹ With fraudsters preying on the vulnerable, such as with pensions liberation scams, it is unacceptable for the Government to take the attitude that potential savers should fend entirely for themselves.
- 6.4 There is therefore **every** need for clear signposting to a trusted central source. We would point out, however, that providing a link to <https://www.gov.uk/workplace-pensions> is of no help at all to non-eligible jobholders or entitled workers as there is no information on their position from that source. This needs to be rectified – ie, that workers in those situations should be provided with **more** information than they are at present.

¹ For example, see

https://www.google.co.uk/?gfe_rd=cr&ei=rwCTVKbhCcyq8wfHtICIBQ&gws_rd=ssl#q=pensions

6.5 Finally, while we are wary of the need to avoid overburdening employees with information (and requiring employers to provide it), we think there is an argument that more information could be helpfully included, for example:

- It is important that low-paid employees being advised about auto enrolment are helped to understand the interaction with Universal Credit (UC). For the calculation of UC income, employees may deduct 100% of pension contributions. If they are unaware of this interaction (that is, that a higher UC award might result from the deduction of employee pension contributions from assessable income), employees might opt out thinking that the cost to them of joining the pension scheme is higher than in fact it is if the UC impact is factored in.
- Non-taxpayers (those who earn less than £10,600 in 2015/16) have no means of claiming tax relief if their pension scheme uses a net pay arrangements. Therefore, whether or not the scheme operates relief at source or net pay arrangements and what this means for them in terms of tax relief is vital information for the employee, so that they are clear as to the overall benefit of opting in. From 6 April 2015, this will also be an important piece of information for those automatically enrolled in a scheme where their earnings are over £10,000 but beneath the income tax personal allowance of £10,600.¹
- We think that the employees should be told the specific contribution amounts that will be payable by both themselves and their employers should they choose to opt in to saving. There is a danger that if individual contribution amounts are not given, people are less likely to save because they may assume it is not affordable. This requirement did appear in the original Regulations², but was removed by virtue of SI 2012/215.³

7 Summary

7.1 It seems to have been accepted at the start of the roll out of auto enrolment that ‘access to the right level of detail, at the right time, in the right format, from the right source’⁴ can

¹ Following the decision to freeze the threshold at £10,000, thus diverging auto enrolment from the income tax personal allowance:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388546/automatic-enrolment-earnings-thresholds-2015-2016-response.pdf

² See <http://www.legislation.gov.uk/ukSI/2010/772/regulation/17/made>

³ <http://www.legislation.gov.uk/ukSI/2012/215/regulation/23/made>

⁴ <https://www.gov.uk/government/publications/pensions-automatic-enrolment-information-for-workers-qualitative-research>

positively influence people's decisions with regards to auto enrolment. We have already seen some erosion of a workers' rights to information by virtue of SI 2012/215¹ and there is a serious risk that the consequence of the current proposed amendments will be further confusion for workers and detrimental to the overall levels of pension saving. This would be unfortunate, and we would prefer to see more being done to encourage opt in, where appropriate, rather than the opposite. We would therefore urge the Government to reconsider the draft regulations to the extent that they erode information for workers.

LITRG
7 January 2015

¹ The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012