Helping users of HMRC's Basic Payroll Tools undertake automatic enrolment calculations
Response to The Pensions Regulator consultative document

1   Executive summary

1.1   We are pleased to see that the Pensions Regulator (PR) has identified and acknowledged the risks faced by small and micro employers in managing and operating auto enrolment, particularly where they are using the HM Revenue & Customs' (HMRC) free payroll program Basic Payroll Tools (BPT) to deal with their payroll.

1.2   We fully support the development and introduction of any tools, across the whole auto enrolment process that will make the system easier to operate. We say this with a particular group in mind – care and support employers. These may be elderly or disabled people who take on carers to support them with things like cooking, cleaning, medical tasks or driving and getting around.

1.3   Many such carers will be engaged on a casual or part-time basis, and more than likely will have fluctuating wages as a result. The identification and assessment process for their employers is therefore likely to be particularly 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 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.

1.4   Software is likely to be very helpful in such situations. However many care and support employers cannot afford to pay for commercial software and may well be wary of, and reluctant to use, free commercial software. On the other hand, free software provided by a central and

trusted source is more likely to be perceived as reliable and approved. We therefore support the argument that there is a definite need for some free 'official' software.

1.5   Our preference would be that any new tool should fully integrate with the HMRC BPT tool in order to keep things as clear and simple as possible for employers. Not only will this help them better comply with their auto enrolment obligations but it should also assist in terms of the accuracy of the feed of information to HMRC for tax purposes and, perhaps less obviously, to the Department for Work and Pensions (DWP) for universal credit (UC) purposes. We recommend further work is done to ensure all such interactions have been considered before making a decision on how best to move forward.

1.6   No matter what solution is developed, we recommend that a commitment is given as to its availability for as long as is required by small and micro employers.

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 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 & 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   Introductory comments

3.1   The Government is encouraging independent living by giving people more choice about how their social and care needs are met through systems such as direct payments and personal budgets. Those who use such money to take on a carer, as well as those who fund care privately, face the probability of becoming an employer and having to deal with responsibilities such as tax, National Insurance and employment law.

3.2   In recognition that these 'care and support employers' may benefit from access to additional information help and resources about being an employer, LITRG (supported with funding from HMRC), have written and published a website, www.disabilitytaxguide.org.uk,covering a range

of topics such as tax, employment status and real-time information (RTI). The site also features a free payslip tool that has been specially designed to work with the HMRC payroll software.

3.3   As part of the launch of the website, a series of workshops were held across the UK – aimed at helping new and prospective employers navigate the consequences of taking on a carer. We know from queries put to us by attendees at these workshops, as well as queries sent in to our ongoing email help service, that auto enrolment is one aspect of being an employer that causes care and support employers real concern. We are therefore responding to this consultation on their behalf.

3.4   Answers to the questions in the consultation follow, but we also take this opportunity to make some general comments in section 5 below. Here we flag some potential issues concerning care and support employers and auto enrolment that we think require further consideration by the Pensions Regulator – for example, how those employers who are digitally excluded will be helped to carry out their pension duties. We are happy to discuss any of the suggestions in this response further either by email or face to face.

4   Responses to questions

4.1   *Is there a need for us to develop a tool for BPT users?*

4.1.1   In short – yes. For many employers, auto enrolment is a new and unfamiliar event. As mentioned in our introductory comments, we know that many small and micro employers, particularly care and support employers, have real concerns about the complexity of the regime, complying with all the rules and regulations and how they will cope with administering the system.

4.1.2   We therefore very much welcome the Pension Regulators consultation regarding what can be done to help them carry out their automatic enrolment duties.

4.1.3   As identified in the consultation document, around 200,000 employers use BPT to manage their payroll. A good proportion of these will be care and support employers perhaps only employing one or two staff – but who still have to comply with auto enrolment. BPT does not offer the complete functionality of some commercial programs but its main advantage is that it is free. This is an important consideration for many care and support employers who may have limited funds at their disposal for the purchase of commercial software, or for engaging the services of a payroll company to operate their payroll.

4.1.4   As BPT does not/will not have the functionality to deal with auto enrolment, we think it is essential that a tool is developed to support an employer's compliance with auto enrolment. In particular, without any assistance, we think that there is a real risk that care and support employers may fail to assess their workers properly and where necessary, calculate their/their employee's contributions correctly.

4.1.5   This is because their workers are unlikely to be on full-time, steady wages but may instead be engaged on casual, temporary, or part-time contracts, very likely translating to low and/or

fluctuating earnings and irregular pay periods. Not only could this mean that the employer is more likely to have to deal with non-eligible jobholders and entitled workers (and the various complexities surrounding their categories), but the process of calculating their qualifying earnings could be fraught with difficulties – leaving them virtually certain to make errors and potentially even facing financial penalties for getting things wrong.

4.1.6   To the extent that the Pension Regulator is in a position to help employers on limited budgets manage auto enrolment and therefore avoid unnecessary compliance issues by creating a tool, we would not only wholly endorse it but go as far to suggest that there is some obligation to do so.

4.1.7   With regards to the notion that there are free-to-use software products available within the market place to help such employers get things right, we would caution against putting too much reliance on care and support employers making use of them. Many will be elderly or lack confidence digitally, and they may feel nervous about entrusting an important task like payroll to free software, not to mention worry about the security aspects of downloading free software.

4.1.8   Even if they do not have such concerns, a quick search on Google for 'free payroll software' returns a confusing page cluttered with results.[1] For someone who is not familiar with what to look for, it could be hard to pick through all the 'noise' on the internet around payroll packages (not to mention avoid getting caught out by the problem of online fraudsters preying on the vulnerable) to make their way to what they need. In our view it would be much better for them to have a trusted, central resource to turn to.

4.2   ***Is the proposed tool a proportionate response to the risk identified?***

4.2.1   We think that the creation of a basic tool by the Pension Regulator to support BPT users with automatic enrolment is a very worthwhile proposal. However, ideally this would not be a standalone tool but be integrated with BPT in some way so as not to have two separate tools.

4.2.2   The reason we say this is because for many care and support employers, who may have literacy or numeracy problems or lack confidence digitally, getting to grips with all that is required of them under PAYE RTI – including the use of BPT – may already have been a mammoth task. Asking them to now embrace auto enrolment and master another online system may be a heavy burden. At the extreme end of the spectrum, some of those requiring care may feel this is the 'last straw' and revert to using agency staff instead. Although all the employer obligations are dealt with by the agency, this leaves them essentially unable to assert their choice and independence by taking on their own carer.

4.2.3   We would therefore recommend that if at all possible, some further discussion is entered into with HMRC to try to produce integrated auto enrolment functions within BPT. Not only could this help alleviate some of the stress and worry for care and support employers of having to

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[1] See:
https://www.google.co.uk/?gfe_rd=cr&ei=dqlVVfb9BuGq8wf82YHgCA&gws_rd=ssl#q=free+payroll+software

operate different systems, but could further help manage risk – for there would be no need for the user to have to take the output from one system and manually type it in to another system in order to submit it to HMRC. Where you have people having to manually switch between two systems, this not only draws out the process but is also likely to mean more errors/duplications, etc.

4.2.4   Not only would such errors/duplications, etc. have ramifications for the feed of information to HMRC under the PAYE RTI system, there could be knock on implications for the calculation of UC, which is dependent on the feed from RTI. Employees may deduct 100% of pension contributions for UC if an RTI submission is made but if pension payments are not reported correctly or at all, then the UC award may be wrong.

4.2.5   An important final point to be made here is that in developing a separate tool, there could be a situation where two sets of pay documentation end up in existence – one from the normal BPT process[1] and then another from the auto enrolment tool.[2] This could confuse employees, who may not understand why all the necessary information cannot be on one payslip or document – bearing in mind that many in the caring sector may have a poor educational background, language difficulties due to English not being their first language and so forth.

4.2.6   To summarise, enhancing BPT rather than developing a separate tool would really reduce risks and lessen the burden on employers by having only one system to deal with. If automated integration with BPT is really not possible, we would recommend that some further discussion is entered into with HMRC to try to produce systems which, if they have to be separate, do not require manual entry of figures between the two and make it easy to import or combine the data into BPT. In addition, we would support the idea that any new system is as close in its look and feel to the BPT as possible.

4.3   ***What kind of functionality for the tool strikes the right balance…?***

4.3.1   We recognise that any tool developed will need to have certain functionality limitations so that other, more developed, products can maintain their position in the marketplace. Against this backdrop, the proposed functionality does seem to cover the basic requirements, however we would like to highlight the following:

4.3.2   1) Our preference would be for the Pension Regulator to move towards implementing the fully advanced functionality from the outset, as the inclusion of data output files and record keeping reports could be most useful for users.

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[1] Of course, we recognise that the BPT does not offer a payslip facility at present, but LITRG have developed a tool based upon the data produced by BPT which we host on our Disability Tax Guide website (www.disabilitytaxguide.org.uk).

[2] There does not seem to be any reference to producing documentation for employees as part of the basic functionality of the proposed tool, however we assume this will be included.

4.3.3   2) We must comment on the number of employees someone using BPT can include on their payroll, and flag a potential issue. BPT is produced by HMRC for those with fewer than ten employees. However, built into this, and to accommodate the eventuality of any leavers and starters throughout a year, it can in fact be used for up to 15 employees. Thus, any tool for auto enrolment should have the same parameters so as not to cause conflict or confusion.

4.3.4   3) With regards to generation of letters, the current proposal seems to be that the user will have to take the output result from the PR tool and manually create any statutory letters required. We accept this, however would like to see the tool not only directing that *a letter* is required, but directing the employer to the relevant template on the Pension Regulator website. Despite the number of letters been vastly streamlined following the recent consultation on technical changes to auto enrolment, there are still a bewildering array of options[1] and unless the employer is directed to exactly where they need to be, there is a risk that the worker will receive the wrong information about their entitlements under auto enrolment. Confusion for workers could be detrimental to the overall levels of pension saving, which would be unfortunate when the whole point of auto enrolment is to encourage pension saving where employees can afford to do so.

4.3.5   4) The proposed tool will have some limitations regarding entitled workers[2] – as appears to be the suggestion in the 'not supported' table on page 11. As carers work often part-time hours for low pay, it is likely that many care and support employers will encounter such categories of workers. We think that this category of workers could cause care and support employers real confusion – mainly because if such a worker is the employer's only employee, then there is no need for them to register as an employer with HMRC. Such confusion could be further compounded if the tool does not sufficiently cater for entitled workers. We would therefore welcome clarification on this entire matter.

4.4   *How might the proposal affect the marketplace?*

4.4.1   This area of the consultation is outside of the key aims of LITRG, and therefore we only have a brief comment to make.

4.4.2   We note that the proposed tool would be available for any employer to use so there is perhaps some worry that employers will move away from their existing solution. However, we think it is very unlikely that employers who currently use commercial payroll software will switch to free basic software supplied by the Pensions Regulator. Employers will have chosen their payroll software carefully – taking into account many factors – not just auto enrolment support. In any case, the sophistication of most commercial software makes it a much more attractive option if affordability is not an issue.

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[1] http://www.thepensionsregulator.gov.uk/employers/write-to-your-staff.aspx

[2] Entitled workers are those aged 16-21 and earning £112 or less a week – entitled to join a scheme but not entitled to an employer contributions if they do so.

4.5   ***What more could be done to encourage BPT users to switch to a system which provides integrated support for automatic enrolment?***

4.5.1   For small and micro employers, cost can sometimes be the major factor in not using advanced payroll software. Thus, although not the remit of the Pensions Regulator, special pricing for such employers may serve as an encouragement to switch to more integrated support for payroll and auto enrolment. Specifically with regards to care and support employers, we should point out that in some, although by no means all, cases the cost of buying a complete payroll package will be covered by an enhanced direct payment by the local authority. Maybe more could be done to raise awareness of this.

4.5.2   Additionally, the Pensions Regulator may have the means to encourage more software developers to offer free auto enrolment ready versions of their payroll programs for the smallest of employers. Due to some of the issues identified in section 4.1.8 of this response, clear signposting would be required, as would some kind of official testing to give employers comfort that the software is satisfactory. This is something HMRC already do with regards to general levels of payroll functionality,[1] so it may simply be a question of working with HMRC to make a jointly accredited list. We would however suggest that there is better promotion of the existence of this list than exists currently.

4.5.3   A comparison table may be useful to compare the options over a range of criteria and help users make their decision about what system to use. This would, at a glance, give an overview of the 'enhanced' options that exist over the Pensions Regulator offering, e.g. the ability to create the correct tailored communications for each employee, the ability to enter the staging date and create a personalised action plan based on best practice and so on.

4.5.4   Having said all these things, the question seems to be alluding to the preference for employers to use third party software. This implies that the tool is being considered as very much a short term measure. While we note that the consultation states that its suitability will be assessed annually, we would urge, for certainty, that the Pension Regulator commit to a continued level of support and tools for a minimum specified time – ideally, this would be for as long as there is a need for the tool. The comments that have made in this section therefore must be taken in the context of this overriding view.

5   General points

5.1   ***Paper payroll and submissions***

5.1.1   There are some groups of people, who will be digitally excluded no matter how much support and encouragement they get, due to age, disability, their remote location, etc. It is possible that some of these people, if they are employers, do not file their payroll information online as they are unable to do so and instead use HMRC's manual forms in the 'RT' series (RT2, RT3, etc.). Similarly, they will not be able to use any new auto enrolment tool.

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[1] https://www.gov.uk/payroll-software/free-software

5.1.2   We recommend that consideration is given to how their needs can be met. We think at the very least, there should be an alternative paper tool for those that need it and would be happy to discuss our ideas further in this area.

5.2   *General pre-staging date information*

5.2.1   We understand that if developed, this tool would sit alongside and link to generic educational material aimed at helping employers understand, plan and comply with their duties. This is very welcome, however we wonder if care and support employers may benefit from specifically targeted educational material covering , for example, how to deal with 'workers' or how to select a payroll provider – matters that may be particularly pertinent to them.

5.2.2   With regards to the former, some carers provide their services on a self-employed basis – meaning the engager has few obligations towards them. However if they provide their services personally and cannot send a substitute, they may be 'workers' for employment law purposes and covered by automatic enrolment – potentially causing the engager all sorts of confusion in terms of how they deal with them. With regards to the latter, some pension schemes use net pay arrangements. 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 they select operates relief at source or net pay arrangements is a vital consideration for an employer of a low-paid worker such as a carer. Again, we are happy to take part in any further consultations on this area.

LITRG
19 May 2015