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Dear Lillian

**PENSIONS: 2012 REFORMS: DRAFT REGULATIONS**

**AUTOMATIC ENROLMENT VIA EMPLOYERS AND THE PENSIONS REGULATOR:  
DELEGATION OF POWERS**

The Institute of Chartered Accountants in England and Wales (the ICAEW) is pleased to respond to your request for comments on *Pensions:2012 Reforms: Draft Regularions*.

Please contact me in the first instance should you wish to discuss any point raised in the attached response.

Yours sincerely

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THE INSTITUTE  
OF CHARTERED  
ACCOUNTANTS  
IN ENGLAND AND WALES

## ICAEW Representation

ICAEW REP 67/09

**PENSIONS: 2012 REFORMS: DRAFT REGULATIONS**

**AUTOMATIC ENROLMENT VIA EMPLOYERS AND  
THE PENSIONS REGULATOR: DELEGATION OF POWERS**

Memorandum of comment submitted in June 2009 by The Institute of Chartered Accountants in England and Wales in response to Department for Work and Pensions consultation paper Pensions: 2012 Reforms: Draft Regulations published on 12 March 2009.

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## **INTRODUCTION**

1. The Institute of Chartered Accountants in England and Wales (the ICAEW) welcomes the opportunity to comment on the consultation paper *Pensions:2012 Reform: Draft Regulations* published by Department of Work and Pensions Client Directorate.

## **WHO WE ARE**

2. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 132,000 members in more than 165 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The Institute ensures these skills are constantly developed, recognised and valued.

## **MAJOR POINTS**

4. As noted in our (unpublished) paper submitted to the Personal Account Delivery Authority ('PADA') on 15 December 2008 we are concerned that:
  - Although the Government states that it is trying to reduce the compliance burden for businesses, the current proposals will result in considerable additional work for employers at implementation and on a continuing basis. This compliance burden should not be underestimated and will be disproportionately higher for smaller employers, especially those with manual payroll systems.
  - The process of automatic enrolment, re-enrolment and subsequent opting out creates additional work for both pension schemes, including the new 'personal accounts' scheme, and employers; it would be preferable to have no opting out provision or, where an employee opts out on initially becoming eligible, no initial automatic enrolment.
  - Inherent in the automatic enrolment provisions is the likelihood of refunds arising where an employee chooses to opt out. This will create considerable extra work for employers and we recommend that the provisions are changed so that the opt out period expires before deductions are started.
  - The information requirements and the definitions of earnings, together with the opt in and opt-out arrangements, re-enrolments, and refunds, will make the legislation complicated and time-consuming to administer and the effect of this should not be underestimated for all employers and particularly for the smaller employer.

- A third definition of earnings is to be introduced for calculating contributions to personal accounts which will increase complexity of payroll-related work.
  - Employers generally deal with payroll processes only once in each pay cycle. Enrolments, re-enrolments, opt ins and opt outs will become part of this cycle and all processes should therefore integrate easily with an employer's payroll arrangements and, as far as possible, not add to the employer's burden.
  - The new regime will be implemented at an already very busy time for payroll departments. It would be desirable to have the enrolment systems in place well before the start date so that employers can spread the workload.
  - There are a large number of practical points and unresolved issues which will need considering and addressing well before the start date.
5. Our comments on the points raised in the consultation paper should be read in the context of the foregoing.
  6. In this memorandum we refer to the date on which the new regime goes live for an employer as P-Day, the Department of Work and Pensions as DWP, the Personal Account Delivery Authority as PADA and the Pensions Regulator as tPR.
  7. Except where the context suggests otherwise, the masculine gender imports the feminine.

#### **Other issues**

8. Other issues that need to be covered, in these or other batches of regulations include:
  - voluntary opting in by jobholders not otherwise eligible either because they appear to earn too little (how will employer be expected to keep track of when such people pass the lower threshold and how lower threshold will be computed depending on the jobholder's normal pay period, ie annually, monthly, four-weekly or weekly) or because they are too young;
  - multiple employments, and the impact of the £3,600 limit;
  - people whose work and pay is provided via employment agencies; and
  - overseas aspects both in EEA and outside the EEA, including employees from overseas, employees on secondment to and from overseas, impact of forms E101 and Migrant Workers Act, overseas employers, overseas pension schemes.

### **RESPONSES TO SPECIFIC POINTS**

#### **DETAILED COMMENTS ON DRAFT PENSIONS (AUTOMATIC ENROLMENT) REGULATIONS 2009**

##### **Regulation 1 Citation, commencement and interpretation**

9. We have no comment on this regulation.

##### **Regulation 2 Automatic enrolment into an occupational pension scheme and**

##### **Regulation 3 Automatic enrolment into a personal pension scheme**

10. We are concerned that when employers first come within the obligation to ensure that their eligible job holders are auto enrolled many will inadvertently miss the fourteen day deadline. This may be because of illness, holidays, or for the P-Day tranche of employees, simply sheer numbers of employees who have to be processed. We consider that when an employer is first obliged to auto enrol employees, either because it is P-Day or because post P-Day a business has its first employee who is eligible to be auto enrolled (eg takes on a new employee who is an eligible jobholder or an existing employee has his 22nd birthday or earns more than the lower contributions threshold), then the fourteen days should be extended to 30 days.
11. If the primary legislation does not provide the vires for this to be included in the regulations, then we suggest that this could be achieved by the Pensions Regulator adopting a light touch when monitoring compliance with the rules in such circumstances.
12. In view of the large amount of work that employers will face around P-Day, we suggest that to help spread the workload employers should be able to put into place arrangements to auto enrol employees, and that employees should be able to opt out, in advance of P-Day. We note below that we consider that there should be standardised opt out forms, and such forms will need to be available in advance of P-Day.

### **Consultation question**

**Regulation 3 - Q.1:** *To what extent would the terms and conditions proposed for deeming the agreement differ from the current joining processes and what impact is this likely to have?*

13. Although in most cases employees receive paperwork concerning their employer's pension scheme when they sign their contract or on their first day at work, some employer pension schemes enrol employees with effect from the first day at work whereas others might have a waiting period, for example, of three months. The fourteen and seven day rules in the two regulations may therefore necessitate rule changes for schemes in existence at the commencement of the new regime.

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

14. One of the proposed employer's information requirements is date of birth (reg 4(1)(b)). We think that this should either be removed or qualified. Employers may think that they have this information but there is no guarantee that employees have been truthful when telling their employers how old they are; for example the employee may have felt compelled to lie about his age to get the job. We consider that the onus should be on the jobholder to prove his age directly to the scheme, and that as it would impose a disproportionate burden on employers to have to guarantee for the scheme that date of birth information is correct, because it is not vital for employment purposes that an employer knows the exact age of their employees, employers should not be responsible for verifying that their employees' dates of birth are correct.

## Consultation questions

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

15. No, but see preceding paragraph about an information requirement that should ideally be removed or at least qualified.

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

16. No.

## Regulation 6 Contributions

17. This is derived from requirements in Pension Act 2008. However, this will involve the employer in having to make apportionments of pay for personal account contributions purposes. This will be complicated, for example where an employee reaches age 22 in the middle of a pay period, especially for those using manual payrolls. In order to obviate the need for apportionment, we should prefer that contributions start from the start of a pay period, preferably the one following that in which a jobholder reaches age 22. An alternative would be to commence contributions at the start of the period in which the employee attains that age.

18. We trust that guidance will make it clear exactly what employers need to do to comply with the law, but as this complying with the law in this case is likely to create complications in computing payroll out of proportion to the amount of contributions, we request that particularly for weekly paid jobholders who reach age 22 the Pensions Regulator adopts a light touch where employers have not strictly complied with this rule.

19. The other side of the coin is that where the scheme does not receive a contribution for a jobholder from the date that he turned 22 but from some days later, the scheme would need to ensure that no money has gone astray by confirming that no deduction was made from the employee's pay.

## Regulation 7 Enrolment Information

20. The information that the employer has to give jobholders does not seem unreasonable but we do not think that it is appropriate for employers to have to compile it. We consider that such information would best be compiled by schemes into an 'enrolment information' leaflet tailored to fit the employer or similar, either using a DWP/PADA/tPR proforma or approved by DWP/PADA/tPR, and the employer's role restricted to making it available to eligible jobholders.

## Regulation 8 Key Features Information

21. The notes to the regulations say that 'the effect is that pension providers will be required to provide this information but the onus will be on employers to ensure this information is passed on to the jobholder.'. In what regulation is the pension provider obliged to provide this information for the employer to make available?

22. The information that the employer has to give jobholders does not seem unreasonable but we do not think that it is appropriate for employers to have to compile it. We consider that such information would best be compiled by

schemes into a 'key features' leaflet or similar, either using a DWP/PADA/tPR proforma or approved by DWP/PADA/tPR, and the employer's role restricted to making it available to eligible jobholders.

### **Consultation questions**

**Regulation 8 - 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?*

23. We think that it will. We welcome the fact that the regulation includes one of the most important key features when considering the suitability of an investment, namely information on deductions and charges (reg 8(c)(iv)).

**Regulation 8 - Q.5:** *To what extent would modifications need to be made to existing information provision processes?*

24. Scheme providers are likely to be better placed to answer this question.

### **Regulation 9 Provision of information to active members of qualifying schemes**

25. This does not seem unreasonable.

### **Regulation 10 Jobholders affected by postponement of automatic enrolment**

26. This does not seem unreasonable.

### **Consultation question**

**Regulation 10 - Q.6:** *Is there any other information to jobholders affected by postponement of automatic enrolment that is missing and needs to be included?*

27. No.

### **Regulation 11 Opting out from an occupational pension scheme**

28. This does not seem unreasonable.

### **Regulation 12 Opting out from a personal pension scheme**

29. This does not seem unreasonable.

### **Regulations 13 and 14 Process of opting out**

30. We consider that instead of the reg 13(3) requirement obliging the employer to forward the opt out notice to the scheme, the employee should be obliged to submit two copies of the form, one to the employer and one to the scheme. This will ensure that the scheme and the employer both receive the form as early as possible.

31. We also consider that there should be a standard opt out form, which would presumably be prepared by schemes tailored to scheme and employer requirements either using a DWP/PADA/tPR proforma or approved by DWP/PADA/tPR.

32. Jobholders who have access to a computer should be able to complete such a form online and send it online to the scheme, to their employer either online or in hard copy (there are many employers who are not computer literate and/or whose business does not necessitate being connected to the web or email) and save a copy and/or send a copy to their own email address and/or print off a copy. For the benefit of jobholders who do not have access to a computer, schemes should be obliged to make available a three-part carbonated form obtainable by telephoning a freephone number.

### **Consultation questions**

**Regulation 13 - Q.7:** *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.*

33. We consider that five days in Reg 13(2) is too short because where a weekend intervenes the time limit will effectively be three working days (for example, employers in receipt of a notice handed to them by a jobholders on a Tuesday will have only until Friday to inform the jobholder that it is invalid). We therefore recommend that the time limit should be five working days which in normal cases will equate to a week from when the notice is received by the employer.

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

34. Given our comments on regulations 13 and 14 in which we recommend that the jobholder be obliged to submit a two part opt out form direct to the scheme and his employer, this question becomes otiose.

**Regulation 14 - Q.9:** *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 is undermined. We would welcome your views on whether we have struck the right balance or whether we should relax our approach.*

35. We consider that this is the optimal approach. It will obviate the need for employers to ensure that they have the most up-to-date forms, enable schemes to tailor (within the rules) the opt out forms to fit their internal processing procedures, and ensure that the forms available to jobholders who decide to opt out are the most up-to-date version.

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

36. Yes, this is essential. We suggest five working days or for the computer literate, an online form should be constantly available – but, as noted above, submitting a form online should not be compulsory.

### **Regulation 15 Content of opt out notice**

37. It is essential that the opt out form is in simple English. The obverse of the form can be used for notes to aid completion and if wished the statement in draft and perhaps relevant regulations to satisfy those who like to read the small print.

### **Consultation questions:**

**Regulation 15 - Q.11:** *Do schemes welcome a standard mandatory opt out form, or would prescribed minimum wording suffice?*

38. In our experience an appropriately-worded prescribed form saves time for all in the long run if the form is acceptable to all parties from the start (so we recommend that DWP consults on the contents of the form before it goes live), once the form has bedded in and teething troubles ironed out. However, it is not easy to design in advance a form that covers all eventualities and to preserve flexibility in case it is wished to change the form in the light of user experience, and to obviate the need to present a new statutory instrument to Parliament to do so, we suggest that Reg 15 gives the responsible government department/organisation (tPR, DWP, PADA or whoever will have ongoing responsibility) the right to prescribe a replacement form perhaps subject to such form including as a minimum the information in Reg 15.

**Regulation 15 - Q.12:** *Should prescribed wording be a minimum or a maximum?*

39. Brevity is always to be commended especially when it is accompanied by clarity.

### **Regulation 16 Opt out refunds**

40. We consider that the proposed deadlines for employers and schemes are fairly balanced. We welcome the alignment with payroll procedures of the deadlines for employers (later of 21 days or second pay day).

### **Consultation question:**

**Regulation 16 – Q.13:** *Is 21 days enough time for schemes to refund monies to employers and a fair period for employers to wait for the money?*

41. Yes. It is essential that schemes are subject to a deadline by which they must send refunds of contributions to employers and we consider a 21 day refund deadline to be not unreasonable for both parties.

42. Regulations will be needed to cater for employees who have left service, as these individuals should have their contributions refunded to them direct by the scheme.

### **Regulation 17 Postponement of the automatic enrolment date**

43. This does not seem unreasonable especially bearing in mind that it is based on Pension Act 2008 requirements.

## **DETAILED COMMENTS ON DRAFT PENSIONS REGULATOR (DELEGATION OF POWERS) REGULATIONS 2009**

### **Regulation 1 Citation and commencement**

44. We have no comment on this regulation.

### **Regulation 2 Delegation of powers by the Regulator**

45. To whom is it envisaged that the Pensions Regulator will delegate its powers?

46. In principle there is an overriding duty on tPR closely and actively to monitor the activities of any organisation to whom they delegate their powers, which should be explicitly covered in the contract between the two parties.
47. We would note that not all commercial organisations are bound by professional standards, unlike, for example, firms of Chartered Accountants who are subject to a code of ethics, ongoing monitoring, disciplinary standards, and in the final analysis the prospect of expulsion from their professional body (see Annex A). It is therefore vital that the regulations provide for watertight contracts setting out, inter alia, data security controls and duties, rights, responsibilities and accountability.
48. On the operational side, employers who receive a call from an organisation purporting to be operating under powers delegated by tPR will need a means of verifying whether the caller is genuine.

### **IMPACT ASSESSMENT**

49. We accept that the question about whether or not to have auto enrolment has been settled with the passing of Pensions Act 2008.
50. The Annual Costs and Annual Benefits in the Summary: Analysis & Evidence on *page 38* are both £10-15 billion. These figures appear to be largely employee/employer/government contributions and retirement income respectively. Employer compliance costs are cited as being less than £½ billion (*page 38*) spread over 1,204,000 employers (*page 48*).
51. The employer compliance costs estimates are in *para 22 on page 42*, ie £152 million in first year and £98 million thereafter. The benefits are cited in *para 23 on page 42* as being ‘... the overall social welfare benefits of pensions reform...’.
52. In our experience compliance cost assessments understate time costs. We should therefore welcome clarification of how the employer compliance costs were arrived at.
53. Whilst it can be argued that employers have responsibilities towards their employees, we should welcome clarification of the justification for employers having to bear these one off and annual compliance costs of this welfare reform without government help, especially as the annual costs and benefits referred to above appear to balance out.
54. We welcome the fact that there is an impact assessment for these regulations and should welcome, once all the regulations have been drafted, sight of a combined compliance cost assessment taking into account all the additional duties that the personal account regime will be impose on employers.
55. *Page 46* says that the employers’ cost of contributions will be able to be offset by lower NIC contributions. Given that the present Class 1 NIC rules do not allow relief for pension contributions, we should welcome confirmation that this statement is referring to self employed, ie non-corporate, employers who are liable to Class 4 NIC between the lower and upper profits thresholds and where pension contributions paid for employees is an allowable deduction from profits when calculating profits for Class 4 NIC.

## ANNEX A

### THE ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in the ICAEW Tax Faculty's discussion document published in October 1999 as TAXGUIDE 4/99; see [www.icaew.co.uk/index.cfm?route=128518](http://www.icaew.co.uk/index.cfm?route=128518).

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