



07 May 2013

Our ref: ICAEW Rep 70/13

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Dear Mr Hone

Technical Changes to Automatic Enrolment

ICAEW is pleased to respond to your request for comments on *Technical Changes to Automatic Enrolment*.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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ICAEW REPRESENTATION

TECHNICAL CHANGES TO AUTOMATIC ENROLMENT

Memorandum of comment submitted in May 2013 by ICAEW, in response to Department for Work & Pensions consultation paper Technical Changes to Automatic Enrolment published in March 2013

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation paper *Technical Changes to Automatic Enrolment* published by Department for Work & Pensions on 25 March 2013, a copy of which is available from this [link](#).

WHO WE ARE

2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 140,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
3. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
4. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.
5. This response reflects consultation with the ICAEW Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

MAJOR POINTS

6. We agree that issues and complexity should be addressed in time for the large numbers of smaller employers that are expected to start be required to auto-enrol their employees from 2014. However, we believe that the proposals do not address most of the issues and complexity that these employers will need to deal with and therefore do not go far enough.
7. It is imperative for the DWP to engage with all sizes of payroll software providers as part of this consultation process, to ensure that the current requirements and any new or alternative requirements are workable in practice. We believe this should include HMRC as a payroll software provider, to ensure that those employers who currently use HMRC's Basic PAYE Tool (which is free-to-use) can continue to do so. We believe, as a matter of principle, that the contributions rules should be simple enough for HMRC software to be able to cope. Otherwise smaller employers (ie, those with up to nine employees) will no longer be able to use this software and will incur additional expense. This will also be a particular problem for those employing carers and other non-business related 'staff' if they can no longer use this HMRC software.
8. We are concerned that many of the difficulties and burdens associated with current requirements for calculating contributions and assessing staff will not be addressed by these proposals, and this will result in significant burdens for employers given these are regular weekly/monthly requirements. We have referred to these issues in many of our previous submissions to DWP and during the course of consultations/discussions over the past five years in which the workplace pensions reforms have been developed, but they were not resolved, which we believe has given rise to some of the current difficulties. See for example ICAEW REPs 76/10 and 145/08 and the general comments in ICAEW REPs 28/09, 67/09,

77/09, 83/09 and 115/09. These are listed in Appendix 1, along with a link where they can be accessed.

9. In particular, we note that PAYE and NIC are calculated on the basis of when earnings are paid irrespective of the period to which those earnings relate (PAYE and NIC is thus payable on remuneration paid within a tax or earnings period, which is for PAYE tax and Class 1 NIC purposes effectively treated as having been earned in that tax or earnings period, even though those earnings may relate to a different period of time). However, the DWP pay reference period proposals would require the employer to consider earnings actually earned in respect of the tax period, which will introduce a new 'earnings period' that would not normally be the same as either the tax or payroll periods and would therefore need to be captured separately. Rather than aligning earnings with those on which PAYE/NIC will be payable, this would result in a completely new period of earnings needing to be considered, and will therefore not give rise to simplification.
10. However, we do believe that changes need to be made to the current legislative requirements for calculating contributions for qualifying schemes, as they also require employers to capture data outside that required for the tax and NIC regimes and will therefore add a major burden to payroll administration, similar in size to each of income tax or national insurance contributions, with the associated cost. We acknowledge that the lower and upper earnings thresholds have been aligned with NIC, as have the due dates by which employers must pay over contributions to be invested in jobholders' pension accounts been aligned with the tax payment deadlines. These are changes that we had recommended in our evidence to, and which were implemented following, the independent review in 2010.
11. However, these changes did not go far enough to remove the complexity, and we recommend that minimum contributions should be more closely aligned with the tax regime, such that they are calculated on the same earnings as Class 1 NIC and that the periods to which they relate should be the same as for PAYE/Class 1 NIC (effectively, the contributions rules should move to a receipts basis, so that they are aligned with the NIC and PAYE regime). We called for these changes in ICAEW REP 76/10, and many previous representations, and we still strongly believe that this measure is necessary in order to avoid excessive administrative cost for employers. A further advantage would be that basing the earnings rules on the well understood and existing tax and NIC regimes would significantly reduce the likelihood of errors.
12. We believe there would be no 'mischief' in moving to a receipts basis. For regular wages there would be no practical difference in minimum contributions, and for fluctuating earnings there may be small timing differences but the advantage would be that minimum contributions would be determined in respect of earnings actually received, avoiding possible mismatches for example where a high contribution is due in respect of a bonus paid, but is deducted in a period of low earnings (eg, worker is paid on 12th each month in respect of earnings for the previous calendar month, bonus is due in respect of April but paid 12th May, large contribution would be payable in respect of April but the bonus wouldn't be received until May. This is also a particular problem for weekly paid workers as they are normally paid in arrears (ie, paid in respect of the previous week's earnings.). Further advantages would be that it would be easier for workers to check that the right amount of contributions are being paid, and also that using well understood and existing tax/NIC bases would reduce the likelihood of errors.
13. If these rules are not aligned with the PAYE regime (as we mention above), we are concerned that the pensions reforms, which require different periods for assessing earnings, require a 'bolt on' for payroll systems to be able to capture the different data, and such 'bolt ons' come at a price and could double the cost of payroll software for some employers. We also fear that some (smaller) payroll providers will simply not be able to cope and will, for instance, restrict the number of schemes that an employer can use to one scheme.
14. We recommend that, in addition to liaising with the payroll providers, the DWP should find out whether any of the larger employers who have already staged in are using 'off the shelf' payroll

solutions rather than bespoke systems (reports that we have received suggest that currently only bespoke solutions can cope with the workplace pensions earnings assessment and contributions requirements).

15. We also stress that when consulting on amending regulations, the government should publish a marked-up version of the amended legislation in order to enable respondents properly to review and comment on the proposals. Such a document would facilitate the review of whether the legislation will work as intended, and we would have thought DWP would have such a document for this very purpose. In the spirit of achieving the government's policy of better consultation such a document should be available as a matter of course.
16. Changes to processes create additional expense for employers, which is contrary to the government's stated desire to cut red tape and reduce burdens on business. If the auto-enrolment processes and systems requirements had been tested in advance, as would happen in industry (and as recommended in Lord Carter of Coles' report on HMRC IT systems published at Budget March 2006 at www.hmrc.gov.uk/budget2006/carter-review.pdf and adopted by government) and piloted with employers well before going live, then there would be no need for 'on the hoof' changes to the system such as those proposed in the consultation in order to help software developers and employers to comply with the requirements on an ongoing basis without huge additional expense. PAYE real time information (RTI) is an example of where piloting with employers has taken place, which was welcome, but it was done far too late to take into account a large number of more complex but not uncommon employer/ee situations and, in similar fashion, HMRC are making 'on the hoof' changes to RTI (as evidenced by the number of updates to guidance currently being issued by HMRC a month after most employers have been mandated into RTI – see our news item dated 1.5.13 at <http://www.ion.icaew.com/TaxFaculty/26768>). Having said that, we welcome the fact that DWP is now biting the bullet and considering changes with the aim of mitigating ongoing costs going forward.

RESPONSES TO SPECIFIC QUESTIONS/POINTS

Q1: Does the existing approach to Pay reference periods cause you any difficulties? If it does, can you explain how, if possible with specific examples?

17. Yes, in our view the current approach to PRPs (both in terms of assessing staff and for calculating contributions) is overly complex and does not align with the tax regime, creating additional administrative burden for employers (see our general comments above). To illustrate this complexity, we would refer you to Volume 5 *Auto-enrolment* of the Pensions Regulator's guidance at <http://www.thepensionsregulator.gov.uk/docs/pensions-reform-automatic-enrolment-v4.pdf>, especially pages 13 and 14, and pages 24 to 29 in the presentation available at: http://www.thepensionsregulator.gov.uk/docs/teachers_pensions_auto_enrolment_event_ports_mouth_270313.pdf.

Q2: Will adding the proposed alternative method of determining a pay reference period to align with tax and NICs periods make assessing jobholder status more straightforward?

18. No. This is because PAYE and NIC are payable on a receipts basis, irrespective of the period to which those earnings relate, whereas the proposed changes would require the employer to assess staff based on earnings payable in respect of the tax period, which is not the same. This would introduce a new 'earnings period' that would not be the same as either the tax or payroll periods (and would therefore need to be captured separately) and will therefore give rise to additional complexity rather than simplification (see also our general comments above).
19. A further disadvantage of this proposal is that it would also cause calculation of contributions to be much more complex, because they would be payable in respect of earnings relating to tax periods, which would not align with most payroll periods and thus would require part-period calculations on an ongoing basis.

20. As we mention in our general comments above, we urge the DWP to move to a receipts basis, to align with what employers currently have to do for PAYE.

Q3: Should both the old and the new definitions of a pay reference period remain in force? If so for how long?

21. We do not believe these proposals will bring any simplification benefits, so it is difficult to comment on transitional arrangements. However, if DWP were to more closely align the workplace pensions requirements with the tax regime (which we would strongly support), we would support a long transitional period to enable the larger employers who are currently using bespoke solutions to overcome current administrative complexity to continue to do so. We doubt that 'off the peg' software solutions would cope with the existing rules, and so there may be less need for transitional arrangements in respect of non-bespoke payroll software.

Q4: If we allow a period where both the old and new definitions of a pay reference period are in force, would it be useful to bring the new requirements as soon as possible.

22. See Q3 above.

Q5: Does adopting the revised definition of a payroll reference period for assessing scheme quality remove any possible need for annual reconciliation?

23. As we mention at paragraph 15 above, it is disappointing that DWP has not provided a marked up version of the draft legislation on which comments are invited; the absence of such a document seems at variance to the government's policy of consulting better. It would make it easier to check that the draft legislation works as intended and we would have thought that such a document would have been drawn up to help write the amended legislation. In the absence of such a document we have not been able to devote the time needed properly to consider the draft legislation. We have therefore with regret decided we are unable to comment on whether the proposed amendments achieve their aim.

Q6: Are there any potential difficulties with the proposed change you wish to highlight?

24. Yes. We believe there will be unintended consequences for employers using self-certification, which is done by reference to the (annual) scheme quality test. It would not be practicable for certification to be given by reference to monthly/weekly periods, and therefore would effectively prevent employers from utilising the self-certification process.

Q7: Is there any reason not to bring the revised definition of a payroll reference period for assessing scheme quality into force as soon as possible?

25. Yes. See Q6 above.

Q8: Does extending the deadline for passing over employer contributions make administration easier?

26. Yes.

Q9: Are there any risks associated with extending the deadline in this way?

27. None that we are aware of.

Q10: Is there any reason not to bring the change to contribution payment deadlines into force as soon as possible?

28. None that we are aware of.

Q11: Should there be a prescribed period under section 3(4) of the Pensions Act 2008 to turn off the automatic enrolment duty? Please set out the reasons for your view.

29. We have not answered this question.

Q12: If so, how long should that period be?

30. We have not answered this question.

Q13: Does the ongoing monitoring requirement limit how useful this would be as an easement?

31. We have not answered this question.

Q14: Do the proposed changes on the form of opt out notices make it easier to design and use?

32. We have not answered this question.

Q15: Is there any reason not to bring the clarification on the form of opt out notices into force as soon as possible?

33. We have not answered this question.

Q16: Do you think extending the deadline from one to six weeks strikes the right balance between the needs of employer and jobholders?

34. We have not answered this question.

Q17: An extended joining window could cut across the disclosure requirements that are currently linked to a one month joining window. Would this cause administrative difficulties? AND Would the domino effect on, for example, refunds and the proposed disclosure requirements cause administrative difficulties?

35. We note the consultation contains two different versions of this question. Refunds are not mentioned in the body of the consultation paper and therefore respondents who do not review the summary page of questions at the end of the document may not have considered the knock on impact these proposals will have on refunds. We believe these proposals will result in refunds becoming more likely to be payable, thus increasing the administrative burden for employers, and this should be considered when determining where the balance should be struck as between employees and employers.

Q18: Does the proposed amendment to the definition of appropriate age have the desired effect?

36. We have not answered this question.

Q19: Does the proposed amendment to maximum service limit for lump sum schemes have the desired effect?

37. We have not answered this question.

Q20: Does the proposed amendment to the revaluation requirement for certain lump sum schemes have the desired effect?

38. We have not answered this question.

Q21: Is there any reason not to bring the changes to the test scheme requirements into force as soon as possible?

39. We have not answered this question.

Q22: Are there categories or descriptions of worker for whom automatic enrolment is inappropriate? If yes, can you say who they are and why?

40. Yes, we believe it is not appropriate to auto-enrol overseas secondees (ie, workers who work for a UK company but are seconded overseas). This is because the requirement to auto-enrol

overseas secondees (ie, those who are considered to be ordinarily working in the UK) can currently give rise to issues because they may not have UK earnings, and there may also be tax issues from the other countries they are based in. For example, secondees to Australia will be enrolled into Australian arrangements, so would have to pay twice (although they could opt out or may be able to have a refund of the Australian contributions).

41. Another category of workers worth considering are fixed-share equity partners in LLPs, as we understand that (until tested in the courts) it is currently unclear whether they are included and therefore, given they are clearly outside the lower paid earners that auto-enrolment is intended to target, consideration should be given to expressly excluding them in the legislation to avoid the expense of a test case.

Q23: Would it be a good idea to allow employers contractually enrolling all workers into an automatic enrolment qualifying scheme to be certified or to self-certify that they are meeting the policy objectives and therefore are exempt from the explicit employer duties?

42. We have not answered this question.

Q24: What would employers need to demonstrate, beyond contractual enrolment of all workers into an automatic enrolment qualifying scheme in order to be certified or allowed to self-certify?

43. We have not answered this question.

Q25: For the purpose of automatic enrolment, is a quality requirement needed for DB schemes at all?

44. We have not answered this question.

Q26 – Is there a simpler way of determining whether a DB scheme is "good enough" to be used for automatic enrolments?

45. We have not answered this question.

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APPENDIX 1

PUBLISHED SUBMISSIONS BY ICAEW TO DWP ON WORKPLACE PENSION REFORM

- ICAEW REP 145/08 Employer obligations
- ICAEW REP 28/09 Securing a retirement income
- ICAEW REP 67/09 Automatic enrolment, and delegation of powers of the Pensions Regulator
- ICAEW REP 77/09 Scheme order and rules
- ICAEW REP 83/09 Designing an investment approach
- ICAEW REP 115/09 Draft regulations
- ICAEW REP 76/10 Workplace Pension Reforms: Automatic Enrolment

All available from: <http://www.icaew.com/en/technical/business-and-financial-management/pensions/pensions-guidance-and-representations>