

A LITTLE FLEXIBILITY IN AUTO-ENROLMENT AND AN UPDATE ON LIFETIME ALLOWANCE PROTECTIONS

AUTOMATIC ENROLMENT SIMPLIFICATIONS

The Department for Work & Pensions (DWP) is consulting on changes to simplify automatic enrolment to reduce the burden of compliance for employers.

The current consultation follows simplifications made in April 2015 that:

- ◆ simplified information requirements; and
- ◆ created exceptions for certain workers such as those:
 - with pensions lifetime allowance (LTA) protection;
 - under notice of termination of employment;
 - who had already opted out of pension saving; and
 - who had received a winding up lump sum in certain circumstances.

The latest draft regulations propose further exceptions to the employer enrolment duties and simplify compliance formalities.

The consultation will end on 16 February 2016. A consultation response is expected in March 2016 and the regulations are expected to come into force in April 2016.

Further exceptions

The DWP is proposing exceptions from enrolment for company directors and "genuine partners" of Limited Liability Partnerships (LLPs) on the grounds that these groups are not the intended targets of automatic enrolment.

In both cases employers will have the option to enrol affected workers but without an obligation to do so.

Company directors

Existing provisions exempt company directors from automatic enrolment unless they are employed under a contract of employment and the company employs at least one other person under a contract of employment.

The proposals simplify the employer duty by giving employers the option to automatically enrol company directors in all cases. Company directors will have the right to opt-in.

The exception will apply to directors of all companies, not just small director-only companies. Larger employers who have already enrolled their workforce may use this exception during the triennial re-enrolment.

"Genuine partners" of LLPs

In *Clyde & Co LLP v Bates van Winkelhof* the Supreme Court held that a LLP member was a "worker" for the purposes of employment legislation protecting whistle-blowers. The definition of "worker" under automatic enrolment legislation is substantially similar to that used under whistleblowing legislation. LLP members are therefore assumed to be subject to automatic enrolment.

However, where the LLP member does not receive "qualifying earnings" (defined to include salary, wages, commission, bonus, overtime and statutory payments) the LLP is unlikely to have enrolment duties.

As with company directors, employers will have the option to enrol "genuine partners" of a LLP. The test as to who is a "genuine partner" dovetails with income tax legislation and HMRC's Salaried Members Rules and the exception will apply to members who are not treated as being employed by the LLP for income tax purposes.

This exception is likely to be of limited application as it does not affect salaried partners and "genuine partners" are unlikely to be receiving "qualifying earnings".

Tax protected status

The existing exception for workers with LTA protection will be extended to cover the new LTA protections that will be introduced from 6 April 2016 (see "Pensions tax limits" below for further details on the tax changes).

Compliance formalities

Re-declaration of compliance

Employers going through triennial re-enrolment currently must comply with two deadlines for re-declaring compliance. Where employers have eligible staff to re-enrol, a re-declaration must be completed within two months of their re-enrolment date. Where there is no one to re-enrol, a re-declaration must be completed before the third anniversary of the original declaration of compliance.

Sensibly, the draft regulations propose one deadline for completing the re-declaration whether or not the employer has staff to re-enrol. The proposed deadline is the fifth month after the third anniversary of the employer's "staging date".

“Staging dates”

The requirement for employers to give one month's notice before bringing forward a “staging date” will be removed. Under the draft regulations, employers must notify the Pensions Regulator no later than the day before their chosen new “staging date”. This easement will assist employers who need to bring their “staging date” forward at short notice.

Employers who have no one to enrol will be able to bring forward their “staging date” to any date and will no longer need to obtain the consent of the pension scheme.

PENSIONS TAX LIMITS

As announced in the March 2015 Budget, the LTA will be reduced from £1.25m to £1m from 6 April 2016. The LTA will be index linked from April 2018 rising annually in line with increases to the Consumer Price Index.

Alongside the LTA reduction, transitional LTA protections will be introduced. The Finance Act 2016 will introduce Individual Protection 2016 (IP16) and Fixed Protection 2016 (FP16). Unlike in previous years, individuals cannot apply for IP16 and FP16 before 6 April 2016. A new online system for applying for IP16 and FP16 will go live in July 2016. HMRC guidance indicates that interim arrangements will be made for individuals who intend to take benefits between 6 April 2016 and 31 July 2016.

CONTACT DETAILS

If you would like further information or specific advice please contact:

CAMILLA BARRY

PARTNER
PENSIONS
DD: +44 (0)20 7849 2238
camilla.barry@macfarlanes.com

SHEAMAL SAMARASEKERA

SENIOR SOLICITOR
PENSIONS
DD: +44 (0)20 7849 2577
sheamal.samarasekera@macfarlanes.com

FEBRUARY 2016

MACFARLANES LLP

20 CURSITOR STREET LONDON EC4A 1LT

T +44 (0)20 7831 9222 F +44 (0)20 7831 9607 DX 138 Chancery Lane www.macfarlanes.com

This note is intended to provide general information about some recent and anticipated developments which may be of interest. It is not intended to be comprehensive nor to provide any specific legal advice and should not be acted or relied upon as doing so. Professional advice appropriate to the specific situation should always be obtained.

Macfarlanes LLP is a limited liability partnership registered in England with number OC334406. Its registered office and principal place of business are at 20 Cursitor Street, London EC4A 1LT. The firm is not authorised under the Financial Services and Markets Act 2000, but is able in certain circumstances to offer a limited range of investment services to clients because it is authorised and regulated by the Solicitors Regulation Authority. It can provide these investment services if they are an incidental part of the professional services it has been engaged to provide. © Macfarlanes February 2016