



2008 CHAPTER 13

PART 1

PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

CHAPTER 1

EMPLOYERS' DUTIES

Quality requirements

Quality requirement: UK money purchase schemes

20.—(1) A money purchase scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if under the scheme—

- (a) the jobholder's employer must pay contributions in respect of the jobholder;
- (b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period;
- (c) the total amount of contributions paid by the jobholder and the employer, however calculated, must be equal to or more than 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.

(2) The Department may by regulations provide that, where a certificate has been issued under section 3(1) of the Pension Schemes Act stating that the employment of the jobholder is contracted-out employment by reference to the scheme, paragraphs (b) and (c) of subsection (1) have effect with prescribed modifications.

(3) A scheme does not fail to satisfy the quality requirement under this section merely because the trustees or managers of the scheme may on any occasion refuse to accept a contribution below an amount prescribed for the purposes of this section on the grounds that it is below that amount.

Quality requirement: UK defined benefits schemes

21.—(1) Subject to subsection (3), a defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if the jobholder is in contracted-out employment.

(2) A defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder who is not in contracted-out employment if it satisfies the test scheme standard in relation to that jobholder.

(3) The Department may by order provide that a scheme does not satisfy the quality requirement in relation to a jobholder who is in contracted-out employment unless it satisfies the test scheme standard in relation to that jobholder, with the substitution of a higher fraction, not exceeding 1/80th, for the fraction of 1/120th in section 23(4)(a).

(4) In relation to any scheme, a jobholder is in contracted-out employment for the purposes of this section and section 22 if a certificate has been issued in respect of the jobholder under section 3(1) of the Pension Schemes Act stating that the employment of the jobholder is contracted-out employment by reference to the scheme.

Test scheme standard

22.—(1) A scheme satisfies the test scheme standard in relation to a jobholder (J) if the pensions to be provided for the relevant members of the scheme are broadly equivalent to, or better than, the pensions which would be provided for them under a test scheme.

(2) Subject to subsection (3), the relevant members are J and—

- (a) if J is not in contracted-out employment, all active members who are not in contracted-out employment and are jobholders of the same employer as J;
- (b) if J is in contracted-out employment, all active members who are in contracted-out employment and are jobholders of the same employer as J.

(3) In applying this section the pensions to be provided for relevant members must be considered as a whole.

(4) The Department may by regulations make provision for the manner of, and criteria for, determining whether the pensions to be provided for the relevant members under a scheme are broadly equivalent to, or better than, the pensions which would be provided for them under a test scheme.

(5) Regulations under subsection (4) may provide for the determination to be made in accordance with guidance issued from time to time by the Department.

(6) The Department may by regulations provide that a scheme only satisfies the test scheme standard if the scheme actuary certifies that it does.

(7) Except in prescribed circumstances, the scheme actuary is the actuary appointed under Article 47(1)(b) of the [Pensions \(Northern Ireland\) Order 1995 \(NI 22\)](#) (in this Act referred to as “the 1995 Order”) (professional advisers) in relation to the scheme.

Test scheme

23.—(1) A test scheme is an occupational pension scheme which satisfies—

- (a) the requirements of subsections (2) and (4), and
- (b) any prescribed requirements.

(2) The scheme must provide for a member to be entitled to a pension commencing at the appropriate age and continuing for life.

(3) The appropriate age is 65 or any higher age prescribed.

(4) The annual rate of the pension at that age must be—

- (a) $\frac{1}{120}$ th of average qualifying earnings in the last three tax years preceding the end of pensionable service,

multiplied by

- (b) the number of years of pensionable service, up to a maximum of 40.

(5) Section 13(1) (qualifying earnings) applies for the purposes of this section as if the reference to a pay reference period were a reference to a tax year.

Quality requirement: UK hybrid schemes

24.—(1) A hybrid scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if it satisfies the requirements mentioned in whichever of these is the appropriate paragraph—

- (a) the requirements for a money purchase scheme under section 20, subject to any prescribed modifications;
- (b) the requirements for a defined benefits scheme under sections 21 to 23, subject to any prescribed modifications.

(2) Which paragraph of subsection (1) is appropriate for any hybrid scheme is to be determined by rules made by the Department.

(3) The rules may provide for different paragraphs to be appropriate for different provisions of a scheme.

(4) The rules may provide for the paragraphs to be appropriate as alternatives, for any scheme or any provisions of a scheme.

Quality requirement: non-UK occupational pension schemes

25. The Department may by regulations make provision as to the quality requirement to be satisfied in the case of an occupational pension scheme within section 18(b) or (c).

Quality requirement: UK personal pension schemes

26.—(1) This section applies to a personal pension scheme if the operation of the scheme—

- (a) is carried on in such a way as to be a regulated activity for the purposes of the Financial Services and Markets Act 2000 (c. 8), and
- (b) is carried on in the United Kingdom by a person who is in relation to that activity an authorised person or an exempt person under section 19 of that Act.

(2) The scheme satisfies the quality requirement in relation to a jobholder if the following conditions are satisfied.

(3) The first condition is that all of the benefits that may be provided to the jobholder under the scheme are money purchase benefits.

(4) The second condition is that, in relation to the jobholder, there is an agreement between the provider of the scheme and the employer under which—

- (a) the employer must pay contributions in respect of the jobholder;
- (b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.

(5) In subsection (6), “shortfall” means the difference (if any) between—

- (a) the employer's contribution in respect of the jobholder under the agreement referred to in subsection (4), and
- (b) 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.

(6) The third condition is that if there is a shortfall there is an agreement between the provider of the scheme and the jobholder under which the jobholder must pay contributions which, however calculated, are equal to or more than the shortfall.

(7) The fourth condition is that, in relation to the jobholder, there are direct payment arrangements (within the meaning of section 107A of the Pension Schemes Act) between the jobholder and the employer.

(8) The Department may by regulations provide that, where the scheme is an appropriate scheme within the meaning of section 3(4) of the Pension Schemes Act, subsections (4)(b) and (5)(b) have effect with prescribed modifications.

(9) A scheme does not fail to satisfy the quality requirement under this section merely because the provider of the scheme may on any occasion refuse to accept a contribution below an amount prescribed for the purposes of this section on the grounds that it is below that amount.

Quality requirement: other personal pension schemes

27. The Department may by regulations make provision as to the quality requirement to be satisfied in the case of a personal pension scheme to which section 26 does not apply.

Sections 20, 24 and 26: certification that quality requirement is satisfied

28.—(1) The Department may by regulations provide that, subject to provision within subsection (6)(f), a scheme to which this section applies is to be taken to satisfy the relevant quality requirement in relation to any jobholder of an employer if a certificate given in accordance with the regulations is in force in relation to the employer.

(2) The certificate must state that, in relation to the jobholders of the employer who are active members of the scheme, the scheme is in the opinion of the person giving the certificate able to satisfy the relevant quality requirement throughout the certification period.

(3) This section applies to—

- (a) a money purchase scheme to which section 20 applies;
- (b) a personal pension scheme to which section 26 applies;
- (c) a hybrid scheme, to the extent that requirements within section 24(1)(a) apply.

(4) The “relevant quality requirement”—

- (a) for a scheme within subsection (3)(a), means the quality requirement under section 20;
- (b) for a scheme within subsection (3)(b), means the quality requirement under section 26;
- (c) for a scheme within paragraph (c) of subsection (3), means the requirements mentioned in that paragraph.

(5) Regulations may make further provision in relation to certification under this section.

(6) Regulations may in particular make provision—

- (a) as to the period for which a certificate is in force (the “certification period”);
- (b) as to the persons by whom a certificate may be given;

- (c) as to procedures in connection with certification or where a certificate has been given;
- (d) requiring persons to have regard to guidance issued by the Department;
- (e) requiring an employer to calculate the amount of contributions that a scheme, and any section 26 agreements, required to be paid by or in respect of any jobholder in the certification period;
- (f) as to cases where the requirements of a scheme, and any section 26 agreements, as to payment of contributions by or in respect of jobholders of an employer did not satisfy prescribed conditions.

(7) Provision within subsection (6)(f) includes in particular provision for a scheme not to be treated by virtue of regulations under this section as having satisfied the relevant quality requirement unless prescribed steps are taken (which may include the making of prescribed payments).

(8) In subsection (6) “section 26 agreements” means the agreement required, in the case of a scheme within subsection (3)(b), by section 26(4) and any agreement required, in the case of such a scheme, by section 26(6).

(9) The Department may by order repeal this section.