



# Pensions Act 2011

## 2011 CHAPTER 19

### PART 2

#### AUTOMATIC ENROLMENT

#### **4 Automatic re-enrolment where scheme membership interrupted**

(1) In section 2 (continuity of scheme membership) of the Pensions Act 2008 (“the 2008 Act”) for subsection (3) substitute—

“(3) Subsection (1) is not contravened if by virtue of section 5 the jobholder becomes an active member of an automatic enrolment scheme with effect from—

- “(a) the day after the cessation referred to in paragraph (a) or (b) of subsection (1), or
- (b) a day within the prescribed period (if a period is prescribed).”

(2) In section 5 of the 2008 Act (automatic re-enrolment) after subsection (1) insert—

“(1A) This section also applies to a jobholder who—

- (a) is aged at least 22,
- (b) has not reached pensionable age, and
- (c) is not an active member of a qualifying scheme because there has been a period beginning at any time after the jobholder’s automatic enrolment date during which the requirements of section 1(1)(a) or (c) were not met (so that the person was not a jobholder for that period).

(1B) This section also applies to a jobholder who has ceased to be an active member of a qualifying scheme because of something other than an action or omission by the jobholder.”

(3) For subsection (4) of that section substitute—

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- “(4) Regulations may provide for subsection (2) not to apply in relation to a jobholder who in prescribed circumstances—
- (a) has ceased to be an active member of a qualifying scheme because of any action or omission by the jobholder, or by the employer at the jobholder’s request, or
  - (b) is treated as not being an active member of a qualifying scheme because the jobholder has given notice under section 8.”
- (4) In subsection (8) of that section omit “, after the automatic enrolment date,”.
- (5) In section 6 of the 2008 Act (timing of automatic re-enrolment) in subsection (4)—
- (a) in paragraph (a) omit “at any time after the jobholder’s automatic enrolment date,”;
  - (b) in that paragraph omit “or a qualifying scheme of which the jobholder is an active member ceases to be such a scheme”;
  - (c) in paragraph (b) omit “or the employer”;
  - (d) in paragraph (c) for “time” substitute “event”.
- (6) In section 54 of the 2008 Act (inducements)—
- (a) in subsection (1)(a) for “within the period prescribed under section 2(3)” substitute “with effect from—
    - (i) the day after the membership is given up, or
    - (ii) a day within the prescribed period (if a period is prescribed)”;
  - (b) in subsection (1)(b) for “within the period prescribed under section 2(3)” substitute “with effect from—
    - (i) the day on which the jobholder became an active member of the scheme to which the notice relates, or
    - (ii) a day within the prescribed period (if a period is prescribed)”.

## **5 Earnings trigger for automatic enrolment and re-enrolment**

- (1) In section 3 of the 2008 Act (automatic enrolment) for subsection (1) substitute—
- “(1) This section applies to a jobholder—
- (a) who is aged at least 22,
  - (b) who has not reached pensionable age, and
  - (c) to whom earnings of more than £7,475 are payable by the employer in the relevant pay reference period (see section 15).”
- (2) After subsection (6) of that section insert—
- “(6A) In this section “earnings” has the meaning given in section 13(3).
- (6B) In the case of a pay reference period of less or more than 12 months, subsection (1) applies as if the amount in paragraph (c) were proportionately less or more.”
- (3) In section 5 of the 2008 Act (automatic re-enrolment) for subsection (1) substitute—
- “(1) This section applies to a jobholder—

- (a) who is aged at least 22,
- (b) who has not reached pensionable age, and
- (c) to whom earnings of more than £7,475 are payable by the employer in the relevant pay reference period (see section 15).”

(4) After subsection (7) of that section insert—

“(7A) In this section “earnings” has the meaning given in section 13(3).

(7B) In the case of a pay reference period of less or more than 12 months, subsection (1) applies as if the amount in paragraph (c) were proportionately less or more.”

## **6 Postponement or disapplication of automatic enrolment**

(1) In section 3 of the 2008 Act (automatic enrolment) at the end of subsection (7) insert—

“This is subject to section 4.”

(2) For section 4 of the 2008 Act substitute—

### **“4 Postponement or disapplication of automatic enrolment**

(1) Where—

- (a) an employer (E) gives to a person employed by E on E’s staging date (“the worker”) notice that E intends to defer automatic enrolment for the worker until a date specified in the notice (“the deferral date”), and
- (b) any prescribed requirements in relation to the notice are met,

the worker’s automatic enrolment date is the deferral date if on that date section 3 applies to the worker as a jobholder of E; if not, subsection (4) applies.

(2) Where—

- (a) a person (“the worker”) begins to be employed by an employer (E) after E’s staging date,
- (b) E gives the worker notice that E intends to defer automatic enrolment until a date specified in the notice (“the deferral date”), and
- (c) any prescribed requirements in relation to the notice are met,

the worker’s automatic enrolment date is the deferral date if on that date section 3 applies to the worker as a jobholder of E; if not, subsection (4) applies.

(3) Where—

- (a) a person (“the worker”) employed by an employer (E) becomes, after E’s staging date, a jobholder to whom section 3 applies,
- (b) E gives the worker notice that E intends to defer automatic enrolment until a date specified in the notice (“the deferral date”), and
- (c) any prescribed requirements in relation to the notice are met,

the worker’s automatic enrolment date is the deferral date if on that date section 3 applies to the worker as a jobholder of E; if not, subsection (4) applies.

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- (4) Where this subsection applies, section 3(2) does not apply in relation to any employment of the worker by E in the period beginning with the starting day and ending with the deferral date.
- (5) A notice under this section may be given on or before the starting day or within a prescribed period after that day.
- (6) The deferral date may be any date in the period of three months after the starting day.
- (7) An employer who gives a worker a notice under subsection (1) or (2) may not give the worker a notice under subsection (3) in relation to any occasion on or before the deferral date specified in the notice on which the worker becomes a jobholder to whom section 3 applies.
- (8) In this section—
  - “staging date”, in relation to an employer of a particular description, means the date prescribed under section 12 in relation to employers of that description;
  - “starting day” means—
    - (a) E’s staging date, in the case of a notice under subsection (1);
    - (b) the day on which the worker begins to be employed by E, in the case of a notice under subsection (2);
    - (c) the day on which the worker becomes a jobholder to whom section 3 applies, in the case of a notice under subsection (3).”
- (3) In section 5 of the 2008 Act (automatic re-enrolment) omit subsection (5).
- (4) In section 6 of the 2008 Act (timing of automatic re-enrolment)—
  - (a) omit subsections (3) and (6);
  - (b) in subsection (4) for “second case” substitute “first case”;
  - (c) in subsection (5) for “third case” substitute “second case”.
- (5) In section 7 of the 2008 Act (jobholder’s right to opt in) omit paragraph (b) of subsection (2) and the “or” before it.
- (6) In section 30 of the 2008 Act (transitional period for defined benefits and hybrid schemes) in subsection (7)—
  - (a) for “applies, section” substitute “applies—
    - (a) section”;
  - (b) for “day on which” substitute “day with effect from which”;
  - (c) at the end insert—
    - “(b) section 4 applies as if—
      - (i) the reference in subsection (1) to the employer’s staging date were a reference to the employer’s first enrolment date;
      - (ii) in that subsection, for “the workers’s automatic enrolment date is the deferral date” there were substituted “the day with effect from which arrangements fall to be made by virtue of section 30 in respect of the jobholder is changed to the deferral date”;

(iii) in subsections (4) to (6), references to the starting day were references to the day with effect from which arrangements would by virtue of this section fall to be made in respect of the jobholder.”

## **7 Timing of automatic re-enrolment**

In section 6 of the 2008 Act (timing of automatic re-enrolment) in subsection (1)(b) for “three years” substitute “2 years and 9 months”.

## **8 Review of earnings trigger and qualifying earnings band**

(1) For section 14 of the 2008 Act (review of qualifying earnings band) substitute—

### **“14 Review of earnings trigger and qualifying earnings band**

- (1) The Secretary of State must in each tax year consider whether any of the amounts in sections 3(1)(c), 5(1)(c) and 13(1)(a) and (b) should be increased or decreased.
- (2) If the Secretary of State considers that any of those amounts should be increased or decreased, the Secretary of State may make an order substituting in the provisions in question the amounts that the Secretary of State thinks appropriate.
- (3) For the purposes of subsection (1) the Secretary of State may take into account any of the factors specified in subsection (4) (as well as any others that the Secretary of State thinks relevant).
- (4) The factors are—
  - (a) the amounts for the time being specified in Chapter 2 of Part 3 (personal allowances) of the Income Tax Act 2007;
  - (b) the amounts for the time being specified in regulations under section 5 of the Social Security Contributions and Benefits Act 1992 (earnings limits and thresholds for Class 1 national insurance contributions);
  - (c) the amount for the time being specified in section 44(4) of that Act (rate of basic state pension);
  - (d) the general level of prices in Great Britain, and the general level of earnings there, estimated in such manner as the Secretary of State thinks fit.”

(2) For the italic heading before section 13 of the 2008 Act substitute—

*“Qualifying earnings and earnings trigger”.*

(3) In section 143(5) of the 2008 Act (statutory instruments subject to affirmative resolution procedure) in paragraph (c) after “section” insert “14(2),”.

## **9 Rounded figures for earnings trigger and qualifying earnings band**

After section 15 of the 2008 Act insert—

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### **“15A Power to specify rounded figures**

- (1) The Secretary of State may by order specify rounded figures for the purposes of section 3(6B), 5(7B) or 13(2) in the case of pay reference periods of any length specified in the order.
- (2) A rounded figure so specified applies in place of the amount that would otherwise apply (“the exact amount”).
- (3) The Secretary of State must decide in relation to any particular amount whether to specify—
  - (a) a figure that is a whole number of pounds, or
  - (b) a figure that is divisible by 10 pence, or
  - (c) a figure that includes a whole number of pennies.
- (4) It is for the Secretary of State to decide whether to round any particular amount up or down.

Accordingly, a figure specified under this section may be the figure within paragraph (a) or (b) or (c) of subsection (3) that is closest to the exact amount or the one that is next closest to it (or, if two figures are joint closest, it may be either of those).”

## **10 Qualifying schemes: administration charges**

- (1) Section 16 of the 2008 Act (qualifying schemes) is amended as follows.
- (2) In subsection (3) for paragraph (a) substitute—
  - “(a) administration charges due from J while J is an active member exceed a prescribed amount,
  - (aa) administration charges due from former active members while J is an active member exceed a prescribed amount,
  - (ab) while J is an active member, the scheme contains provision under which administration charges that will be due from J when J is no longer an active member will exceed a prescribed amount, or will do so in particular circumstances,”.
- (3) After that subsection insert—
  - “(4) For the purposes of subsection (3) administration charges are due from a person to the extent that—
    - (a) any payments made to the scheme by, or on behalf or in respect of, the person,
    - (b) any income or capital gain arising from the investment of such payments, or
    - (c) the value of the person’s rights under the scheme,
 may be used to defray the administrative expenses of the scheme, to pay commission or in any other way that does not result in the provision of pension benefits for or in respect of members.

- (5) In subsection (3)(aa) “former active member” means a person who at some time after the automatic enrolment date was both a jobholder and an active member but is no longer an active member.”

## **11 Test scheme standard for schemes that produce sum of money for provision of benefits**

- (1) In section 22 of the 2008 Act (test scheme standard) after subsection (7) insert—

“(8) In the case of a scheme under which a sum of money is made available for the provision of benefits to a relevant member, references in this section to pensions are to be read as references to such sums.”

- (2) For section 23 of the 2008 Act substitute—

### **“23 Test scheme**

- (1) A test scheme is an occupational pension scheme which satisfies—
- (a) the requirement in subsection (2),
  - (b) the requirement in subsection (4) or requirements prescribed under subsection (6) (as appropriate), and
  - (c) any further requirements that are prescribed.
- (2) The scheme must either—
- (a) provide for a member to be entitled to a pension commencing at the appropriate age and continuing for life, or
  - (b) provide for a sum of money to be made available for the provision of benefits to a member commencing at the appropriate age and continuing for life.
- (3) The appropriate age is 65 or any higher age prescribed.
- (4) In the case of a scheme that provides entitlement to a pension as mentioned in subsection (2)(a), the annual rate of the pension at the appropriate age must be—
- (a) 1/120th 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 subsection (4) as if the reference to a pay reference period were a reference to a tax year.
- (6) In the case of a scheme that provides for a sum of money to be made available as mentioned in subsection (2)(b), regulations must prescribe requirements relating to that sum.”

## **12 Certification that alternative to quality requirement is satisfied**

- (1) Section 28 of the 2008 Act (sections 20, 24 and 26: certification that quality requirement is satisfied) is amended as follows.

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- (2) For the heading substitute “**Certification that quality requirement or alternative requirement is satisfied**”.
- (3) In subsection (1) for “any jobholder of an employer” substitute “each of an employer’s relevant jobholders”.
- (4) After subsection (1) insert—
- “(1A) In this section—
- (a) “relevant jobholder” means a jobholder to whom the certificate in question applies;
- (b) a reference to a scheme includes a reference to part of a scheme.”
- (5) In subsection (2)—
- (a) for “state that” substitute “state—
- (a) that”;
- (b) for “the jobholders” substitute “relevant jobholders”;
- (c) at the end insert “, or
- (b) that, in relation to those jobholders, the scheme is in that person’s opinion able to satisfy a prescribed alternative requirement throughout the certification period.”
- (6) After subsection (2) insert—
- “(2A) Alternative requirements must be such that, assuming all jobholders to be active members of schemes to which this section applies, for at least 90% of jobholders—
- (a) employer contributions, and
- (b) total contributions,
- would be likely to be no less if every scheme satisfied an alternative requirement applicable to it than if every scheme satisfied the relevant quality requirement.
- (2B) In subsection (2A)—
- “alternative requirement” means a requirement prescribed under subsection (2)(b);
- “employer contributions”, in relation to an active member of a scheme, means the amount of contributions that have to be paid under the scheme in respect of the member by the employer;
- “total contributions”, in relation to an active member of a scheme, means the total amount of contributions that have to be paid under the scheme in respect of the member by the employer and by the member.
- (2C) The Secretary of State—
- (a) must apply the test in subsection (2A) when regulations under subsection (2)(b) are first made, and
- (b) must carry out subsequent reviews of whether the test continues to be satisfied.
- A review under paragraph (b) must be carried out during 2017, and after that each review must be completed no more than three years after the completion of the previous one.”



- (7) In subsection (6)—
  - (a) in paragraph (e) for “any jobholder” substitute “any relevant jobholder”;
  - (b) in paragraph (f) for “jobholders” substitute “relevant jobholders”.
- (8) In section 32 of the 2008 Act (power to modify by resolution) in subsection (1)(b) for the words after “the scheme” substitute “to satisfy—
  - (i) the requirements contained in section 20(1),
  - (ii) those requirements as modified under section 24(1)(a), or
  - (iii) a requirement prescribed under section 28(2)(b).”

### **13 Certification for non-UK schemes**

- (1) Section 28 of the 2008 Act is amended as follows.
- (2) After subsection (3) insert—
  - “(3A) This section also applies to—
    - (a) a money purchase scheme that is an occupational pension scheme within section 18(b);
    - (b) a personal pension scheme of a prescribed description for which provision is made under section 27;
    - (c) a hybrid scheme that is an occupational pension scheme within section 18(b), to the extent prescribed.”
- (3) In subsection (4) at the end insert—
  - “(d) for a scheme within subsection (3A), means a prescribed requirement.”
- (4) In paragraphs (e) and (f) of subsection (6) for “section 26 agreements” substitute “contribution agreements”.
- (5) In subsection (8)—
  - (a) for ““section 26 agreements” means the agreement” substitute ““contribution agreements” means—
    - “(a) the agreement”;
  - (b) at the end insert “, or
    - (b) any agreement of the same or a similar kind that is required, in the case of a scheme within subsection (3A)(b), by regulations under section 27.”

### **14 Transitional period for defined benefits and hybrid schemes to be optional**

- (1) Section 30 of the 2008 Act (transitional period for defined benefits and hybrid schemes) is amended as follows.
- (2) In subsection (3) for “Where this subsection applies” substitute “If by the end of the prescribed period the employer has given the jobholder notice that the employer intends to defer automatic enrolment until the end of the transitional period for defined benefits and hybrid schemes”.
- (3) In subsection (4) for “at any time” substitute “a notice is given under subsection (3) and at any later time”.

(4) After subsection (7) insert—

“(7A) The Secretary of State may by regulations make provision about the form and content of a notice under subsection (3).”

## **15 Arrangements where transitional conditions cease to be satisfied**

(1) Section 30 of the 2008 Act is amended as follows.

(2) In subsection (5) after “money purchase scheme” insert “or personal pension scheme”.

(3) In subsection (6)(b) omit “(in accordance with section 20(1))”.

## **16 Power of managers to modify by resolution**

In section 32 of the 2008 Act (power of trustees to modify by resolution) in subsection (1) and in the heading after “trustees” insert “or managers”.

## **17 No indemnification for civil penalties**

In section 256 of the Pensions Act 2004 (no indemnification for fines or civil penalties) in subsection (1)(b)—

(a) for “or section” substitute “, section”;

(b) after “1993 (c. 48)” insert “or section 40 or 41 of the Pensions Act 2008”.

## **18 Power to exempt certain cross-border employment from enrolment duty**

In Part 7 of the Pensions Act 2004 (cross-border activities within European Union) after section 292 insert—

### **“292A Exemption from enrolment duty under Part 1 of Pensions Act 2008**

Regulations may provide for section 2(1), 3(2), 5(2), 7(3), 9(2) or 54 of the Pensions Act 2008 (employer’s obligations regarding membership of a qualifying scheme) not to apply in relation to a person’s employment of—

(a) an individual in relation to whom the person is a European employer, or

(b) someone whom the person reasonably believes to be such an individual.”