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STATUTORY INSTRUMENTS

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**2000 No. 1403**

**The Stakeholder Pension Schemes Regulations 2000**

**PART IV**

**EMPLOYER REQUIREMENTS**

**Exemptions from employer access and consultation requirements**

**22.**—(1) An employer need not comply with the requirements set out in section 3 (duty of employers to facilitate access to stakeholder pension schemes) and this Part of these Regulations if he has fewer than 5 employees.

(2) An employer need not comply with the requirements set out in section 3 and this Part of these Regulations if—

- (a) it is a term of the contract of every relevant employee (other than any employee who has not attained the age of 18) that—
  - (i) the employer will make contributions to a personal pension scheme in respect of the employee, in accordance with paragraph (3) and subject to paragraph (4), for any period for which that employee, while in his employment, is a member of that scheme; and
  - (ii) the employer will, if he is requested to do so by the employee, deduct the employee's contributions to that scheme from his remuneration and pay them to the trustees or manager of the scheme; and
- (b) subject to paragraph (7), no charge or penalty is imposed by the personal pension scheme in question on any member in respect of whom the employer has made any contributions to the scheme for transferring all or any of his funds out of that scheme or for ceasing to contribute to the scheme.

(3) Contributions are made in accordance with this paragraph if they are made on each occasion on which the employee is paid remuneration by the employer (or, if the employer and employee agree longer intervals, at such longer intervals as are agreed) and at a rate of at least 3 per cent. of the amount of remuneration paid.

(4) Contributions made by the employer in accordance with paragraph (3) may be conditional on the employee making contributions to the same scheme at a specified rate on each occasion on which he is paid (or, if the employer and employee agree longer intervals, at such longer intervals as are agreed) while—

- (a) if the arrangement is in place as at 8th October 2001, the employer is making contributions equal to or exceeding that of the employee; and
- (b) if the condition is first imposed on or after 8th October 2001 or if sub-paragraph (a) ceases to apply after that date, the employee is not required to make contributions exceeding 3 per cent. of the amount of remuneration paid to him on any such occasion or for each such interval.

(5) For the purposes of paragraphs (3) and (4) only payments made in respect of basic pay shall be taken into account and payments in respect of bonuses, commission, overtime or similar payments shall be disregarded.

(6) In calculating the amount paid to an employee for the purposes of paragraphs (3) and (4) no account shall be taken of any deductions from the employee's remuneration which are made in respect of tax, national insurance contributions or pension contributions.

(7) For the purposes of paragraph (2)(b) deductions in the member's accrued rights to take account of—

- (a) costs or charges that have not previously been taken into account and which would otherwise have been deductible under the terms and conditions of the scheme by the trustees or manager of the scheme in question, had contributions continued or a transfer not occurred, in respect of the member's rights under the scheme on or before the day the cessation takes effect or the day that member's rights are transferred from that scheme; or
- (b) market value adjustments which occur in relation to a with-profits fund,

shall not be taken to be charges or penalties for transferring those funds or for ceasing to contribute to that scheme.

(8) An employer need not comply with the requirements set out in section 3 and this Part of these Regulations if the employer can provide written evidence to show that contributions are being made, and have continuously been made from a date prior to 8th October 2001, as if each relevant employee had a term in his contract that would satisfy the requirements set out in paragraph (2)(a) above.

(9) An employer need not comply with the requirements set out in section 3 and this Part of these Regulations to the extent that it is not practicable for him to do so because—

- (a) on section 3 first applying to him (unless, subject to sub-paragraph (b), that section first applied to him on 8th October 2001), he has not had sufficient time to select a scheme which he wishes to designate for the purposes of that section and to complete the designation process, provided that the exemption under this sub-paragraph shall not apply for more than 3 months from the date on which that section first applies,
- (b) on employing a fifth employee in the period from 8th July 2001 to 8th October 2001 after a period when he had fewer than 5 employees, he has not had sufficient time to select a scheme which he wishes to designate and to complete the designation process, provided that the exemption under this sub-paragraph shall not apply for more than 3 months from the date on which he employed that fifth employee,
- (c) on section 3 applying to him after a period when it did not so apply, he has not had sufficient time to select a scheme which he wishes to designate and to complete the designation process, provided that the exemption under this sub-paragraph shall not apply for more than 3 months from the date on which that section begins to apply after such a period, or
- (d) on having withdrawn his designation of a scheme due to reasons beyond his control he has not had sufficient time to select another scheme which he wishes to designate and to complete the designation process, provided that the exemption under this sub-paragraph shall not apply for more than 4 months from the withdrawal of designation.

(10) Where a stakeholder pension scheme commences winding-up, the employer need not comply with the consultation requirements in section 3(2) if, within 4 months of the scheme commencing to wind up, he designates for the purposes of that section the stakeholder pension scheme named in the notice mentioned in regulation 6(2) as the scheme of the trustees' or manager's choice.

### **Definition of relevant employees**

**23.—**(1) The following persons shall not be an employer's relevant employee for the purposes of section 3—

- (a) any employee whose employment would qualify him for membership of an occupational pension scheme of the employer had he been employed by that employer for more than 12 months;
- (b) any employee whose employment would qualify him for membership of an occupational pension scheme of the employer if he were over the age of 18, or was more than 5 years younger than the age which would be his normal pension age were he a member of the scheme;
- (c) any employee who—
  - (i) had he wished to join an occupational pension scheme of the employer at some time in the past, would have qualified for membership of the scheme; and
  - (ii) is now excluded from membership of that scheme because he did not join the scheme at an earlier time;
- (d) any employee who has been employed by the employer for a continuous period of less than 3 months;
- (e) any employee whose earnings have fallen below the lower earnings limit for one or more weeks within the last 3 months; and
- (f) any employee who is ineligible, by virtue of any enactment relating to tax or any restriction imposed by the Inland Revenue, to make contributions to a stakeholder pension scheme.

(2) For the purposes of paragraph (1)(b) “normal pension age” means the earliest age at which the employee in question would, if he were a member of the scheme in question, be entitled to receive benefits (other than a guaranteed minimum pension) on retirement from employment to which the scheme applies, disregarding any rule of the scheme which makes special provision as to early retirement on grounds of ill-health or otherwise.

### **Payroll deduction of contributions**

**24.**—(1) Subject to paragraph (2), where an employee requests an employer to make or vary (but not cease) deductions of the employee’s contributions to a qualifying scheme from his remuneration (“the request”), the employer must comply with the request as soon as possible, but no later than the end of the pay period following that in which the request is made.

(2) Where an employee makes the request within 6 months of requesting the same employer to make, vary or cease deductions of the employee’s contributions to a qualifying scheme from the employee’s remuneration, the employer need not comply with the request but, where he does not do so, he must give notice to the employee in writing—

- (a) that he is not complying with the request;
- (b) informing him of the date (which must be no later than 6 months after the date of the employee’s previous request to make, vary or cease such deductions) that the employee can make a new request to make or vary deductions of the employee’s contributions; and
- (c) informing him that—
  - (i) he may require the employer to cease such deductions immediately (if deductions are being made at the time of the request) but, if the employee makes such a request, the employer is not required to comply with any further request to make such deductions if that further request is made within 6 months of the employee requesting that the deductions cease; and
  - (ii) the employee may make payments, at a rate of his choosing, directly to the qualifying scheme.

(3) Where an employee requests an employer to cease to make deductions from the employee’s remuneration on account of contributions to a qualifying scheme, the employer must cease such

deductions as soon as possible, but no later than the end of the pay period following that in which the request is made, and must give notice to the employee in writing—

- (a) that the employer is not obliged to make any further such deductions if a request to make those deductions is made by the employee within 6 months of the employee requesting that deductions cease; and
- (b) that the employee may make payments, at a rate of his choosing, directly to the qualifying scheme.

(4) If an employer ceases on an employee's request to make deductions from the employee's remuneration of contributions to a qualifying scheme, the employer need not comply with any further request to make such deductions if that request is made within 6 months from the date when the employee requested the employer to cease deductions.

(5) Where an employer is notified that a stakeholder pension scheme that has been designated by him for the purposes of section 3(2) of the Act has commenced winding-up, the employer must immediately cease making deductions from the employee's remuneration on account of contributions to that scheme and notify the employee in writing as soon as is practicable that those deductions have ceased.

#### **Disclosure of information to relevant employees**

**25.**—(1) Where an employee for the first time requests an employer to make or vary (but not cease) deductions of the employee's contributions to a qualifying scheme from his remuneration, the employer must, within 2 weeks of receiving that request, give notice in writing to the employee containing the information referred to in paragraph (2).

(2) The information to be provided under paragraph (1) is—

- (a) the manner in which the employer will accept requests to make, vary or cease such deductions;
- (b) advice that, where an employee requests an employer to make or vary deductions of the employee's contributions to a qualifying scheme from the employee's remuneration, the employer need not comply with that request—
  - (i) within 6 months of the date of any previous request to make, vary or cease such deductions; or
  - (ii) where the employer is agreeable to complying with the request within a lesser period than 6 months of a previous request, that lesser period;
- (c) advice that the employee may, at any time, require the employer to cease such deductions immediately; and
- (d) advice that, where the employer is required to comply with a request to make, vary or cease such deductions, the request will be complied with as soon as possible but no later than the end of the pay period following that in which the request is made.