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2008 CHAPTER 13

PART 1

PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

CHAPTER 1

EMPLOYERS' DUTIES

VALID FROM 30/06/2012

Jobholders

Jobholders

1.—(1) For the purposes of this Part a jobholder is a worker—

(a) who is working or ordinarily works in Northern Ireland under the worker's contract,

(b) who is aged at least 16 and under 75, and

(c) to whom qualifying earnings are payable by the employer in the relevant pay reference period (see sections 13 and 15).

(2) Where a jobholder has more than one employer, or a succession of employers, this Chapter applies separately in relation to each employment.

(3) Accordingly—

(a) references to the employer are references to the employer concerned;

(b) references to membership of a pension scheme are references to membership in relation to the employment concerned.

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Employers' duties

Continuity of scheme membership

2.—(1) If a jobholder is an active member of a qualifying scheme, the employer must not take any action, or make any omission, by which (without the jobholder ceasing to be employed by the employer)—

(a) the jobholder ceases to be an active member of the scheme, or

(b) the scheme ceases to be a qualifying scheme.

(2) Subsection (1) is not contravened if the jobholder remains an active member of another qualifying scheme.

(3) Subsection (1) is not contravened if the jobholder becomes an active member of another qualifying scheme within the prescribed period.

(4) Subsection (1) is not contravened if the action or omission is at the jobholder's request.

(5) In this Part as it applies in the case of any jobholder, references to a qualifying scheme are references to a pension scheme which is a qualifying scheme in relation to that jobholder (see section 16).

Commencement Information

I1 S. 2 partly in force; s. 2 in force for certain purposes at Royal Assent see s. 118(2)

Automatic enrolment

3.—(1) This section applies to a jobholder who—

(a) is aged at least 22, and

(b) has not reached pensionable age.

(2) The employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date.

(3) Subsection (2) does not apply if the jobholder was an active member of a qualifying scheme on the automatic enrolment date.

(4) Subsection (2) does not apply if, within the prescribed period before the automatic enrolment date, the jobholder ceased to be an active member of a qualifying scheme because of any action or omission by the jobholder.

(5) For the purposes of arrangements under subsection (2) regulations may require information to be provided to any person by the employer or—

(a) where the arrangements relate to an occupational pension scheme, the trustees or managers of the scheme;

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(b) where the arrangements relate to a personal pension scheme, the provider of the scheme.

(6) For the purposes of arrangements made under subsection (2) in relation to a personal pension scheme, regulations may deem an agreement to exist (subject to section 8) between the jobholder and the provider of the scheme for the jobholder to be an active member of the scheme on terms and conditions determined in accordance with the regulations.

(7) The automatic enrolment date, in relation to any person, is the first day on which this section applies to the person as a jobholder of the employer.

(8) In this Part as it applies in the case of any jobholder, references to an automatic enrolment scheme are references to a pension scheme which is an automatic enrolment scheme in relation to that jobholder (see section 17).

Commencement Information

I2 S. 3 partly in force; s. 3 in force for certain purposes at Royal Assent see s. 118(2)

Postponement of automatic enrolment

4.—(1) The Department may by regulations provide that, in prescribed cases, the automatic enrolment date is a date, determined in accordance with regulations under this section, which is later than the date specified in section 3(7).

(2) Where a person becomes an active member of a scheme in accordance with regulations under this section, the employer must not take any action, or make any omission, by which within the minimum period—

(a) the person ceases to be an active member of the scheme, or

(b) the scheme ceases to be a scheme of the relevant kind.

(3) The minimum period is so much of a prescribed period as the person remains a jobholder of the employer.

(4) A scheme ceases to be a scheme of the relevant kind, in the case of any person, if it ceases to have a feature by reference to which regulations under this section operated so as to postpone the automatic enrolment date in that person's case.

(5) Subsection (2) does not apply to any action or omission at the member's request.

Commencement Information

I3 S. 4 partly in force; s. 4 in force for certain purposes at Royal Assent see s. 118(2)

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Automatic re-enrolment

5.—(1) This section applies to a jobholder who—

(a) is aged at least 22, and

(b) has not reached pensionable age.

(2) The employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic re-enrolment date.

(3) Subsection (2) does not apply if the jobholder was an active member of a qualifying scheme on the automatic re-enrolment date.

(4) Subsection (2) does not apply if, within the prescribed period before the automatic re-enrolment date, the jobholder—

(a) ceased to be an active member of a qualifying scheme because of any action or omission by the jobholder, or

(b) gave notice under section 8.

(5) Subsection (2) is subject to section 6(6).

(6) For the purposes of arrangements under subsection (2) regulations may require information to be provided to any person by the employer or—

(a) where the arrangements relate to an occupational pension scheme, the trustees or managers of the scheme;

(b) where the arrangements relate to a personal pension scheme, the provider of the scheme.

(7) For the purposes of arrangements made under subsection (2) in relation to a personal pension scheme, regulations may deem an agreement to exist (subject to section 8) between the jobholder and the provider of the scheme for the jobholder to be an active member of the scheme on terms and conditions determined in accordance with the regulations.

(8) Automatic re-enrolment dates are dates, after the automatic enrolment date, that are to be determined in accordance with regulations.

Commencement Information

I4 S. 5 partly in force; s. 5 in force for certain purposes at Royal Assent see s. 118(2)

Timing of automatic re-enrolment

6.—(1) Regulations under section 5(8) must either—

(a) secure that for any jobholder there is no automatic re-enrolment date less than three years after the jobholder's automatic enrolment date, and that

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there is not more than one automatic re-enrolment date in any period of three years, or

(b) secure that for any employer there is not more than one automatic re-enrolment date in any period of three years.

(2) Subsection (1) does not restrict the provision that regulations may make about the timing of a jobholder's automatic re-enrolment date ("the relevant date") in the following cases.

(3) The first case is where the jobholder became an active member of a scheme in accordance with regulations under section 4 and—

(a) at any time before the end of the minimum period under that section, the jobholder ceases to be an active member of the scheme or the scheme ceases to be a scheme of the relevant kind for the purposes of that section,

(b) that event is not the effect of any action or omission by the jobholder or the employer, and

(c) the relevant date is the jobholder's first automatic re-enrolment date after that time.

(4) The second case is where—

(a) at any time after the jobholder's automatic enrolment date, the jobholder ceases to be an active member of a qualifying scheme or a qualifying scheme of which the jobholder is an active member ceases to be such a scheme,

(b) that event is not the effect of any action or omission by the jobholder or the employer, and

(c) the relevant date is the jobholder's first automatic re-enrolment date after that time.

(5) The third case is where—

(a) there is a period beginning at any time after the jobholder's automatic enrolment date during which the requirements of section 1(1)(a) or (c) are not met (so that the person is not a jobholder for that period), and

(b) the relevant date is the jobholder's first automatic re-enrolment date after that period.

(6) Where subsection (3) applies—

(a) section 5(2) has effect as if the reference to an automatic enrolment scheme were, in relation to the relevant date, a reference to a scheme ("the new scheme") of the kind referred to in subsection (3)(a), and

(b) section 4(2) to (5) applies in relation to the new scheme as it applied in relation to the scheme referred to in subsection (3).

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Commencement Information

I5 S. 6 partly in force; s. 6 in force for certain purposes at Royal Assent see s. 118(2)

Jobholder's right to opt in

7.—(1) This section applies to a jobholder who is not an active member of a qualifying scheme.

(2) But it does not apply at a time when—

(a) arrangements are required to be made under section 3 or 5 in respect of the jobholder, or

(b) the jobholder's automatic enrolment date is postponed under section 4.

(3) The jobholder may by notice require the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme.

(4) The Department may by regulations make provision—

(a) about the form and content of the notice;

(b) about the arrangements that the employer is required to make;

(c) for determining the date with effect from which the jobholder is to become an active member under the arrangements.

(5) For the purposes of arrangements under subsection (3) regulations may require information to be provided to any person by the employer or—

(a) where the arrangements relate to an occupational pension scheme, the trustees or managers of the scheme;

(b) where the arrangements relate to a personal pension scheme, the provider of the scheme.

(6) For the purposes of arrangements made under subsection (3) in relation to a personal pension scheme, regulations may deem an agreement to exist (subject to section 8) between the jobholder and the provider of the scheme for the jobholder to be an active member of the scheme on terms and conditions determined in accordance with the regulations.

(7) Subsections (8) and (9) apply where a jobholder becomes an active member of an automatic enrolment scheme in pursuance of a notice under this section and, within the period of 12 months beginning with the day on which that notice was given—

(a) ceases to be an active member of that scheme, and

(b) gives the employer a further notice under this section.

(8) The further notice does not have effect to require the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme.

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(9) But any arrangements the employer makes for the jobholder to become, within that period, an active member of such a scheme must be made in accordance with regulations under this section.

Commencement Information

I6 S. 7 partly in force; s. 7 in force for certain purposes at Royal Assent see s. 118(2)

Jobholder's right to opt out

8.—(1) This section applies on any occasion when arrangements under section 3(2), 5(2) or 7(3) apply to a jobholder (arrangements for the jobholder to become an active member of an automatic enrolment scheme).

(2) If the jobholder gives notice under this section—

(a) the jobholder is to be treated for all purposes as not having become an active member of the scheme on that occasion;

(b) any contributions paid by the jobholder or by the employer on behalf or in respect of the jobholder, on the basis that the jobholder has become an active member of the scheme on that occasion must be refunded in accordance with prescribed requirements.

(3) Regulations under subsection (2)(b) may, in particular, make provision about—

(a) the time within which contributions must be refunded;

(b) how the amount to be refunded is calculated;

(c) the procedure for refunding contributions.

(4) The Department may by regulations make further provision in relation to notices under this section.

(5) The regulations may in particular make provision—

(a) as to the form and content of a notice;

(b) as to the period within which a notice must be given;

(c) as to the person to whom a notice must be given;

(d) requiring any person to make prescribed arrangements for enabling notices to be given;

(e) requiring any person to take prescribed action in consequence of a notice (in addition to any action prescribed under subsection (2)(b)).

(6) The regulations must provide for the notice—

(a) to include information about the effect in relation to jobholders of giving notice under this section, and

(b) to be signed or otherwise authorised by the jobholder.

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Commencement Information

I7 S. 8 partly in force; s. 8 in force for certain purposes at Royal Assent see s. 118(2)

Duty in relation to workers without qualifying earnings

Workers without qualifying earnings

9.—(1) This section applies to a worker—

(a) to whom paragraphs (a) and (b) of section 1(1) apply (working in Northern Ireland and aged between 16 and 75),

(b) to whom paragraph (c) of section 1(1) does not apply (qualifying earnings), and

(c) who is not an active member of a pension scheme that satisfies the requirements of this section.

(2) The worker may by notice require the employer to arrange for the worker to become an active member of a pension scheme that satisfies the requirements of this section.

(3) The Department may by regulations make provision—

(a) about the form and content of the notice;

(b) about the arrangements that the employer is required to make;

(c) for determining the date with effect from which the worker is (subject to compliance with any requirements of the scheme) to become an active member under the arrangements.

(4) Subsections (5) and (6) apply where a worker becomes an active member of a pension scheme in pursuance of a notice under this section and, within the period of 12 months beginning with the day on which that notice was given—

(a) ceases to be an active member of that scheme because of any action or omission by the worker, and

(b) gives the employer a further notice under this section.

(5) The further notice does not have effect to require the employer to arrange for the worker to become an active member of a pension scheme.

(6) But any arrangements the employer makes for the worker to become, within that period, an active member of a pension scheme that satisfies the requirements of this section must be made in accordance with regulations under this section.

(7) A pension scheme satisfies the requirements of this section if—

(a) it is registered under Chapter 2 of Part 4 of the Finance Act 2004 (c. 12), and

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(b) in the case of a personal pension scheme, there are, in relation to the worker concerned, direct payment arrangements (within the meaning of section 107A of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (in this Act referred to as "the Pension Schemes Act")) between the worker and the employer.

Commencement Information

I8 S. 9 partly in force; s. 9 in force for certain purposes at Royal Assent see s. 118(2)

Supplementary provision about the duties

Information to be given to workers

10.—(1) The Department must make provision by regulations—

(a) for all jobholders to be given information about the effect of sections 2 to 8 in relation to them;

(b) for all workers to whom section 9 applies to be given information about the effect of that section in relation to them;

(c) for a prescribed person to be required to provide the information.

(2) Regulations under this section must state—

(a) what information must be given;

(b) in what circumstances it must be given;

(c) how and when it must be given.

Commencement Information

I9 S. 10 partly in force; s. 10 in force for certain purposes at Royal Assent see s. 118(2)

Information to be given to the Pensions Regulator

11.—(1) The Department may make regulations requiring employers to provide the Pensions Regulator ("the Regulator") with information about action they have taken or intend to take for the purposes of any provision of, or of regulations under, sections 2 to 10.

(2) The regulations may in particular—

(a) require an employer to provide information about pension schemes to which any action relates;

(b) require an employer to identify which of any prescribed descriptions a scheme falls within;

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(c) require an employer to provide information that appears to the Department to be required for the performance by the Regulator of its functions under Chapter 2;

(d) make provision about how and in what form any information is to be provided.

Commencement Information

I10 S. 11 partly in force; s. 11 in force for certain purposes at Royal Assent see s. 118(2)

Introduction of employers' duties

12 The Department may by regulations provide that sections 2 to 9 do not apply in the case of an employer of any description until such date after the coming into operation of those sections as is prescribed in relation to employers of that description.

Commencement Information

I11 S. 12 partly in force; s. 12 in force for certain purposes at Royal Assent see s. 118(2)

Qualifying earnings

Qualifying earnings

13.—(1) A person's qualifying earnings in a pay reference period of 12 months are the part (if any) of the gross earnings payable to that person in that period that is—

(a) more than £5,035, and

(b) not more than £33,540.

(2) In the case of a pay reference period of less or more than 12 months, subsection (1) applies as if the amounts in paragraphs (a) and (b) were proportionately less or more.

(3) In this section, “earnings”, in relation to a person, means sums of any of the following descriptions that are payable to the person in connection with the person's employment—

(a) salary, wages, commission, bonuses and overtime;

(b) statutory sick pay under Part 11 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (in this Act referred to as “the Contributions and Benefits Act”);

(c) statutory maternity pay under Part 12 of that Act;

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(d) ordinary statutory paternity pay or additional statutory paternity pay under Part 12ZA of that Act;

(e) statutory adoption pay under Part 12ZB of that Act;

(f) sums prescribed for the purposes of this section.

Commencement Information

I12 S. 13 partly in force; s. 13 in force for certain purposes at Royal Assent see s. 118(2)

Review of qualifying earnings band

14 Whenever the Secretary of State makes an order under section 14 of the Pensions Act 2008 (c. 30) (review of qualifying earnings band), the Department may make a corresponding order for Northern Ireland.

Commencement Information

I13 S. 14 partly in force; s. 14 in force for certain purposes at Royal Assent see s. 118(2)

Pay reference period

15.—(1) In relation to any person a pay reference period is the period prescribed.

(2) The Department may by regulations—

(a) make provision for determining a person's earnings in any pay reference period;

(b) make provision for determining the first date of each pay reference period in relation to a person.

(3) A reference in any provision to the relevant pay reference period is a reference to the period determined in accordance with regulations under this section, as they apply for the purposes of that provision in the case concerned.

Commencement Information

I14 S. 15 partly in force; s. 15 in force for certain purposes at Royal Assent see s. 118(2)

Qualifying schemes and automatic enrolment schemes

Qualifying schemes

16.—(1) A pension scheme is a qualifying scheme in relation to a jobholder (J) if—

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(a) it is an occupational pension scheme or a personal pension scheme,

(b) it is registered under Chapter 2 of Part 4 of the Finance Act 2004 (c. 12), and

(c) while J is an active member, the scheme satisfies the quality requirement in relation to J.

(2) The Department may by regulations provide that subsection (1)(b) does not apply in relation to a scheme to which section 25 or 27 applies, if prescribed requirements are satisfied.

(3) The Department may by regulations provide that a scheme is not a qualifying scheme in relation to J if—

(a) while J is an active member, the payments that must be made to the scheme by, or on behalf or in respect of, J for purposes other than the provision of benefits exceed a prescribed amount,

(b) while J is an active member, the contributions that must be paid to the scheme by, or on behalf or in respect of, J exceed a prescribed amount, or

(c) the scheme provides for average salary benefits to be provided to or in respect of J and contains prescribed features.

Commencement Information

I15 S. 16 partly in force; s. 16 in force for certain purposes at Royal Assent see s. 118(2)

Automatic enrolment schemes

17.—(1) A pension scheme is an automatic enrolment scheme in relation to a jobholder (J) if—

(a) it is a qualifying scheme in relation to J,

(b) it satisfies the conditions in subsection (2), and

(c) it satisfies any further conditions prescribed.

(2) The conditions mentioned in subsection (1)(b) are that—

(a) no provision of the scheme prevents the employer from making arrangements prescribed under section 3(2), 5(2) or 7(4) for J to become an active member of the scheme;

(b) no provision of the scheme requires J to express a choice in relation to any matter, or to provide any information, in order to remain an active member.

Commencement Information

I16 S. 17 partly in force; s. 17 in force for certain purposes at Royal Assent see s. 118(2)

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Occupational pension schemes

18 For the purposes of this Part, each of these is an occupational pension scheme—

(a) an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act that has its main administration in the United Kingdom;

(b) an institution for occupational retirement provision within the meaning of Article 6(a) of the IORP Directive that has its main administration in an EEA state other than the United Kingdom;

(c) a pension scheme that is prescribed or is of a prescribed description and that has its main administration elsewhere than in an EEA state.

Commencement Information

I17 S. 18 partly in force; s. 18 in force for certain purposes at Royal Assent see s. 118(2)

VALID FROM 30/06/2012

Personal pension schemes

19 For the purposes of this Part, a personal pension scheme is a pension scheme that is not an occupational pension scheme.

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

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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.

Modifications etc. (not altering text)

C1 S. 20(1) modified (1.10.2012) by Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 (S.R. 2010/122), **reg. 45(2)**

Commencement Information

I18 S. 20 partly in force; s. 20 in force for certain purposes at Royal Assent see s. 118(2)

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.

Modifications etc. (not altering text)

C2 S. 21 modified (1.10.2012) by Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 (S.R. 2010/122), **reg. 45(4)**

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Commencement Information

I19 S. 21 partly in force; s. 21 in force for certain purposes at Royal Assent see s. 118(2)

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.

Commencement Information

I20 S. 22 partly in force; s. 22 in force for certain purposes at Royal Assent see s. 118(2)

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.

Status: *Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

(4) The annual rate of the pension at that 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 this section as if the reference to a pay reference period were a reference to a tax year.

Modifications etc. (not altering text)

C3 S. 23 modified (1.10.2012) by Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 (S.R. 2010/122), **regs. 41(2)**, **42(2)**

Commencement Information

I21 S. 23 partly in force; s. 23 in force for certain purposes at Royal Assent see s. 118(2)

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.

Modifications etc. (not altering text)

C4 S. 24 applied (with modifications) (1.10.2012) by Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 (S.R. 2010/122), **reg. 45(5)(6)**

Commencement Information

I22 S. 24 partly in force; s. 24 in force for certain purposes at Royal Assent see s. 118(2)

Status: *Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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).

Commencement Information

I23 S. 25 partly in force; s. 25 in force for certain purposes at Royal Assent see s. 118(2)

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.

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Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

Commencement Information

I24 S. 26 partly in force; s. 26 in force for certain purposes at Royal Assent see s. 118(2)

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.

Commencement Information

I25 S. 27 partly in force; s. 27 in force for certain purposes at Royal Assent see s. 118(2)

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;

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Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(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.

Commencement Information

I26 S. 28 partly in force; s. 28 in force for certain purposes at Royal Assent see s. 118(2)

Transitional

Transitional periods for money purchase and personal pension schemes

29.—(1) During the first transitional period for money purchase and personal pension schemes—

(a) sections 20(1)(b) and 26(4)(b) have effect as if for "3%" there were substituted " 1% ";

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(b) sections 20(1)(c) and 26(5)(b) have effect as if for "8%" there were substituted " 2% ".

(2) The first transitional period is a prescribed period of at least one year, beginning with the coming into operation of section 20.

(3) During the second transitional period for money purchase and personal pension schemes—

(a) sections 20(1)(b) and 26(4)(b) have effect as if for "3%" there were substituted " 2% ";

(b) sections 20(1)(c) and 26(5)(b) have effect as if for "8%" there were substituted " 5% ".

(4) The second transitional period is a prescribed period of at least one year, beginning with the end of the first transitional period.

Commencement Information

I27 S. 29 partly in force; s. 29 in force for certain purposes at Royal Assent see s. 118(2)

Transitional period for defined benefits and hybrid schemes

30.—(1) Subsection (3) applies if, in relation to a person who on the employer's first enrolment date is a jobholder to whom section 3 applies, the conditions in subsection (2) are satisfied, and continue to be satisfied during the transitional period for defined benefits and hybrid schemes.

(2) The conditions are that—

(a) the jobholder has been employed by the employer for a continuous period beginning before the employer's first enrolment date,

(b) at a time in that period before the employer's first enrolment date, the jobholder became entitled to become an active member of a defined benefits scheme or a hybrid scheme,

(c) the jobholder is, and has always since that time been, entitled to become an active member of a defined benefits scheme or a hybrid scheme, and

(d) the scheme to which that entitlement relates is a qualifying scheme, and any scheme to which it has related on or after the employer's first enrolment date has been a qualifying scheme.

(3) Where this subsection applies, section 3 has effect in relation to the jobholder with the substitution for subsection (2) of the following subsection—

"(2) The employer must make prescribed arrangements by which the jobholder becomes an active member, with effect from the end of the transitional period for defined benefits and hybrid schemes, of an automatic enrolment scheme which is a defined benefits scheme or a hybrid scheme.".

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Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) If at any time in the transitional period for defined benefits and hybrid schemes the condition in subsection (2)(c) or (d) ceases to be satisfied, subsection (5) applies instead of subsection (3) (and the day after the last day on which that condition is satisfied is referred to as "the closure date").

(5) Where this subsection applies, section 3 has effect in relation to the jobholder with the substitution for subsection (2) of the following subsection—

"(2) The employer must make prescribed arrangements by which the jobholder either—

(a) becomes an active member, with effect from the closure date, of an automatic enrolment scheme which is a defined benefits scheme or a hybrid scheme, or

(b) becomes an active member, with effect from the automatic enrolment date, of an automatic enrolment scheme which is a money purchase scheme.".

(6) If the jobholder becomes a member of a scheme under arrangements made under subsection (2)(b) of that section (as substituted by subsection (5))—

(a) the employer's contributions are payable with effect from the automatic enrolment date;

(b) any requirement of the scheme (in accordance with section 20(1)) for contributions to be payable by the jobholder does not apply in respect of the period of the jobholder's membership before the closure date;

(c) regulations made for the purposes of section 3(2)(b) must secure that the jobholder may pay, within a period prescribed by the regulations, any contributions which would have been payable by the jobholder but for paragraph (b) of this subsection.

(7) Where subsection (3) or (5) applies, section 3(3) and (4) applies as if references to the automatic enrolment date were references to the day on which arrangements would by virtue of this section fall to be made in respect of the jobholder.

(8) The transitional period for defined benefits and hybrid schemes is a prescribed period beginning with the day on which section 3 comes into operation.

(9) In this section, the "employer's first enrolment date" means the first day on which section 3 applies in the case of the employer (where that day falls within the transitional period for defined benefits and hybrid schemes).

Commencement Information

I28 S. 30 partly in force; s. 30 in force for certain purposes at Royal Assent see s. 118(2)

Status: *Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Miscellaneous

VALID FROM 30/06/2012

Effect of freezing order or assessment period

31.—(1) Where a jobholder is an active member of a qualifying scheme and a freezing event occurs in relation to the scheme, the jobholder does not, for the purposes of this Chapter, cease to be an active member of the scheme, and the scheme does not, for those purposes, cease to be a qualifying scheme, by virtue of any relevant provision.

(2) Where a worker is an active member of a scheme that satisfies the requirements of section 9 and a freezing event occurs in relation to the scheme, the worker does not, for the purposes of section 9(1)(c), cease to be an active member of the scheme by virtue of any relevant provision.

(3) In this section—

"freezing event" in relation to a scheme means—

(a) the making of a freezing order under Article 19 of the Pensions (Northern Ireland) Order 2005 (NI 1) (in this Act referred to as "the 2005 Order") in relation to the scheme, or

(b) the beginning of an assessment period within the meaning of Article 116 of that Order in relation to the scheme;

"relevant provision" means—

(a) in relation to a freezing order, provision contained in the order, or the provision made with respect to the order by Article 19 of the 2005 Order;

(b) in relation to an assessment period, the provision made with respect to the period by Article 117 of that Order.

Power of trustees to modify by resolution

32.—(1) The trustees of an occupational pension scheme may by resolution modify the scheme—

(a) with a view to enabling the scheme to comply with the conditions in section 17(2), or

(b) by increasing the amount required to be paid in contributions in order for the scheme to satisfy the requirements contained in section 20(1) or those requirements as modified under section 24(1)(a).

(2) An increase under subsection (1)(b) may be made only—

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(a) by increasing the amount of any contribution, directly or by modifying the basis on which it is calculated, or

(b) by increasing the frequency of any contributions.

(3) No modification may be made by virtue of subsection (1) without the consent of the employer in relation to the scheme.

(4) In the application of subsection (3) to a scheme in relation to which there is more than one employer, references to the employer have effect as if they were references to a person nominated by the employers, or by the scheme, to act as the employers' representative for the purposes of this section or, if no such nomination is made, to all of the employers.

(5) Regulations may provide that this section does not apply to occupational pension schemes within a prescribed class or description.

Commencement Information

I29 S. 32 partly in force; s. 32 in force for certain purposes at Royal Assent see s. 118(2)

Deduction of contributions

33.—(1) An employer who arranges for a person to become a member of a scheme in accordance with section 3(2), 5(2) or 7(3), or of an occupational pension scheme in accordance with section 9(2), may deduct the person's contributions to the scheme from the person's remuneration and pay them to the trustees or managers of the scheme (in the case of an occupational pension scheme) or the provider of the scheme (in the case of a personal pension scheme).

(2) Regulations prescribing arrangements for the purposes of section 3(2), 5(2), 7(3) or 9(2), may require the employer to make such a deduction or payment at any time on or after the date with effect from which the jobholder is to become an active member of a scheme under the arrangements.

Commencement Information

I30 S. 33 partly in force; s. 33 in force for certain purposes at Royal Assent see s. 118(2)

Status: *Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.*
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CHAPTER 2

COMPLIANCE

VALID FROM 30/06/2012

Effect of failure to comply

Effect of failure to comply

34.—(1) Contravention of any of the employer duty provisions does not give rise to a right of action for breach of statutory duty.

(2) But nothing in the employer duty provisions or this Chapter affects any right of action arising apart from those provisions.

(3) In this Chapter, references to the employer duty provisions are references to any provision of sections 2 to 11 or of regulations under those sections.

Compliance notices and unpaid contributions notices

VALID FROM 30/06/2012

Compliance notices

35.—(1) The Regulator may issue a compliance notice to a person if it is of the opinion that the person has contravened one or more of the employer duty provisions.

(2) A compliance notice is a notice directing the person to whom it is issued to take, or refrain from taking, the steps specified in the notice in order to remedy the contravention.

(3) A compliance notice may, in particular—

(a) state the period within which any step must be taken or must cease to be taken;

(b) require the person to whom it is issued to provide within a specified period specified information relating to the contravention;

(c) require the person to inform the Regulator, within a specified period, how the person has complied or is complying with the notice;

(d) state that, if the person fails to comply with the requirements of the notice, the Regulator may issue a fixed penalty notice under section 40.

Status: *Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.*
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(4) The steps specified in the notice may, in particular, include such steps as the Regulator thinks appropriate for placing the worker in the same position (as nearly as possible) as if the contravention had not occurred.

(5) If the compliance notice is issued in respect of a failure to comply with an enrolment duty and the specified steps relate to membership of a defined benefits scheme or a hybrid scheme, the notice may, in particular, require the employer to ensure that the worker is entitled to the same benefits under the scheme as if the employer had complied with that duty.

VALID FROM 30/06/2012

Third party compliance notices

36.—(1) The Regulator may issue a third party compliance notice if it is of the opinion that—

(a) a person has contravened one or more of the employer duty provisions,

(b) the contravention is or was, wholly or partly, a result of a failure of another person (the "third party") to do any thing, and

(c) that failure is not itself a contravention of any of the employer duty provisions.

(2) A third party compliance notice is a notice directing the third party to take, or refrain from taking, the steps specified in the notice in order to remedy or prevent a recurrence of the failure.

(3) A third party notice may, in particular—

(a) state the period within which any step must be taken or must cease to be taken;

(b) require the third party to inform the Regulator, within a specified period, how the third party has complied or is complying with the notice;

(c) state that, if the third party fails to comply with the requirements of the notice, the Regulator may issue a fixed penalty notice under section 40.

(4) A third party notice may give the third party a choice between different ways of remedying or preventing the recurrence of the third party's failure.

Unpaid contributions notices

37.—(1) The Regulator may issue an unpaid contributions notice to an employer if it is of the opinion that relevant contributions have not been paid on or before the due date.

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(2) An unpaid contributions notice is a notice requiring an employer to pay into a pension scheme by a specified date an amount in respect of relevant contributions that have not been paid.

(3) "Due date" has the meaning prescribed.

(4) An unpaid contributions notice may, in particular—

(a) specify the scheme to which the contributions are due;

(b) specify the workers, or category of workers, in respect of whom the contributions are due;

(c) state the period in respect of which the contributions are due;

(d) state the due date in respect of the contributions;

(e) require the employer to take such other steps in relation to remedying the failure to pay the contributions as the Regulator considers appropriate;

(f) state that if the employer fails to comply with the notice, the Regulator may issue a fixed penalty notice under section 40.

(5) In this section, "employer" in relation to a worker means the person by whom the worker is or, if the employment has ceased, was employed.

Commencement Information

I31 S. 37 partly in force; s. 37 in force for certain purposes at Royal Assent see s. 118(2)

Calculation and payment of contributions

38.—(1) This section applies to—

(a) a compliance notice issued to an employer in respect of a contravention of section 2(1) or a failure to comply with an enrolment duty;

(b) an unpaid contributions notice.

(2) The notice may, in particular, include—

(a) a requirement to calculate the amount of relevant contributions that are of a description specified in the notice ("unpaid relevant contributions");

(b) if the contributions are being paid within the prescribed period after the appropriate date, a requirement to pay an amount equal to the amount of unpaid relevant contributions within section 39(2)(a);

(c) if the contributions are not being paid within the prescribed period after the appropriate date, a requirement to pay (on the employer's own account) an amount equal to the amount of unpaid relevant contributions;

(d) if paragraph (b) applies, a requirement to ensure—

(i) that the worker is not required to pay an amount equal to the balance of the unpaid relevant contributions during the prescribed period, and

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(ii) that, if the worker chooses to pay that amount, it may be paid in instalments;

(e) if the contributions are payable to a money purchase scheme, a hybrid scheme or a personal pension scheme, a requirement to pay interest on the amount required by the notice to be paid in respect of unpaid relevant contributions, at a rate and in respect of a period determined in accordance with regulations.

(3) The Department may by regulations make provision about the way in which the Regulator may (without prejudice to subsection (2)(a)) estimate the amount of contributions that an employer has failed to pay on behalf or in respect of a worker.

(4) Regulations under subsection (3) may include, in particular, provision about the sources of information that the Regulator may use in estimating that amount, other than information provided by the employer.

(5) In this section, "appropriate date" means—

(a) in the case of a compliance notice, such date as may be specified in the notice;

(b) in the case of an unpaid contributions notice, the due date within the meaning of section 37(3).

(6) In this section, "employer" in relation to a worker means the person by whom the worker is or, if the employment has ceased, was employed.

Commencement Information

I32 S. 38 partly in force; s. 38 in force for certain purposes at Royal Assent see s. 118(2)

VALID FROM 30/06/2012

Meaning of "relevant contributions"

39.—(1) In sections 37 and 38 "relevant contributions" are—

(a) in relation to a jobholder, employer contributions payable to a qualifying scheme in relation to the jobholder;

(b) in relation to a worker to whom section 9 applies, employer contributions payable to a pension scheme which satisfies the requirements of that section.

(2) In subsection (1), "employer contributions" means contributions payable by the employer—

(a) on the employer's own account (but in respect of the worker), or

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(b) on behalf of the worker out of deductions from the worker's earnings.

Penalty notices

Fixed penalty notices

40.—(1) The Regulator may issue a fixed penalty notice to a person if it is of the opinion that the person has failed to comply with—

(a) a compliance notice under section 35,

(b) a third party compliance notice under section 36,

(c) an unpaid contributions notice under section 37, or

(d) a notice issued under Article 67 of the 2005 Order (provision of information).

(2) The Regulator may issue a fixed penalty notice to a person if it is of the opinion that the person has contravened—

(a) any provision of regulations under section 3(2) or 5(2) (prescribed arrangements for automatic enrolment or re-enrolment),

(b) any provision of regulations under section 7(4) (prescribed arrangements: jobholder's right to opt in),

(c) section 8(2)(b) (refund of contributions if jobholder opts out of scheme membership), and any provision of regulations under that provision,

(d) section 10 (requirement to give information to workers) and any provision of regulations under that section, or

(e) any provision of regulations under section 59 (requirement to keep records).

(3) A fixed penalty notice is a notice requiring the person to whom it is issued to pay a penalty within the period specified in the notice.

(4) The penalty—

(a) is to be determined in accordance with regulations, and

(b) must not exceed £50,000.

(5) A fixed penalty notice must—

(a) state the amount of the penalty;

(b) state the date, which must be at least four weeks after the date on which the notice is issued, by which the penalty must be paid;

(c) state the period to which the penalty relates;

(d) if the notice is issued under subsection (1), specify the failure to which the notice relates;

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Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(e) if the notice is issued under subsection (2), specify the provision or provisions that have been contravened;

(f) if the notice is issued under subsection (1), state that, if the failure to comply continues, the Regulator may issue an escalating penalty notice under section 41;

(g) notify the person to whom the notice is issued of the review process under section 43 and the right of referral to **[**[F1]a tribunal**]** under section 44.

Textual Amendments

F1 Words in s. 40(5)(g) substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 29** (with Sch. 2); S.R. 2010/101, **art. 2**

Commencement Information

I33 S. 40 partly in force; s. 40 in force for certain purposes at Royal Assent see s. 118(2)

Escalating penalty notices

41.—(1) The Regulator may issue an escalating penalty notice to a person if it is of the opinion that the person has failed to comply with—

(a) a compliance notice under section 35,

(b) a third party compliance notice under section 36,

(c) an unpaid contributions notice under section 37, or

(d) a notice under Article 67 of the 2005 Order (provision of information).

(2) But the Regulator may not issue an escalating penalty notice if—

(a) it relates to failure to comply with a notice within subsection (1)(a), (b) or (c), the person to whom that notice was issued has applied for a review of it under section 43, and any review has not been completed;

(b) it relates to failure to comply with any notice within subsection (1), the person has exercised the right of referral to **[**[F2]a tribunal**]** under section 44 in respect of a fixed penalty notice issued in relation to that notice, and the reference has not been determined.

(3) An escalating penalty notice is a notice requiring a person to pay an escalating penalty if the person fails to comply with a notice referred to in subsection (1) before a specified date.

(4) An escalating penalty is a penalty which is calculated by reference to a prescribed daily rate.

(5) The prescribed daily rate—

(a) is to be determined in accordance with regulations, and

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Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) must not exceed £10,000.

(6) An escalating penalty notice must—

(a) specify the failure to which the notice relates;

(b) state that, if the person fails to comply with the notice referred to in subsection (1) before a specified date, the person will be liable to pay an escalating penalty;

(c) state the daily rate of the escalating penalty and the way in which the penalty is calculated;

(d) state the date from which the escalating penalty will be payable, which must not be earlier than the date specified in the fixed penalty notice under section 40(5)(b);

(e) state that the escalating penalty will continue to be payable at the daily rate until the date on which the person complies with the notice referred to in subsection (1) or such earlier date as the Regulator may determine;

(f) notify the person of the review process under section 43 and the right of referral to **[**[F3]a tribunal**]** under section 44.

Textual Amendments

F2 Words in s. 41(2)(b) substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 30** (with Sch. 2); S.R. 2010/101, **art. 2**

F3 Words in s. 41(6)(f) substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 30** (with Sch. 2); S.R. 2010/101, **art. 2**

Commencement Information

I34 S. 41 partly in force; s. 41 in force for certain purposes at Royal Assent see s. 118(2)

VALID FROM 30/06/2012

Penalty notices: recovery

42.—(1) Any penalty payable under section 40 or section 41 is recoverable by the Regulator.

(2) The Regulator must pay into the Consolidated Fund any penalty recovered under this section.

Status: *Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Reviews and references

Review of notices

43.—(1) The Regulator may review a notice to which this section applies—

(a) on the written application of the person to whom the notice was issued, or

(b) if the Regulator otherwise considers it appropriate.

(2) This section applies to—

(a) a compliance notice issued under section 35;

(b) a third party compliance notice issued under section 36;

(c) an unpaid contributions notice issued under section 37;

(d) a fixed penalty notice issued under section 40;

(e) an escalating penalty notice issued under section 41.

(3) Regulations may prescribe the period within which—

(a) an application to review a notice may be made under subsection (1)(a);

(b) a notice may be reviewed under subsection (1)(b).

(4) On a review of a notice, the effect of the notice is suspended for the period beginning when the Regulator determines to carry out the review and ending when the review is completed.

(5) In carrying out a review, the Regulator must consider any representations made by the person to whom the notice was issued.

(6) The Regulator's powers on a review include power to—

(a) confirm, vary or revoke the notice;

(b) substitute a different notice.

Commencement Information

I35 S. 43 partly in force; s. 43 in force for certain purposes at Royal Assent see s. 118(2)

VALID FROM 30/06/2012

References to [[F4]First-tier Tribunal or Upper Tribunal]

44.—(1) A person to whom a notice is issued under section 40 or section 41 may, if one of the conditions in subsection (2) is satisfied, make a reference to **[**[F5]the Tribunal**]** in respect of—

(a) the issue of the notice;

(b) the amount of the penalty payable under the notice.

Status: *Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) The conditions are—

(a) that the Regulator has completed a review of the notice under section 43;

(b) that the person to whom the notice was issued has made an application for the review of the notice under section 43(1)(a) and the Regulator has determined not to carry out such a review.

(3) On a reference to **[**[F6]the Tribunal**]** in respect of a notice, the effect of the notice is suspended for the period beginning when the Tribunal receives notice of the reference and ending—

(a) when the reference is withdrawn or completed, or

(b) if the reference is made out of time, on the Tribunal determining not to allow the reference to proceed.

(4) For the purposes of subsection (3), a reference is completed when—

(a) the reference has been determined,

(b) the Tribunal has remitted the matter to the Regulator, and

(c) any directions of the Tribunal for giving effect to its determination have been complied with.

[[F7](4A) In this section "the Tribunal", in relation to a reference under this section, means—

(a) the Upper Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the Upper Tribunal is to hear the reference;

(b) the First-tier Tribunal, in any other case.**]**

[F8](5) . . . . . .

[F9](6) . . . . . .

Textual Amendments

F4 S. 44: words in heading substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 31(a)** (with Sch. 2); S.R. 2010/101, **art. 2**

F5 Words in s. 44(1) substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 31(b)** (with Sch. 2); S.R. 2010/101, **art. 2**

F6 Words in s. 44(3) substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 31(b)** (with Sch. 2); S.R. 2010/101, **art. 2**

F7 S. 44(4A) inserted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 31(c)** (with Sch. 2); S.R. 2010/101, **art. 2**

Status: *Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.*
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F8 S. 44(5) repealed (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(3), 5(2), **Sch. 3** (with Sch. 2); S.R. 2010/101, **art. 2**

F9 S. 44(6) repealed (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(3), 5(2), **Sch. 3** (with Sch. 2); S.R. 2010/101, **art. 2**

VALID FROM 03/01/2012

Offences and monitoring

VALID FROM 30/06/2012

Offences of failing to comply

45.—(1) An offence is committed by an employer who wilfully fails to comply with—

(a) the duty under section 3(2) (automatic enrolment),

(b) the duty under section 5(2) (automatic re-enrolment), or

(c) the duty under section 7(3) (jobholder's right to opt in).

(2) A person guilty of an offence under this section is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or both;

(b) on summary conviction to a fine not exceeding the statutory maximum.

VALID FROM 30/06/2012

Offences by bodies corporate

46 For the purposes of an offence under section 45, section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

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Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 30/06/2012

Offences by partnerships and unincorporated associations

47.—(1) Proceedings for an offence under section 45 alleged to have been committed by a partnership or an unincorporated association may be brought in the name of the partnership or association.

(2) For the purposes of such proceedings—

(a) rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate;

(b) Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26) applies in relation to the partnership or association as it applies in relation to a body corporate.

(3) A fine imposed on a partnership or association on its conviction of an offence under section 45 is to be paid out of the funds of the partnership or association.

(4) Subsection (5) applies where an offence under section 45 committed by a partnership is proved—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on the part of a partner.

(5) The partner, as well as the partnership, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(6) Subsection (7) applies where an offence under section 45 committed by an unincorporated association is proved—

(a) to have been committed with the consent or connivance of an officer of the association, or

(b) to be attributable to any neglect on the part of an officer of the association.

(7) The officer, as well as the association, is guilty of the offence and is liable to be proceeded against and punished accordingly.

(8) "Officer" in this section means—

(a) an officer of the association or a member of its governing body, or

(b) a person purporting to act in such capacity.

(9) "Partner" in this section includes a person purporting to act as a partner.

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VALID FROM 30/06/2012

Offences of providing false or misleading information

48 In Article 75(1)(a) of the 2005 Order (offences of providing false or misleading information)—

(a) at the end of head (iv) add "or

(v) regulations under section 11 of the Pensions (No. 2) Act (Northern Ireland) 2008 (information to be given to the Pensions Regulator);";

(b) omit "or" at the end of head (iii).

Monitoring of employers' payments to personal pension schemes

49 In section 107A of the Pension Schemes Act, at the end add—

"(18) In this section, "employee" includes a jobholder within the meaning of section 1 of the Pensions (No. 2) Act (Northern Ireland) 2008 and "employer" is to be read accordingly.".

Commencement Information

I36 S. 49 partly in operation; s. 49 not in operation at Royal Assent see s. 118(1); s. 49 in operation for certain purposes at 3.1.2012 by S.R. 2011/441, **art. 2(a)**

CHAPTER 3

SAFEGUARDS: EMPLOYMENT AND PRE-EMPLOYMENT

Prohibited recruitment conduct

VALID FROM 30/06/2012

Prohibited recruitment conduct

50.—(1) An employer contravenes this section if any statement made or question asked by or on behalf of the employer for the purposes of recruitment indicates (expressly or impliedly) that an application for employment with the employer may be determined by reference to whether or not an applicant might opt out of automatic enrolment.

(2) The reference in subsection (1) to a statement made or a question asked for the purposes of recruitment is a reference to one made or asked in the course of any of the following—

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(a) inviting applications for employment;

(b) requesting information from an applicant, referee or other person in connection with an application for employment;

(c) providing information about employment;

(d) proposing terms or conditions of employment.

(3) The reference in subsection (1) to an applicant opting out of automatic enrolment is a reference to the applicant, if becoming at any time in the course of the employment a jobholder to whom section 3 or 5 applies, giving notice in accordance with section 8 in relation to arrangements made by the employer under the relevant section.

(4) In this section and sections 51 and 52, "employer" means the prospective employer in relation to any employment.

VALID FROM 30/06/2012

Compliance notices

51.—(1) The Regulator may issue a compliance notice to an employer if it is of the opinion that the employer has contravened section 50.

(2) A compliance notice is a notice directing the employer to take, or refrain from taking, the steps specified in the notice in order to—

(a) remedy the contravention, or

(b) prevent the contravention being repeated.

(3) A compliance notice may, in particular—

(a) state the period within which any step must be taken or must cease to be taken;

(b) require the employer to provide within a specified period specified information relating to the contravention;

(c) require the employer to inform the Regulator, within a specified period, how the employer has complied or is complying with the notice;

(d) state that, if the employer fails to comply with the requirements of the notice, the Regulator may issue a penalty notice under section 52.

(4) A compliance notice must specify the contravention to which the notice relates.

Penalty notices

52.—(1) The Regulator may issue a penalty notice to an employer if it is of the opinion that the employer—

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(a) has contravened section 50, or

(b) has failed to comply with a compliance notice under section 51.

(2) A penalty notice is a notice requiring the person to whom it is issued to pay a penalty within the period specified in the notice.

(3) The penalty—

(a) is to be determined in accordance with regulations, and

(b) must not exceed £50,000.

(4) A penalty notice must—

(a) state the amount of the penalty;

(b) state the date, which must be at least four weeks after the date on which the notice is issued, by which the penalty must be paid;

(c) specify the contravention or failure to which the notice relates;

(d) notify the employer of the review process under section 43 and the right to make a reference under section 44 (as applied by section 53).

(5) Section 42 (penalty notices: recovery) applies to a penalty payable under this section, and to a notice under this section, as it applies to a penalty payable under section 40, and to a notice under that section.

Commencement Information

I37 S. 52 partly in force; s. 52 in force for certain purposes at Royal Assent see s. 118(2)

VALID FROM 30/06/2012

Review of notices and references to the [[F10]First-tier Tribunal or Upper Tribunal]

53.—(1) Section 43 (review of notices) also applies to a compliance notice issued under section 51 and to a penalty notice issued under section 52.

(2) Section 44 (references to the **[**[F11]First-tier Tribunal or Upper Tribunal**]**) applies in relation to a penalty notice issued under section 52 as it applies in relation to a notice issued under section 40 or 41.

Textual Amendments

F10 S. 53: words in heading substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 32** (with Sch. 2); S.R. 2010/101, **art. 2**

Status: *Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

F11 Words in s. 53(2) substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 32** (with Sch. 2); S.R. 2010/101, **art. 2**

Inducements

Inducements

54.—(1) An employer contravenes this section if the employer takes any action for the sole or main purpose of—

(a) inducing a worker to give up membership of a relevant scheme without becoming an active member of another relevant scheme within the period prescribed under section 2(3), or

(b) inducing a jobholder to give a notice under section 8 without becoming an active member of a qualifying scheme within the period prescribed under section 2(3).

(2) Section 35 applies in relation to a contravention of this section as it applies in relation to a contravention of section 2(1), and sections 38 to 44 apply accordingly.

(3) But the Regulator may not issue a compliance notice in respect of a contravention of this section unless the contravention occurred within the prescribed period before—

(a) the time when a complaint was made to the Regulator about the contravention, or

(b) the time when the Regulator informed the employer of an investigation of the contravention, if no complaint was made before that time.

(4) A compliance notice in respect of a contravention of this section may direct the employer to take or refrain from taking specified steps in order to prevent the contravention being repeated.

(5) For the purposes of this section a worker gives up membership of a relevant scheme if the worker—

(a) takes action or makes an omission by which the worker, without ceasing to be employed by the employer, ceases to be an active member of the scheme, or

(b) requests or authorises the employer to take such action or to make such an omission.

(6) In this section, "relevant scheme" means—

(a) in relation to a jobholder, a qualifying scheme;

(b) in relation to a worker to whom section 9 applies, a scheme which satisfies the requirements of that section.

Status: *Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Commencement Information

I38 S. 54 partly in force; s. 54 in force for certain purposes at Royal Assent see s. 118(2)

Protection of employment rights

VALID FROM 30/06/2012

The right not to suffer detriment

55.—(1) A worker has the right not to be subjected to any detriment by an act, or a deliberate failure to act, by the worker's employer, done on the ground that—

(a) any action was taken, or was proposed to be taken, with a view to enforcing in favour of the worker a requirement to which this section applies,

(b) the employer was prosecuted for an offence under section 45 as a result of action taken for the purpose of enforcing in favour of the worker a requirement to which this section applies, or

(c) any provision of Chapter 1 applies to the worker, or will or might apply.

(2) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1)—

(a) whether or not the requirement applies in favour of the worker, or

(b) whether or not the requirement has been contravened,

but, for that subsection to apply, the claim that the requirement applies and, if applicable, the claim that it has been contravened must be made in good faith.

(3) This section applies to any requirement imposed on the employer by or under any provision of Chapter 1.

(4) This section does not apply where the detriment in question amounts to dismissal within the meaning of Part 11 of the Employment Rights (Northern Ireland) Order 1996 (NI 16) (in this Act referred to as “the Employment Rights Order”) (unfair dismissal).

(5) In this section references to enforcing a requirement include references to securing its benefit in any way.

Status: *Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 30/06/2012

Enforcement of the right

56.—(1) A worker may present a complaint to an industrial tribunal that the worker has been subjected to a detriment in contravention of section 55.

(2) Subject to the following provisions of this section, the provisions of Articles 71(2) to (4) and 72 of the Employment Rights Order (complaints to industrial tribunals and remedies), apply in relation to a complaint under this section as they apply in relation to a complaint under Article 71 of that Order, but taking references in those provisions to the employer as references to the employer within the meaning of section 55(1).

(3) Where—

(a) the detriment to which the worker is subjected is the termination of the worker's contract, but

(b) that contract is not a contract of employment,

any compensation awarded under Article 72 of the Employment Rights Order by virtue of subsection (2) must not exceed the limit specified in subsection (4).

(4) The limit is the total of—

(a) the sum which would be the basic award for unfair dismissal, calculated in accordance with Article 153 of the Employment Rights Order, if the worker had been an employee within the meaning of that Order and the contract terminated had been a contract of employment, and

(b) the sum for the time being specified in Article 158(1) of that Order which is the limit for a compensatory award to a person calculated in accordance with Article 157 of that Order.

(5) Where the worker has been working under arrangements which do not fall to be regarded as a worker's contract for the purposes of the Employment Rights Order, the worker is to be treated for the purposes of subsections (3) and (4) as if any arrangements under which the worker has been working constituted a worker's contract falling within Article 3(3)(b) of that Order.

(6) In Article 20(1) of the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) (proceedings where conciliation is available), after sub-paragraph (q) add “, or

(r) under section 56 of the Pensions (No. 2) Act (Northern Ireland) 2008.”.

Status: *Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

VALID FROM 30/06/2012

Right of employee not to be unfairly dismissed

57.—(1) The Employment Rights Order is amended as follows.

(2) After Article 135C (flexible working) insert—

"**Pension enrolment**

135D.—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

(a) any action was taken, or was proposed to be taken, with a view to enforcing in favour of the employee a requirement to which this Article applies;

(b) the employer was prosecuted for an offence under section 45 of the Pensions (No. 2) Act (Northern Ireland) 2008 as a result of action taken for the purposes of enforcing in favour of the employee a requirement to which this Article applies; or

(c) any provision of Chapter 1 of that Part of that Act applies to the employee, or will or might apply.

(2) It is immaterial for the purposes of sub-paragraph (a) or (b) of paragraph (1)—

(a) whether or not the requirement applies in favour of the employee, or

(b) whether or not the requirement has been contravened,

but, for that paragraph to apply, the claim that the requirement applies and, if applicable, the claim that it has been contravened must be made in good faith.

(3) This Article applies to any requirement imposed on the employer by or under any provision of Chapter 1 of Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008.

(4) In this Article references to enforcing a requirement include references to securing its benefit in any way.".

(3) In Article 137 (redundancy as unfair dismissal), in paragraph (1)(c) (which refers to any of paragraphs (2A) to (7I) of that Article applying) for "(7I)" substitute " (7J) ".

(4) After paragraph (7I) of that Article insert—

"(7J) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal

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was one of those specified in paragraph (1) of Article 135D (read with paragraph (2) of that Article).".

(5) In Article 140 (exclusion of right: qualifying period of employment) in paragraph (3) (cases where no qualifying period is required) after sub-paragraph (fh) insert—

"(fi) paragraph (1) of Article 135D (read with paragraph (2) of that Article) applies,".

(6) In Article 143(2) (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action), after sub-paragraph (d) insert—

"(dd) Article 135D applies,".

(7) In Article 144(2) (cases where industrial tribunal to determine whether dismissal of an employee is unfair despite limitation in paragraph (1) of that Article), after sub-paragraph (d) insert—

"(dd) Article 135D applies;".

Restrictions on agreements to limit operation of this Part

58.—(1) Any provision in any agreement (whether a worker's contract or not) is void in so far as it purports—

(a) to exclude or limit the operation of any provision of this Part, or

(b) to preclude a person from bringing proceedings under section 56 before an industrial tribunal.

(2) The fact that an agreement is to any extent void under subsection (1) does not entitle the employer to recover any property transferred, or the value of any benefit conferred, as an inducement to enter into, or otherwise in connection with, the agreement.

(3) Subsection (1) does not apply to any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) (conciliation).

(4) Subsection (1) does not apply to any agreement to refrain from instituting or continuing before an industrial tribunal any proceedings within Article 20(1)(r) of the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) (proceedings under this Act where conciliation is available) if the conditions regulating compromise agreements under this Act are satisfied in relation to the agreement.

(5) For the purposes of subsection (4) the conditions regulating compromise agreements under this Act are that—

(a) the agreement must be in writing,

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Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(b) the agreement must relate to the particular proceedings,

(c) the worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an industrial tribunal,

(d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or a professional body, covering the risk of a claim by the worker in respect of loss arising in consequence of the advice,

(e) the agreement must identify the adviser, and

(f) the agreement must state that the conditions regulating compromise agreements under this Act are satisfied.

(6) A person is a relevant independent adviser for the purposes of subsection (5)(c) if that person—

(a) is a qualified lawyer,

(b) is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,

(c) works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or

(d) is a person of a description specified in an order made by the Department.

(7) But a person is not a relevant independent adviser for the purposes of subsection (5)(c) in relation to the worker—

(a) if the person is employed by, or is acting in the matter for, the employer or an associated employer,

(b) in the case of a person within subsection (6)(b) or (c), if the trade union or advice centre is the employer or an associated employer,

(c) in the case of a person within subsection (6)(c), if the worker makes a payment for the advice received from the person, or

(d) in the case of a person of a description specified in an order under subsection (6)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.

(8) In this section "qualified lawyer" means—

(a) a barrister (whether in practice as such or employed to give legal advice), or

(b) a solicitor who holds a practising certificate.

(9) For the purposes of this section any two employers are associated if—

(a) one is a company of which the other (directly or indirectly) has control, or

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(b) both are companies of which a third person (directly or indirectly) has control,

and "associated employer" is to be read accordingly.

Commencement Information

I39 S. 58 partly in force; s. 58 in force for certain purposes at Royal Assent see s. 118(2)

CHAPTER 4

SUPPLEMENTARY PROVISION ABOUT COMPLIANCE AND INFORMATION-SHARING

Records and information

Requirement to keep records

59.—(1) For the purposes of Chapter 1 or 2, the Department may by regulations make provision requiring any person—

(a) to keep, in such form and manner as may be prescribed, such records as may be prescribed;

(b) to preserve those records for such period, not exceeding 6 years, as may be prescribed;

(c) to provide those records, on request, to the Regulator.

(2) Regulations under subsection (1) may provide that Article 10 of the 1995 Order (civil penalties) applies to a person who fails to comply with those requirements.

Commencement Information

I40 S. 59 partly in force; s. 59 in force for certain purposes at Royal Assent see s. 118(2)

VALID FROM 30/06/2012

Powers to require information and to enter premises

60.—(1) The 2005 Order is amended as follows.

(2) In Article 67 (provision of information), after paragraph (1) insert—

"(1A) If the Regulator requires information which is relevant to the exercise of its functions under Chapter 2 of Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008 or section 51 of that Act, the Regulator may, by notice in writing, require a person to whom paragraph (2) applies—

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Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(a) to furnish the Regulator with an explanation of any document or information required under paragraph (1);

(b) to attend before the Regulator at such time and place as may be specified in the notice under that paragraph to furnish any such explanation.

(1B) The Regulator may not require a person to answer any question or furnish any information which might incriminate the person or, if that person is married or a civil partner, the person's spouse or civil partner.”.

(3) In Article 69 (inspection of premises in respect of employers' obligations), before paragraph (1) insert—

“(A1) An inspector may, for the purposes of investigating whether an employer is contravening, or has contravened—

(a) any provision of, or of regulations under, Chapter 1 of Part 1, or section 50 or 54, of the Pensions (No. 2) Act (Northern Ireland) 2008, or

(b) any corresponding provision in force in Great Britain,

at any reasonable time enter premises liable to inspection.

(B1) Premises are liable to inspection for the purposes of paragraph (A1) if the inspector has reasonable grounds to believe that—

(a) the employer employs workers there,

(b) documents relevant to any of the following are being kept there—

(i) the administration of the employer's business,

(ii) the duties of the employer under Chapter 1 of Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008 or any corresponding provision in force in Great Britain,

(iii) the administration of a pension scheme that is relevant to the discharge of those duties, or

(c) the administration of the employer's business, or work connected with that administration, is being carried out there.

(C1) In paragraphs (A1) and (B1) “employer” and “worker” have the meaning given by section 70 of the Pensions (No. 2) Act (Northern Ireland) 2008.

(D1) In the application of paragraphs (A1) and (B1) in relation to any provision mentioned in paragraph (A1)(b) (a “corresponding GB provision”), references in those paragraphs to “employer” or “worker” are to be read as having the meaning that they have for the purposes of the corresponding GB provision.”.

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(4) In Article 70(1) (inspection of premises: powers of inspectors), after "paragraph" (in the third place where it occurs) insert " (A1), ".

(5) In Article 71(9) (inspection of premises: supplementary), after "paragraph" (in the second place where it occurs) insert " (A1), ".

Disclosure of tax information etc.

61.—(1) In the 2005 Order, for Article 83 (tax information) substitute—

"**Tax information etc.**

83.—(1) This Article applies to information held by the Revenue and Customs if it is held by them in connection with a function of the Revenue and Customs that relates to any of these matters—

(a) tax or duty;

(b) national insurance contributions;

(c) the national minimum wage.

(2) An officer of Revenue and Customs may disclose to the Regulator information to which this Article applies, if the disclosure is made for the purpose of enabling or assisting the Regulator to discharge its functions.

(3) Where information to which this Article applies is disclosed to the Regulator by virtue of paragraph (2) or section 19 of the Anti-terrorism, Crime and Security Act 2001 (disclosure of information held by revenue departments), it must, subject to paragraphs (4) and (5), be treated for the purposes of Article 77 as restricted information.

(4) Information to which this Article applies which is disclosed to the Regulator as mentioned in paragraph (3) may not be disclosed by the Regulator or any person who receives the information directly or indirectly from the Regulator except—

(a) to, or in accordance with authority given by, the Commissioners for Her Majesty's Revenue and Customs,

(b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings,

(c) with a view to the institution of any other proceedings by the Regulator, or for the purposes of any such proceedings instituted by the Regulator,

(d) in accordance with Article 79, otherwise than for the purposes of any proceedings, or

(e) in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

Status: *Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.*
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(5) Accordingly Articles 77(3), 78 and 80 to 82, and section 235 of and paragraph 4 of Schedule 10 to, the Pensions Act 2004, do not apply to such information, and Article 79 applies subject to paragraph (4)(d).

(6) In paragraph (4)(c) and (d), "proceedings" includes the issue of notices or any other enforcement action taken by the Regulator under Chapter 2 of Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008 or any other provision.

(7) In this Article "the Revenue and Customs" and a "function of the Revenue and Customs" have the same meaning as in section 18 of the Commissioners for Revenue and Customs Act 2005 (confidentiality).".

(2) In Article 77 of that Order (restricted information) in paragraph (3) for "83(4)" substitute " 83(4)(d) ".

Penalty for disclosure

62 In Article 77(5)(a) of the 2005 Order (penalty for disclosure of restricted information, on summary conviction) at the end add " , or imprisonment for a term not exceeding six months, or both ".

VALID FROM 16/03/2011

Objectives of the Regulator

Objectives of the Regulator

63 In Article 4(1) of the 2005 Order (Regulator's objectives), before "and" at the end of sub-paragraph (c) insert—

"(ca) to maximise compliance with the duties under Chapter 1 of Part 1 (and the safeguards in sections 50 and 54) of the Pensions (No. 2) Act (Northern Ireland) 2008,".

VALID FROM 30/06/2012

Functions of the Pensions Ombudsman

Functions of the Pensions Ombudsman

64.—(1) Section 142 of the Pension Schemes Act (functions of the Pensions Ombudsman) is amended as follows.

(2) In subsection (7), after paragraph (ba) insert—

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"(bb) a person who has given notice in accordance with section 8 of the Pensions (No. 2) Act (Northern Ireland) 2008 (right to opt out of membership of an automatic enrolment scheme);".

(3) In paragraph (c)(i) of that subsection, for "or (ba)" substitute " , (ba) or (bb) ".

CHAPTER 5

PERSONAL ACCOUNTS DELIVERY AUTHORITY

Functions

Functions and winding up

65.—(1) [F12] . . . . . .

(2) [F12] . . . . . .

(3) [F12] . . . . . .

(4) [F12] . . . . . .

(5) [F12] . . . . . .

(6) If the Secretary of State makes an order containing provision under section 23(7) of the Pensions Act 2007 (c. 22), the Department may by order make corresponding provision in relation to Northern Ireland.

Textual Amendments

F12 Art. 65(1)-(5) repealed (5.7.2010) by Personal Accounts Delivery Authority Winding Up (Consequential Provisions) Order (Northern Ireland) 2010 (S.R. 2010/212), **art. 2(b)**

Principles

66 [F13] . . . . . .

Textual Amendments

F13 Arts. 66-68 repealed (5.7.2010) by Personal Accounts Delivery Authority Winding Up (Consequential Provisions) Order (Northern Ireland) 2010 (S.R. 2010/212), **art. 2(b)**

Directions and guidance

67 [F14] . . . . . .

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Textual Amendments

F14 Arts. 66-68 repealed (5.7.2010) by Personal Accounts Delivery Authority Winding Up (Consequential Provisions) Order (Northern Ireland) 2010 (S.R. 2010/212), **art. 2(b)**

Disclosure of information by the Regulator

68 [F15] . . . . . .

Textual Amendments

F15 Arts. 66-68 repealed (5.7.2010) by Personal Accounts Delivery Authority Winding Up (Consequential Provisions) Order (Northern Ireland) 2010 (S.R. 2010/212), **art. 2(b)**

VALID FROM 01/10/2012

CHAPTER 6

STAKEHOLDER PENSION SCHEMES

Stakeholder pension schemes

69.—(1) The Welfare Reform and Pensions (Northern Ireland) Order 1999 (NI 11) is amended as follows.

(2) Article 5 (duty of employers to facilitate access to stakeholder pension schemes) is amended as follows.

(3) In paragraph (1), for "the requirements set out below" substitute " the requirement in paragraph (5) ".

(4) After paragraph (1) insert—

"(1A) A relevant employee, in relation to an employer, is an employee of the employer who, on the relevant date, satisfies the conditions in paragraph (1B).

(1B) The conditions are that—

(a) the employee is a member of a stakeholder pension scheme;

(b) the employee made a request under paragraph (5) before the relevant date and that request has not been withdrawn;

(c) the employee pays contributions (which are deducted in accordance with that request) to the scheme at regular intervals;

(d) at least one deduction has been made before the relevant date in accordance with that request.

(1C) A person ceases to be a relevant employee—

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(a) on ceasing to be employed by the employer;

(b) on withdrawing a request under paragraph (5);

(c) on ceasing to pay contributions at regular intervals.”.

(5) Omit paragraphs (2) to (4).

(6) In paragraph (5)—

(a) omit the word “fourth”;

(b) omit the words from “of his” to “qualifying scheme”;

(c) in sub-paragraph (a), for “scheme” substitute “ stakeholder pension scheme ”.

(7) After paragraph (5) insert—

“(5A) That requirement only applies in relation to a request to make deductions made before the relevant date (whether or not that request is varied after that date).”.

(8) Omit paragraph (6).

(9) In paragraph (7), for “any of the requirements” substitute “ the requirement ”.

(10) In paragraph (8)—

(a) for the words from “whether before” to “those purposes” substitute “ while subject to the requirement in paragraph (5) ”;

(b) omit sub-paragraph (a)(ii) and (iii).

(11) In paragraph (9), after the definition of “regulations” insert—

““relevant date” means the date on which section 69 of the Pensions (No. 2) Act (Northern Ireland) 2008 comes into operation.”.

(12) In that paragraph—

(a) omit the definition of “qualifying scheme”;

(b) omit the definition of “relevant employees”.

(13) In Article 8 (application of certain statutory provisions) omit paragraphs (1), (2) and (4).

(14) In Article 9 (interpretation), in paragraph (1), omit the definition of “designated scheme”.

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CHAPTER 7

APPLICATION AND INTERPRETATION

Workers

VALID FROM 30/06/2012

"Employer", "worker" and related expressions

70.—(1) This section applies for the purposes of this Part.

(2) "Contract of employment" means a contract of service or apprenticeship whether express or implied, and (if it is express) whether oral or in writing.

(3) "Worker" means an individual who has entered into or works under—

(a) a contract of employment, or

(b) any other contract by which the individual undertakes to do work or perform services personally for another party to the contract.

(4) But a contract is not within subsection (3)(b) if the status of the other party is by virtue of the contract that of a client or customer of a profession or business undertaking carried on by the individual concerned.

(5) For the purposes of subsection (3)(b), it does not matter whether the contract is express or implied or (if it is express) whether it is oral or in writing.

(6) Any reference to a worker's contract is to be read in accordance with subsections (3) to (5).

(7) "Employer", in relation to a worker, means the person by whom the worker is employed (subject to sections 37(5) and 38(6)).

(8) "Employment" in relation to a worker, means employment under the worker's contract.

VALID FROM 30/06/2012

Agency workers

71.—(1) This section applies to an individual ("the agency worker")—

(a) who is supplied by a person ("the agent") to do work for another person ("the principal") under a contract or other arrangements made between the agent and the principal,

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(b) who is not, as respects that work, a worker, because of the absence of a worker's contract between the individual and the agent or the principal, and

(c) who is not a party to a contract under which the agency worker undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of a profession or business undertaking carried on by the individual.

(2) Where this section applies, the other provisions of this Part have effect—

(a) as if there were a worker's contract for the doing of the work by the agency worker, made between the agency worker and the relevant person under subsection (3), and

(b) as if that person were the agency worker's employer.

(3) The relevant person is—

(a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work, or

(b) if neither the agent nor the principal is responsible for doing so, whichever of them pays the agency worker in respect of the work.

VALID FROM 30/06/2012

Directors

72.—(1) A person who holds office as a director of a company is not, by virtue of that office or of any employment by the company, a worker for the purposes of this Part, unless—

(a) the person is employed by the company under a contract of employment, and

(b) there is at least one other person who is employed by the company under a contract of employment.

(2) In this section, “company” includes any body corporate.

VALID FROM 30/06/2012

Crown employment

73.—(1) This Part has effect in relation to employment by or under the Crown as it has effect in relation to other employment.

Status: *Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.*
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(2) For the purposes of the application of the provisions of this Part in accordance with subsection (1)—

(a) references to a worker are to be construed as references to a person employed by or under the Crown;

(b) references to a worker's contract are to be construed as references to the terms of employment of a person employed by or under the Crown.

(3) This section does not impose criminal liability on the Crown.

(4) But on the application of the Regulator the High Court may declare unlawful a failure by the Crown to comply with any of the duties mentioned in section 45(1).

VALID FROM 30/06/2012

Armed forces

74.—(1) A person serving as a member of the naval, military or air forces of the Crown is not, by virtue of that service, a worker for the purposes of this Part.

(2) A member of any of the forces specified in subsection (3) who assists the activities of any of those forces is not, by virtue of anything done in assisting those activities, a worker for the purposes of this Part.

(3) The forces are—

(a) the Combined Cadet Force;

(b) the Sea Cadet Corps;

(c) the Army Cadet Force;

(d) the Air Training Corps.

Police

75 This Part has effect in relation to a person who—

(a) (subject to such exceptions as may be prescribed), holds the office of constable as a police officer or an appointment as a police trainee or police reserve trainee under section 39 or 40 of the Police (Northern Ireland) Act 2000 (c. 32) or as a police cadet under section 42 of that Act, and

(b) does not hold that office or appointment under a contract of employment,

as if the person were employed by the Chief Constable under a worker's contract.

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Commencement Information

I41 S. 75 partly in force; s. 75 in force for certain purposes at Royal Assent see s. 118(2)

VALID FROM 30/06/2012

Persons working on vessels

76.—(1) Subject to regulations under section 96 of the Pensions Act 2008 (c. 30), a person employed or engaged in any capacity on board a ship is not, by virtue of that employment or engagement, a worker for the purposes of this Part.

(2) In this section, "ship" includes—

(a) a hovercraft within the meaning of the Hovercraft Act 1968 (c. 59), and

(b) every description of vessel used in navigation.

Extension of definition of worker

77 The Department may by regulations make provision for this Part to apply with or without modifications—

(a) as if any individual of a prescribed description (who would not otherwise be a worker) were a worker,

(b) as if there were in the case of any such individual a worker's contract of a prescribed description under which the individual works, and

(c) as if a person of a prescribed description were the employer under that contract.

Commencement Information

I42 S. 77 partly in force; s. 77 in force for certain purposes at Royal Assent see s. 118(2)

General

Interpretation of Part

78 In this Part—

"active member"—

(a) in relation to an occupational pension scheme, means a person who is in pensionable service under the scheme;

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(b) in relation to a personal pension scheme, means a jobholder in relation to whom there is an agreement within section 26(4) between the provider of the scheme and the employer or (where section 9 applies) a worker in relation to whom there are direct payment arrangements (within the meaning of section 107A of the Pension Schemes Act) between the worker and the employer;

"automatic enrolment scheme" is to be read in accordance with section 3(8);

"average salary benefits" means benefits the rate or amount of which is calculated by reference to the average salary of a member over the period of service on which the benefits are based;

"contract of employment" has the meaning given by section 70;

"defined benefits", in relation to a member of an occupational pension scheme, means benefits which are not money purchase benefits (but the rate or amount of which is calculated by reference to earnings or service of the member or any other factor other than an amount available for their provision);

"defined benefits scheme" means an occupational pension scheme under which all the benefits that may be provided are defined benefits;

"employer" and "employment" have the meaning given by section 70;

"enrolment duty" means a duty under section 3(2), 5(2), 7(3) or 9(2);

"hybrid scheme" means an occupational pension scheme which is neither a defined benefits scheme nor a money purchase scheme;

the "IORP Directive" means Directive 2003/41/EC of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision;

"jobholder" has the meaning given by section 1(1);

"money purchase benefits", in relation to a member of a pension scheme, means benefits the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member and **[**[F16]which fall within section 78A**]**;

"money purchase scheme" means an occupational pension scheme under which all the benefits that may be provided are money purchase benefits;

"occupational pension scheme" has the meaning given by section 18;

"pension scheme" has the meaning given by section 1(5) of the Pension Schemes Act;

"pensionable age" has the meaning given by the rules in paragraph 1 of Schedule 2 to the 1995 Order;

"pensionable service", in relation to a member of an occupational pension scheme, means service in any description of employment to which the scheme

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relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme;

"personal pension scheme" has the meaning given by section 19;

"provider"—

(a) in relation to a personal pension scheme to which section 26 applies, means the person referred to in subsection (1)(b) of that section;

(b) in relation to any other personal pension scheme, has the meaning prescribed;

"qualifying earnings" has the meaning given by section 13;

"qualifying scheme" is to be read in accordance with section 2(5);

"tax year" means the 12 months beginning with 6th April in any year;

"trustee or manager" is to be construed in accordance with section 173 of the Pension Schemes Act (trustees or managers of schemes);

"worker" has the meaning given by section 70.

Textual Amendments

F16 Words in s. 78 substituted (retrospectively) by Pensions Act (Northern Ireland) 2012 (c. 3), ss. 27(3)(6), 34(3); S.R. 2014/203, **art. 2**

Commencement Information

I43 S. 78 wholly in operation at 5.7.2010; s. 78 in operation for certain purposes at Royal Assent see s. 118(2); s. 78 in operation at 5.7.2010 in so far as not already in operation by S.R. 2010/50, **art. 2(2)**

[[F17]Money purchase benefits: supplementary

78A.—(1) This section applies for the purposes of the definition of "money purchase benefits" in section 78.

(2) A benefit other than a pension in payment falls within this section if its rate or amount is calculated solely by reference to assets which (because of the nature of the calculation) must necessarily suffice for the purpose of its provision to or in respect of the member.

(3) A benefit which is a pension in payment falls within this section if—

(a) its provision to or in respect of the member is secured by an annuity contract or insurance policy made or taken out with an insurer, and

(b) at all times before coming into payment the pension was a benefit falling within this section by virtue of subsection (2).

Status: *Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.*
Changes to legislation: *Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(4) For the purposes of subsection (2) it is immaterial if the calculation of the rate or amount of the benefit includes deductions for administrative expenses or commission.

(5) In this section references to a pension do not include income withdrawal or dependants' income withdrawal (within the meaning of paragraphs 7 and 21 of Schedule 28 to the Finance Act 2004).**]**

Textual Amendments

F17 S. 78A inserted (retrospectively) by Pensions Act (Northern Ireland) 2012 (c. 3), ss. 27(3)(6), 34(3); S.R. 2014/203, **art. 2**

Status:
Point in time view as at 05/07/2010. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation:
Pensions (No. 2) Act (Northern Ireland) 2008, PART 1 is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.