



## 2015 CHAPTER 5

### PART 6

#### PRIVATE PENSIONS

##### *Automatic enrolment*

PROSPECTIVE

#### **Automatic re-enrolment: exceptions where automatic enrolment deferred**

**36.—**(1) The Pensions (No. 2) Act is amended as follows.

(2) In section 5 (automatic re-enrolment), after subsection (3) insert—

“(3A) Subsection (2) does not apply if the jobholder's automatic enrolment date is deferred under section 4 from a date before the automatic re-enrolment date to a date after the automatic re-enrolment date.”.

(3) In section 30(7) (transitional period for defined benefits and hybrid schemes), at the end insert—

“(c) section 5(2) does not apply in relation to an automatic re-enrolment date that falls before the day with effect from which arrangements would by virtue of this section fall to be made in respect of the jobholder.”.

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PROSPECTIVE

### **Automatic enrolment: powers to create general exceptions**

**37.**—(1) In section 10 of the Pensions (No. 2) Act (information to be given to workers)—

(a) in subsection (1)—

(i) for “must” substitute “ may ”;

(ii) in paragraphs (a) and (b), omit “all”;

(b) in subsection (2) for “must state” substitute “ may in particular make provision about ”.

(2) In Chapter 7 of Part 1 of the Pensions (No. 2) Act, before section 70 (and the heading “Workers” above it) insert—

#### *“Exceptions*

### **Power to create exceptions from the employer duties etc.**

**69A.**—(1) The Department may by regulations provide for exceptions to the employer duties; and an exception may in particular—

(a) turn an employer duty into a power;

(b) be framed by reference to a description of worker, particular circumstances or in some other way.

(2) But the regulations may not provide for an exception for employers of a particular size.

(3) Regulations which make provision under subsection (1)(a) may make provision modifying this Part or regulations made under it in connection with that provision.

(4) The regulations may make provision in connection with the coming to an end of the state of affairs that caused an exception to apply, including provision—

(a) modifying this Part or regulations made under it in relation to a person;

(b) for the purpose of putting a person, wholly or partly, in the position he or she would have been in if the exception had never applied.

(5) In this section “employer duties” means any duty of an employer under any provision of sections 2 to 11 and 54 or of regulations made under those sections.”.

(3) In consequence of subsection (2), the following are repealed—

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- (a) Article 268A of the Pensions (Northern Ireland) Order 2005 (in this Act referred to as “the 2005 Order”);
- (b) section 5(4) of the Pensions (No. 2) Act;
- (c) section 19 of the Pensions Act (Northern Ireland) 2012.

PROSPECTIVE

**Alternative quality requirements for UK defined benefits scheme**

- 38.**—(1) The Pensions (No. 2) Act is amended as follows.
- (2) After section 23 insert—

**“Alternative quality requirements for UK defined benefits schemes**

**23A.**—(1) The Department may by regulations provide that a defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if any one or more of the following is satisfied—

- (a) the scheme is of a prescribed description and satisfies the quality requirement under section 20 in relation to that jobholder;
  - (b) the cost of providing the benefits accruing for or in respect of the relevant members over a relevant period would require contributions to be made of a total amount equal to at least a prescribed percentage of the members' total relevant earnings over that period;
  - (c) in the case of each of at least 90% of the relevant members, the cost of providing the benefits accruing for or in respect of the member over a relevant period would require contributions to be made of a total amount equal to at least a prescribed percentage of the member's total relevant earnings over that period.
- (2) For this purpose—
- “contributions” means contributions to the scheme by, or on behalf or in respect of, a relevant member;
  - “relevant earnings” means earnings of a prescribed description;
  - “relevant members” means members of the scheme of a prescribed description;
  - “relevant period” means a period specified in or determined in accordance with the regulations.

- (3) A percentage prescribed under subsection (1)(b) or (c) must be at least 8%.

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(4) Regulations under subsection (1)(b) or (c) may make provision—

- (a) about how to calculate whether the requirement is satisfied, including provision requiring the calculation to be made in accordance with prescribed methods or assumptions;
- (b) requiring benefits of a prescribed description to be disregarded in determining whether the requirement is satisfied;
- (c) that a scheme only satisfies the requirement if the scheme actuary certifies that it does; and for this purpose “scheme actuary” has the prescribed meaning.

(5) Section 13(3) (meaning of “earnings”) applies for the purposes of this section as it applies for the purposes of that section.”.

(3) In section 24 (quality requirement: UK hybrid schemes), in subsection (1)(b), for “23” substitute “ 23A ”.

(4) In section 28 (certification that quality requirement or alternative requirement is satisfied)—

(a) after subsection (3A) insert—

“(3B) This section also applies to a defined benefits scheme that has its main administration in the United Kingdom and is of a description prescribed under section 23A(1)(a).”;

(b) in subsection (4), after paragraph (d) insert—

“(e) for a scheme within subsection (3B), means the quality requirement under section 23A(1)(a).”.

(5) In section 29 (transitional periods for money purchase and personal pension schemes), in subsections (1) and (3) omit “for money purchase and personal pension schemes”.

(6) Section 30 (transitional period for defined benefits and hybrid schemes) is amended as follows.

(7) In subsection (3), at the end of the substituted subsection (2) insert—

“A reference in this subsection to a scheme does not include a scheme to which section 30(11)(a) or (b) applies.”.

(8) In subsection (5), in the substituted subsection (2)—

- (a) in paragraph (a), after “defined benefits scheme” insert “ other than a scheme to which section 30(11)(a) applies ”;
- (b) in paragraph (aa) (inserted by section 39), after “a hybrid scheme” insert “ other than a scheme to which section 30(11)(b) applies ”;
- (c) after paragraph (c) (inserted by section 39), insert—

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- “(d) becomes an active member, with effect from the automatic enrolment date, of an automatic enrolment scheme which is a defined benefits scheme to which section 30(11)(b) applies, or
- (e) becomes a defined benefits member, with effect from the automatic enrolment date, of an automatic enrolment scheme which is a hybrid scheme to which section 30(11)(b) applies.”.

(9) After subsection (10) (added by section 39) add—

“(11) In subsection (2) references to a scheme do not include—

- (a) a defined benefits scheme that satisfies the quality requirement in relation to the jobholder by reason only of section 23A(1)(a), or
- (b) a hybrid scheme if—
  - (i) the appropriate paragraph of section 24(1) for any provisions of the scheme is paragraph (b) (those provisions are referred to below as “the defined benefits section”),
  - (ii) the defined benefits section satisfies section 23A(1)(a) as applied by section 24(1)(b), and
  - (iii) the defined benefits section does not satisfy any of the other requirements mentioned in section 24(1)(b).”.

PROSPECTIVE

### **Automatic enrolment: transitional period for hybrid schemes**

**39.**—(1) Section 30 of the Pensions (No. 2) Act (transitional period for defined benefits and hybrid schemes) is amended as follows.

(2) In subsection (2)(b) and (c), for “a hybrid scheme” substitute “ a defined benefits member of a hybrid scheme ”.

(3) In subsection (3), in the substituted subsection (2)—

- (a) after “becomes” insert “ (a) ”;
- (b) for “or a hybrid scheme” substitute “, or
  - (b) a defined benefits member, with effect from the end of that period, of an automatic enrolment scheme which is a hybrid scheme.”.

(4) In subsection (5), in the substituted subsection (2)—

(a) in paragraph (a), for “a hybrid scheme, or” substitute—

- “(aa) becomes a defined benefits member, with effect from the closure date of an automatic enrolment scheme which is a hybrid scheme;”;

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(b) after paragraph (b) insert—

“(c) becomes a money purchase member, with effect from the automatic enrolment date, of an automatic enrolment scheme which is a hybrid scheme.”.

(5) After subsection (9) add—

“(10) For the purposes of this section—

(a) a person is a “money purchase member” of a hybrid scheme if—

(i) the person is an active member of the scheme, and

(ii) all the benefits accruing in respect of his or her membership are money purchase benefits, and

(b) a person is a “defined benefits member” of a hybrid scheme if the person is an active member of the scheme other than a money purchase member.”.

(6) Subsection (7) applies if—

(a) an employer whose first enrolment date is before the date on which the amendments made by this section come into operation (“the commencement date”) has given a jobholder notice under section 30(3) of the Pensions (No. 2) Act,

(b) the conditions in section 30(2) of that Act have continued to be satisfied during the period beginning with the employer's first enrolment date and ending with the day before the commencement date, and

(c) had the amendments made by this section come into operation on 19 December 2012, the condition in section 30(2)(c) of that Act would not have been satisfied at a time during that period.

(7) Section 30(5) to (7) of the Pensions (No. 2) Act (as amended by this section) applies in relation to the jobholder with the following modifications—

(a) references in section 30(5) and (6) of that Act to the closure date are to be read as references to the commencement date, and

(b) references in section 30(5) and (6) of that Act to the automatic enrolment date are to be read as references to—

(i) 19 December 2012, or

(ii) if later, the employer's first enrolment date;

and section 30(3) and (4) of that Act does not apply.

(8) Expressions used in this section and in section 30 of the Pensions (No. 2) Act have the same meaning in this section as in that section.

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### **Penalty notices under sections 40 and 41 of the Pensions (No. 2) Act etc.**

**40.**—(1) In sections 40(1)(d) and 41(1)(d) of the Pensions (No. 2) Act (fixed and escalating penalty notices), at the end insert “ , so far as relevant to the exercise of any of its functions under or by virtue of this Part ”.

(2) In Article 67 of the 2005 Order (powers to require information), in paragraph (1A), for “Chapter 2 of Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008 or section 51 of that Act” substitute “ or by virtue of Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008 ”.

PROSPECTIVE

### **Unpaid scheme contributions**

**41.**—(1) The Pension Schemes Act is amended as follows.

(2) In section 119 (payment by Department for Employment and Learning of unpaid scheme contributions on employer insolvency: interpretation)—

(a) in subsection (2), for the definition of “contract of employment” and related expressions substitute—

“employer”, employment”, worker” and worker's contract” and other expressions which are defined in the Employment Rights (Northern Ireland) Order 1996 have the same meaning as in that Order (see further subsections (2A) and (2B));”;

(b) in subsection (2), in paragraph (b) of the definition of “holiday pay”, for “the employee's contract of employment” substitute “ the worker's contract ”;

(c) after subsection (2) insert—

“(2A) Section 71 of the Pensions (No. 2) Act (Northern Ireland) 2008 (agency workers) applies for the purposes of this Chapter as it applies for the purposes of Part 1 of that Act.

(2B) References in this Chapter to a worker include references to an individual to whom Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008 applies as if the individual were a worker because of regulations made under section 77 of that Act; and related expressions are to be read accordingly.”.

(3) In section 120 (Department for Employment and Learning's duty to pay unpaid contributions)—

(a) for “an employee”, in each place, substitute “ a worker ”;

(b) for “the employee”, in each place, substitute “ the worker ”;

(c) for “the employee's” substitute “the worker's”;

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(d) for “employees”, in each place, substitute “workers”.

(4) In section 157, for “contract of employment” substitute “worker's contract”.

(5) In section 161(6)—

(a) in paragraph (a), for “contract of employment the employee” substitute “worker's contract the worker”;

(b) in paragraph (b), for “employee” substitute “worker”.



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**Changes and effects yet to be applied to :**

- specified provision(s) transitional provisions for effects of commencing S.I. 2017/297, art. 2 by [S.R. 2017/58 Order](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 22(1)(a) word omitted by [S.R. 2016/80 reg. 3\(2\)\(a\)](#)
- s. 22(1)(c) inserted and preceding word by [S.R. 2016/80 reg. 3\(2\)\(b\)](#)
- Sch. 9 para. 3(1)(ba) inserted by [S.R. 2016/80 reg. 3\(3\)\(b\)](#)
- Sch. 20 para. 2 coming into force by [S.R. 2017/44 art. 5\(b\)](#)
- Sch. 20 para. 3 coming into force by [S.R. 2017/44 art. 5\(b\)](#)
- Sch. 20 para. 4 coming into force by [S.R. 2017/44 art. 5\(b\)](#)