

2015 No. 310

PENSIONS

**The Occupational and Personal Pension Schemes
(Automatic Enrolment) (Amendment) Regulations
(Northern Ireland) 2015**

Made - - - -

16th July 2015

Coming into operation -

6th August 2015

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 3(5), 4(1) to (3), 5(2), 9(3), 10, 23A(1)(a) and (b), (2) and (4)(b), 25, 30(7A), 69A(1), (3) and (4) and 113(2) of the Pensions (No. 2) Act (Northern Ireland) 2008(a).

Citation and commencement

1. These Regulations may be cited as the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations (Northern Ireland) 2015 and shall come into operation on 6th August 2015.

Amendment of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations

2. The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010(b) are amended in accordance with regulations 3 to 13.

Amendment of regulation 2

3. In regulation 2(c) (enrolment information) for “, 24 and 25” substitute “and 24”.

Amendment of heading to Part 1A

4. In the heading to Part 1A(d) (exemption) after “Exemption” add “and exceptions”.

-
- (a) 2008 c. 13 (N.I.); section 4 was substituted by section 7(2) of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)); section 10 was amended by section 37(1) of the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)); section 23A was inserted by section 38(2) of that Act; section 30(7A) was inserted by section 15(4) of the Pensions Act (Northern Ireland) 2012; section 69A was inserted by section 37(2) of the Pensions Act (Northern Ireland) 2015
- (b) S.R. 2010 No. 122; relevant amending Regulations are S.R. 2012 Nos. 232, 237 and 238 and S.R. 2013 No. 243
- (c) Regulation 2 was substituted by regulation 2(3) of S.R. 2012 No. 232
- (d) Part 1A was inserted by regulation 2 of S.R. 2012 No. 238

Insertion of regulations 5B to 5F

5. After regulation 5A(a) (exemption of European employers) insert—

“Notice of termination of employment

5B.—(1) This regulation applies, subject to paragraph (3), where notice of termination of a worker’s employment is given before the end of the period of 6 weeks beginning with the automatic enrolment date or automatic re-enrolment date, as the case may be.

(2) Where this regulation applies—

- (a) sections 3(2) (automatic enrolment) and 5(2) (automatic re-enrolment) are to be read as if for “must” there were substituted “may”;
- (b) section 7(3) (jobholder’s right to opt in) is to be read as if there were inserted at the end “unless notice of termination of employment of that jobholder has been given (and the jobholder and the employer have not agreed that such notice is withdrawn)”;
- (c) section 9(2) (workers without qualifying earnings) is to be read as if there were inserted at the end “unless notice of termination of employment of that worker has been given (and the worker and the employer have not agreed that such notice is withdrawn)”.

(3) Where a jobholder and employer agree that the notice of termination of the jobholder’s employment referred to in this regulation is withdrawn, paragraphs (1) and (2) cease to apply on the date of that agreement and, subject to paragraph (4), for the purposes of sections 3(2) and 5(2), as the case may be—

- (a) the automatic enrolment date, or
- (b) the automatic re-enrolment date,

is the date of that agreement.

(4) Where, on the date referred to in paragraph (3), section 3 or 5, as the case may be, does not apply to the jobholder, the next date on which one of those sections applies to that jobholder is to be taken as the automatic enrolment date or automatic re-enrolment date, as the case may be, in relation to that jobholder.

Former members

5C.—(1) This regulation applies where a person (P) is a jobholder and—

- (a) P ceased to be an active member of a qualifying scheme because of an action or omission by P or an action by the employer at P’s request, or
- (b) at a time when P was a worker, but not a jobholder, ceased to be an active member of a scheme which would have been a qualifying scheme in relation to P, had P been a jobholder, because of an action or omission by P or an action by the employer at P’s request.

(2) This regulation also applies where a jobholder gives notice under section 8 (jobholder’s right to opt out).

(3) Where this regulation applies in relation to the jobholder mentioned in paragraph (1) or (2)—

- (a) during the period of 12 months beginning with the date that jobholder ceased to be an active member or gives notice, sections 3(2) (automatic enrolment) and 5(2) (automatic re-enrolment) are to be read as if for “must” there were substituted “may”, and
- (b) after the expiry of that period, section 3(2) does not apply.

(a) Regulation 5A was inserted by regulation 2 of S.R. 2012 No. 238

Tax protection

5D.—(1) This regulation applies where an employer has reasonable grounds to believe that one of the following provisions applies in relation to a jobholder—

- (a) paragraph 7 or 12 of Schedule 36 to the Finance Act 2004^(a) (pension schemes etc: transitional provisions and savings);
- (b) paragraph 14 of Schedule 18 to the Finance Act 2011^(b) (lifetime allowance charge);
- (c) paragraph 1 of Schedule 22 to the Finance Act 2013^(c) (transitional provision relating to reduction in standard lifetime allowance etc);
- (d) paragraph 1 of Schedule 6 to the Finance Act 2014^(d) (transitional provision relating to new standard lifetime allowance for the tax year 2014-15 etc).

(2) Where this regulation applies, in relation to the jobholder referred to in paragraph (1), sections 3(2) (automatic enrolment) and 5(2) (automatic re-enrolment) are to be read as if for “must” there were substituted “may”.

Winding-up lump sum

5E.—(1) This regulation applies to a worker where—

- (a) that worker has received a winding-up lump sum as defined in paragraph 10^(e) of Schedule 29 to the Finance Act 2004 (registered pension schemes: authorised lump sums - supplementary);
- (b) at the time the winding-up lump sum was paid, the worker was employed by the person mentioned in paragraph 10(1)(c) of Schedule 29 to the Finance Act 2004, and
- (c) since the winding-up lump sum was paid, the worker has ceased to be employed and been re-employed by that person.

(2) In relation to the worker to whom this regulation applies—

- (a) during the period of 12 months beginning with the date on which the winding-up lump sum was paid—
 - (i) sections 3(2) (automatic enrolment) and 5(2) (automatic re-enrolment) are to be read as if for “must” there were substituted “may”, and
 - (ii) sections 7 (jobholder’s right to opt in) and 9 (workers without qualifying earnings) do not apply, and
- (b) after the expiry of that period, section 3(2) does not apply.

Effect of exercise of discretion

5F.—(1) This regulation applies to an employer who—

- (a) exercises a discretion under section 3(2) (automatic enrolment) or 5(2) (automatic re-enrolment), as conferred by regulation 5B, 5C, 5D or 5E, so that the prescribed arrangements are made whereby the jobholder will become an active member of an automatic enrolment scheme;

(a) 2004 c. 12; paragraph 12 was amended by paragraph 53(2) to (6) of Schedule 10 to the Finance Act 2005 (c. 7), paragraph 17 of Schedule 20 to the Finance Act 2007 (c. 11), paragraph 432(2) of Schedule 1 to the Corporation Tax Act 2010 (c. 4) and paragraph 59 (as inserted by paragraph 5 of Schedule 1 to S.I. 2010/2279) of Schedule 26 to the Equality Act 2010 (c. 15)

(b) 2011 c. 11; paragraph 14 was amended by section 47(2) of the Finance Act 2013 (c. 29) and regulation 2 of S.I. 2013/1740

(c) 2013 c. 29

(d) 2014 c. 26

(e) Paragraph 10 was amended by paragraph 12 of Schedule 20 to the Finance Act 2007 and paragraph 30 of Schedule 16, and paragraph 5 of Schedule 18, to the Finance Act 2011

- (b) makes the arrangements referred to in section 7(3) (jobholder’s right to opt in) for a jobholder, unless notice of termination of employment of that jobholder has been given (and the jobholder and the employer have not agreed that such notice is withdrawn), or
- (c) makes the arrangements referred to in section 9(2) (workers without qualifying earnings) for a worker, unless notice of termination of employment of that worker has been given (and the worker and the employer have not agreed that such notice is withdrawn).

(2) In relation to the employer to whom this regulation applies, the employer is to be treated for all purposes as if the employer were acting under the duty which would apply by virtue of section 3(2) or 5(2) or were required to make the arrangements in section 7(3) or 9(2) but for the provisions of this Part.”.

Substitution of regulation 21

6. For regulation 21(a) (information) substitute—

“Information to be given to workers

21. At any time before the end of the period of 6 weeks beginning with the date on which section 7 (jobholder’s right to opt in) or section 9 (workers without qualifying earnings), as the case may be, first applies to a worker, the employer must give in writing—

- (a) to the jobholder to whom section 7 applies, the information described in—
 - (i) paragraphs 16 and 24 of Schedule 2, or
 - (ii) paragraphs 18 and 24 of Schedule 2, and
- (b) to the worker to whom section 9 applies, the information described in—
 - (i) paragraphs 17 and 24 of Schedule 2, or
 - (ii) paragraphs 18 and 24 of Schedule 2.”.

Amendment of regulation 23

7. In regulation 23(3) for “one month” substitute “6 weeks”.

Amendment of regulation 24

8. In regulation 24(b) (prescribed requirements for the purposes of section 4(1), (2) and (3))—

(a) for paragraph (1) (including the Table) substitute—

“(1) A notice under section 4(1), (2) or (3) (postponement or disapplication of automatic enrolment) given by an employer to all workers must be in writing and, subject to paragraphs (1A) and (1B), include the information described in paragraphs 18, 20, 21 and 24 of Schedule 2.

(1A) In the case of workers who are jobholders and who are not active members of a qualifying scheme, the notice referred to in paragraph (1) must include the information described in either paragraph 16 or 18 and in paragraphs 20, 21 and 24.

(1B) In the case of workers who are not jobholders and are not active members of a qualifying scheme, the notice referred to in paragraph (1) must include the information described in either paragraph 17 or 18 and in paragraphs 20, 21 and 24.”;

(b) omit paragraph (2).

(a) Regulation 21 was amended by regulation 2(10) of S.R. 2012 No. 232 and regulation 4(4) of S.R. 2013 No. 243
 (b) Regulation 24 was substituted by regulation 2(12) of S.R. 2012 No. 232 and amended by regulation 4(4) of S.R. 2013 No. 243

Amendment of regulation 27

9. In regulation 27(c)(a) (notice to be given under section 30(3)) for “paragraphs 16, 22, 24 and 25” substitute “paragraph 16 or 18 and paragraphs 22 and 24”.

Alternative quality requirements for UK defined benefits schemes

10. After regulation 32K(b) (interpretation) insert—

“PART 7B

Alternative quality requirements: UK defined benefits schemes

Alternative quality requirements for UK defined benefits schemes

32L.—(1) A defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement(c) in relation to a jobholder if section 23A(1)(a) (alternative quality requirements for UK defined benefits schemes) is satisfied and for the purpose of that section, the scheme is of a prescribed description if the conditions in paragraph (2) are satisfied.

(2) The conditions referred to in paragraph (1) are—

- (a) the benefits provided to the member are calculated by reference to factors which include the contributions made to the scheme by or on behalf of or in respect of the member;
- (b) the contributions referred to in sub-paragraph (a) are converted in accordance with the scheme rules, as soon as reasonably practicable and no later than one month after their receipt into the scheme, into a right to an income for life;
- (c) the benefits payable to the member under the scheme are payable no later than the member’s pensionable age;
- (d) following any conversion referred to in sub-paragraph (b), the amount of the member’s benefits under the scheme cannot be reduced unless this is at the member’s request;
- (e) following any valuation of the scheme’s assets and determination of its liabilities, the trustees or managers of the scheme have absolute discretion to use any excess assets to increase the benefits of the members in relation to whose contributions the excess assets may be attributed, and
- (f) where a member’s benefits are increased using the excess assets referred to in sub-paragraph (e), the amount of those benefits cannot be reduced unless this is at the member’s request.

32M.—(1) A defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if section 23A(1)(b)(d) (alternative quality requirements for UK defined benefits schemes) is satisfied.

(2) Terms defined for the purpose of section 23A have the meanings prescribed in the following paragraphs.

(3) Subject to paragraphs (4) and (6), the relevant members are the active members of the defined benefits scheme of which the jobholder is a member.

(a) Regulation 27 was substituted by regulation 2(13) of S.R. 2012 No. 232 and amended by regulation 4(4) of S.R. 2013 No. 243

(b) Regulation 32K was inserted by regulation 2(3) of S.R. 2012 No. 237

(c) See section 16(1)(c) of the Pensions (No. 2) Act (Northern Ireland) 2008 in relation to the quality requirement

(d) Section 23A was inserted by section 38(2) of the Pensions Act (Northern Ireland) 2015

(4) Where there is or was, as the case may be, a material difference in the cost of providing the benefits accruing for different groups of relevant members over the relevant period by taking into account the criteria under which members accrue or accrued benefits including—

- (a) the rate at which benefits accrue or accrued;
- (b) the provision of survivor's benefits;
- (c) the normal pension age;
- (d) the definition of "pensionable earnings" used by the scheme;
- (e) the method of revaluation provided for by Schedule 2(a) to the 1993 Act (methods of revaluing accrued pension benefits);
- (f) the method of an annual increase in the rate of pension provided for under Article 51(b) of the 1995 Order (annual increase in rate of pension) or under the scheme rules;
- (g) the maximum pensionable service period;
- (h) the calculation of service, and
- (i) the terms for retirement before normal pension age,

the relevant members are the active members of each such group.

(5) For the purposes of paragraph (4), whether a difference in cost is a material difference is to be determined by the actuary.

(6) Subject to paragraph (4), in the case of a multi-employer scheme, the employer of the jobholder may choose that the relevant members are the active members who are also employed by that employer.

(7) Subject to paragraph (8), the relevant period is—

- (a) where the most recent written report signed (including by way of an electronic signature (within the meaning given by section 7(2) of the Electronic Communications Act 2000(c)) by an actuary provides details of the cost of accruals by reference to a period which begins later than the date of that report, that period, and
- (b) in any other case, any period of 12 months.

(8) Where, after the date of the report referred to in paragraph (7)(a) or the period referred to in paragraph (7)(b) begins (whether or not it has ended), a change is made to the benefits provided to a relevant member, the relevant period is a period of 12 months commencing with the day on which that change takes effect.

(9) Relevant earnings are the earnings which the scheme uses to determine pensionable earnings provided that they are the relevant member's—

- (a) qualifying earnings;
- (b) pensionable earnings where those earnings are equal to or more than that member's basic pay;
- (c) pensionable earnings where those earnings are equal to or more than that member's basic pay and, taking all the relevant members together, the pensionable earnings of those members constitute at least 85% of the earnings of those members in the relevant period;

(a) Schedule 2 was amended by paragraphs 1 to 3 of Schedule 1 to the Pensions (No. 2) Act (Northern Ireland) 2008, section 20(4) to (6) of the Pensions Act (Northern Ireland) 2012 and regulation 2(3) of S.R. 2014 No. 213

(b) Article 51 was amended by paragraph 40 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), section 47(1) of the Child Support, Pension and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)), Article 255(1) to (6) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), sections 20(7) and (8) and 21(1) to (3) of the Pensions Act (Northern Ireland) 2012, paragraph 59 of Schedule 13 to the Pensions Act (Northern Ireland) 2015 and Article 11(2) of S.I. 2006/745

(c) 2000 c. 7

- (d) earnings where that member's pensionable earnings are equal to the whole of that member's earnings, or
- (e) basic pay above—
 - (i) the amount of the lower earnings limit specified for the purposes of section 5(1)(a)(i)(a) of the Contributions and Benefits Act (earnings limits and thresholds for Class 1 contributions), or
 - (ii) the amount of the basic state pension specified in the first figure in section 44(4)(b) of the Contributions and Benefits Act (Category A retirement pension).

(10) Subject to paragraph (11), for the purposes of section 23A(1)(b), the prescribed percentage is, in relation to—

- (a) paragraph (9)(a) and (c), 10%;
- (b) paragraph (9)(b), 11%;
- (c) paragraph (9)(d), 9%, and
- (d) paragraph (9)(e), 13%.

(11) Where the scheme does not provide pension benefits payable on the death of a relevant member, the respective percentages mentioned in paragraph (10) are to be reduced by 1%.

(12) In this regulation—

“actuary” means an actuary appointed by the scheme or the employer;

“basic pay” means the gross earnings of the relevant member from their employment by the employer, disregarding the gross amount of—

- (a) any commission, bonuses, overtime or similar payments;
- (b) any shift premium pay, as defined in regulation 32K as if—
 - (i) “jobholder” read “relevant member”, and
 - (ii) “within a certification period” and “during the certification period” were omitted, and
- (c) any reasonable allowance with respect to—
 - (i) any duty of the relevant member, such as a duty in connection with the role of fire or bomb warden, that is ancillary to the main duties of the relevant member's employment;
 - (ii) the cost of relocation of the relevant member to a different place of work;
 - (iii) in a case not covered by sub-paragraph (ii), the purchase, lease or maintenance of a vehicle;
 - (iv) in a case not covered by sub-paragraph (ii) or (iii), the purchase, lease or maintenance of an item;
 - (v) in a case not covered by sub-paragraph (ii), (iii) or (iv), the delivery of a service to the relevant member;

“multi-employer scheme” means an occupational pension scheme in relation to which there is more than one employer;

“normal pension age” has the meaning given by section 175 of the 1993 Act;

(a) Section 5 was substituted by paragraph 1 of Schedule 10 to the Welfare Reform and Pensions Act 1999 (c. 30) and subsection (1) was amended by section 8(2) of the Pensions Act 2007 (c. 22) and Schedule 2 to the National Insurance Contributions Act 2008 (c. 16)

(b) Section 44(4) was substituted by Article 64 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)) and amended by Article 4(3) of S.R. 2015 No. 124

“pensionable earnings” means the gross earnings of the relevant member on which contributions are payable to the pension scheme in question by the employer or the relevant member.”.

Amendment of regulation 40

11. In regulation 40 (interpretation) in the definition of “the paragraph (b) quality requirements” for “23” substitute “23A”.

Amendment of regulation 45

12. In regulation 45 (quality requirements: non-UK occupational pension schemes)—

- (a) in paragraphs (3)(a) and (6)(b) for “23” substitute “23A”;
- (b) in paragraph (4) for “section 21 is” substitute “sections 21 and 23A are”.

Amendment of Schedule 2

13. In Schedule 2(a) (information)—

- (a) for the reference note substitute “Regulations 2, 21, 24 and 27”;
- (b) for paragraph 1 substitute—

“**1.** A statement that the jobholder has been or will be enrolled into a pension scheme.”;

- (c) omit paragraphs 3, 7, 19, 23 and 25;
- (d) in paragraph 6 for the words from “in accordance with section 192 or 193” to the end substitute “on employee contributions.”;
- (e) for paragraph 18 substitute—

“**18.** A statement that by giving written notice to the employer, the worker who is aged at least 16 and under 75 and—

- (a) who earns more than the lower qualifying earnings limit as specified in section 13(1)(a)(b) (and the amount must be specified in the statement) and is not an active member of a qualifying scheme, may require the employer to arrange for that worker to become an active member of an automatic enrolment scheme and will be entitled to employer’s contributions, or
- (b) who earns no more than the lower qualifying earnings limit as specified in section 13(1)(a) (and the amount must be specified in the statement) and is not a member of a pension scheme that satisfies the requirements of section 9 (workers without qualifying earnings), may require the employer to arrange for that worker to become an active member of such a pension scheme but will not be entitled to employer’s contributions.”.

(a) Schedule 2 was added by regulation 2(27) of S.R. 2012 No. 232
(b) Section 13(1)(a) was amended by Article 2(a) of S.R. 2015 No. 119

Revocations

14. The following provisions are revoked—

- (a) regulations 14(a), 17(b) and 33(c) of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010(d);
- (b) regulation 2(8), (9), (10) and (15) of the Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012(e).

Sealed with the Official Seal of the Department for Social Development on 16th July 2015

(L.S.)

Anne McCleary

A senior officer of the Department for Social Development

(a) Regulation 14 was substituted by regulation 2(8) of S.R. 2012 No. 232
(b) Regulation 17 was amended by regulation 2(9) of S.R. 2012 No. 232 and regulation 4(4) of S.R. 2013 No. 243
(c) Regulation 33 was substituted by regulation 2(15) of S.R. 2012 No. 232
(d) S.R. 2010 No. 122
(e) S.R. 2012 No. 232

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 (“the 2010 Regulations”) by reducing the information requirements on employers, introducing certain circumstances where the employer duty is turned into a discretion and prescribing alternative quality requirements for defined benefits schemes.

These Regulations introduce further exceptions to the employer duties and modify relevant sections of the Pensions (No. 2) Act (Northern Ireland) 2008 (“the Act”) so as to provide that—

where notice of termination of employment has been given, the employer duty to automatically enrol or re-enrol is turned into a discretion and the entitlement of a jobholder or worker to opt in to or join a scheme does not apply. Where it is agreed between the jobholder or worker and employer that notice is withdrawn, the duties are imposed from the date of that agreement;

the employer duty to automatically enrol or re-enrol a worker or jobholder is turned into a discretion where a worker or jobholder has decided, in the last 12 months, to leave a qualifying scheme; where a jobholder benefits from certain tax protection, and where a worker has received a winding-up lump sum in the last 12 months;

where the employer exercises the power to make arrangements for the jobholder or worker to join a relevant scheme, the employer is treated as if they were discharging a duty.

These Regulations also—

amend the period of time in which an employer must give relevant information about the jobholder to the trustees or managers of the occupational pension scheme or personal pension scheme from 1 month to 6 weeks;

amend the requirements imposed on employers with regard to the provision of information to employees, with the aim of reducing the burden to give several different pieces of information to different kinds of workers at different times;

introduce alternative quality requirements for UK defined benefits schemes under section 23A(1)(a) and (b) of the Act by inserting regulations 32L and 32M into the 2010 Regulations. The requirements under section 23A(1)(a) are that the scheme meets the quality requirement under section 20 of the Act and also meets the prescribed conditions set out in regulation 32L. The requirement under section 23A(1)(b) is that the cost of accrual of benefits for or in respect of an active member of the scheme must be at least a specified percentage of the member’s qualifying earnings or earnings as defined in regulation 32M. Regulation 32M provides definitions for terms used in that requirement;

make similar changes in respect of non-UK schemes to reflect the new requirements;

make consequential amendments and revocations.

The Pensions (2015 Act) (Commencement No. 1) Order (Northern Ireland) 2015 (S.R. 2015 No. 307 (C. 25)) provides for the coming into operation of sections 37 and 38 of the Pensions Act (Northern Ireland) 2015, which amend section 10 of, and insert sections 69A and 23A into, the Act, some of the enabling provisions under which these Regulations are made, on 16th July 2015.

© Crown copyright 2015

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print Acts of the Northern Ireland Assembly.

STATUTORY RULES OF NORTHERN IRELAND

2015 No. 310

PENSIONS

The Occupational and Personal Pension Schemes
(Automatic Enrolment) (Amendment) Regulations
(Northern Ireland) 2015

£6.00

N6744 07/2015 456744T 19585

ISBN 978-0-337-99849-2



9 780337 998492