

**2016 No. 142**

**PENSIONS**

**The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations (Northern Ireland) 2016**

*Made* - - - -

*10th March 2016*

*Coming into operation* -

*6th April 2016*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 11, 12, 23A(1)(b), 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) (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 and shall come into operation on 6th April 2016.

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

2.—(1) The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010(b) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 5E(1)(c) (winding-up lump sum) for sub-paragraph (c) substitute—

“(c) during the period of 12 months beginning with the date on which the winding-up lump sum was paid—

- (i) the worker has ceased to be employed and been re-employed by that person, and
- (ii) after re-employment, either section 3(1)(d) (automatic enrolment) or 5(1A) or (1B)(e) (automatic re-enrolment) of the Act applies to the worker.” .

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(a) 2008 c. 13 (N.I.); section 23A was inserted by section 38(2) of the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)) and section 69A was inserted by section 37(2) of that Act  
(b) S.R. 2010 No. 122; relevant amending Regulations are S.R. 2015 No. 310  
(c) Subsections 5B to 5F were inserted by regulation 5 of S.R. 2015 No. 310  
(d) Section 3(1) was substituted by section 6(1) of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)) and amended by Article 2(1) of S.R. 2014 No. 81  
(e) Subsections (1A) and (1B) of section 5 were inserted by section 5(2) of the Pensions Act (Northern Ireland) 2012

(3) After regulation 5E insert—

#### **“Company directors**

**5EA.**—(1) This regulation applies to a jobholder who holds office as a director of the company by which that jobholder is employed.

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

#### **Limited liability partnerships**

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

- (a) P is a member of a limited liability partnership;
- (b) qualifying earnings are payable to P by that limited liability partnership, and
- (c) P is not treated for income tax purposes as being employed by that limited liability partnership under section 863A of the Income Tax (Trading and other Income) Act 2005(a) (limited liability partnerships: salaried members).

(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”.

(4) In regulation 5F(1)(a) (effect of exercise of discretion) for “or 5E” substitute “, 5E, 5EA or 5EB”.

(5) In regulation 32M(b) (alternative quality requirements for UK defined benefits schemes)—

- (a) in paragraph (3) after “(4)” insert “, (5A)”;
- (b) at the beginning of paragraph (4) insert “Subject to paragraph (5A),”;
- (c) after paragraph (5) insert—

“(5A) Subject to paragraph (5C), where the conditions in paragraph (5B) are met, the employer of the jobholder may choose, notwithstanding paragraph (4), that the relevant members are the members of the scheme who were active members and in contracted-out employment on the effective date of the most recent written report from an actuary.

(5B) The conditions to be met for the purposes of paragraph (5A) are—

- (a) the jobholder was in contracted-out employment on 5th April 2016, and
- (b) the rules of the scheme of which the jobholder is a member have not been amended, on or after the coming into operation of these Regulations, in any way which would mean that the rules of the scheme would not satisfy the contracting-out requirements if those requirements were still in operation.

(5C) Paragraph (5A) applies until the earlier of—

- (a) the date the first written report determining whether there is, or was, a material difference in the cost of providing the benefits accruing for different groups of relevant members over the relevant period, taking into account the criteria mentioned in paragraph (4), is signed by an actuary after 5th April 2016;
- (b) 5th April 2019.

(5D) For the purposes of paragraph (5A), the effective date of the most recent written report is the date by reference to which the information in that report is stated.”;

- (d) in paragraph (6) for “paragraph (4)” substitute “paragraphs (4) and (5A)”;
- (e) in paragraph (9) —

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(a) 2005 c. 5; section 863A was inserted by paragraph 1 of Schedule 17 to the Finance Act 2014 (c. 26)

(b) Regulation 32M was inserted by regulation 10 of S.R. 2015 No. 310

- (i) after “they are” insert “equal to or more than”;
- (ii) for sub-paragraph (b) substitute—  
““(b) basic pay;”;
- (iii) in sub-paragraph (c) omit the words from “pensionable earnings” to “that member’s”;
- (iv) for sub-paragraph (d) substitute—  
“(d) earnings, or”;
- (f) in paragraph (12) after the definition of “basic pay” insert—  
““contracted-out employment” has the meaning given in section 4(1) of the 1993 Act(a)  
(meaning of “contracted-out” employment);  
“contracting-out requirements” means the requirements set out in section 5 of the 1993  
Act(b) (requirements for certification of schemes: general) as they had effect  
immediately before 6th April 2016;”.

### **Amendment of the Employers’ Duties (Implementation) Regulations**

**3.—**(1) The Employers’ Duties (Implementation) Regulations (Northern Ireland) 2010(c) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 3 (early automatic enrolment)—

- (a) in paragraph (4)(b)(d) —
  - (i) at the beginning insert “where, on the date the employer notifies the Regulator in accordance with sub-paragraph (c), the duty in section 3(2) (automatic enrolment) applies in relation to at least one of that employer’s jobholders,”;
  - (ii) for “was” substitute “is”;
- (b) for paragraph (4)(c)(i)(e) substitute—  
“(i) where paragraph (5)(a) or (d) applies, on or before the early automatic enrolment date;”;
- (c) in paragraph (5)(f)—
  - (i) at the end of sub-paragraph (b) omit “or”;
  - (ii) at the end of sub-paragraph (c) insert—  
“or  
(d) in the case of an employer who has no jobholder to whom the duty in section 3(2) (automatic enrolment) applies on the date the employer notifies the Regulator in accordance with paragraph 4(c)(i), any date which is earlier than the staging date corresponding to that employer’s description.”.

(3) In regulation 4 (staging of the employers’ duties) omit—

- (a) paragraph (2);
- (b) the second column of the Table(g) (date before which notification to automatically enrol early must be sent).

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(a) Section 4(1) is substituted by paragraph 7(2) of Schedule 13 to the Pensions Act (Northern Ireland) 2015

(b) Section 5 was amended by Article 133(3) of, and paragraph 14 of Schedule 3 to, the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)), paragraph 38 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671), article 8(2) of S.I. 2006/745, section 12(4) of, and paragraph 4 of Schedule 4 to, the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.)), modified for public service pension schemes by regulation 27 of S.R. 1996 No. 493 and is repealed by paragraph 9 of Schedule 13 to the Pensions Act (Northern Ireland) 2015; *see* S.R. 2016 No. 106 for savings provisions

(c) S.R. 2010 No. 123; relevant amending Regulations are S.R. 2012 Nos. 232 and 332

(d) Paragraph (4)(b) was amended by regulation 3(4)(c)(iii) of S.R. 2012 No. 232 and regulation 2(4)(b) of S.R. 2012 No. 332

(e) Paragraph (4)(c) was substituted by regulation 3(4)(c)(iv) of S.R. 2012 No. 232

(f) Paragraph (5) was added by regulation 3(4)(d) of S.R. 2012 No. 232

(g) The Table was amended by regulation 2(5) of S.R. 2012 No. 332

## **Amendment of the Employers' Duties (Registration and Compliance) Regulations**

**4.**—(1) The Employers' Duties (Registration and Compliance) Regulations (Northern Ireland) 2010(a) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 2 (registration: general)—

(a) in paragraph (1)—

(i) at the beginning of sub-paragraph (a) insert “on or”;

(ii) at the end of sub-paragraph (b) for “, or” substitute “, and”;

(iii) for sub-paragraph (c) substitute—

“(c) on or after an automatic re-enrolment date for that employer.”.

(b) after paragraph (3) add—

“(4) In this Part, “automatic re-enrolment date” means an automatic re-enrolment date occurring by virtue of section 6(1)(b)(b) (timing of automatic enrolment).”.

(3) In regulation 4 (registration: re-registration)—

(a) for paragraph (1) substitute—

“(1) Where regulation 2(1)(c) applies, an employer must provide the information specified in paragraph (3) of this regulation in relation to each of its PAYE schemes—

(a) where it is the employer's first automatic re-enrolment date, within the period of 5 months beginning with the third anniversary of the employer's staging date, and

(b) in any other case, within the period of 5 months beginning with the third anniversary of the employer's previous automatic re-enrolment date,

and the time at which an employer provides that information is referred to in this regulation as the “point of re-registration”.”.

(b) omit paragraph (2);

(c) in paragraph (3)—

(i) in sub-paragraph (c)(c) omit head (iii) and the preceding “and”;

(ii) after sub-paragraph (c) insert—

“(ca) the automatic re-enrolment date;”;

(iii) for paragraph (e) substitute—

“(e) the number of workers in the employer's PAYE scheme who, immediately before the point of re-registration, were active members of a qualifying scheme or, if the employer uses more than one qualifying scheme to comply with the employers' duties, the number of workers in each of those schemes;”.

## **Revocation**

**5.** Regulation 5(3) of the Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2013(d) is revoked.

Sealed with the Official Seal of the Department for Social Development on 10th March 2016

(L.S.)

*Anne McCleary*

A senior officer of the Department for Social Development

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(a) S.R. 2010 No. 186; relevant amending Regulations are S.R. 2012 No. 232

(b) Section 6(1)(b) was amended by section 8 of the Pensions Act (Northern Ireland) 2012

(c) Sub-paragraphs (c) to (e) were substituted by regulation 4(5)(b) of S.R. 2012 No. 232

(d) S.R. 2013 No. 243

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make miscellaneous amendments to three sets of Regulations relating to automatic enrolment.

Regulation 2 amends the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 (“the Automatic Enrolment Regulations”).

Regulation 2(2) amends regulation 5E of the Automatic Enrolment Regulations whereby the employer duty to automatically enrol or re-enrol a worker or jobholder is turned into a discretion where a worker has received a winding-up lump sum in the previous 12 months. The amendment clarifies that the duty is lifted where a worker receives a winding-up lump sum, ceases to be employed and is re-employed by the same employer but becomes eligible for automatic enrolment or re-enrolment during the 12-month period.

Regulation 2(3) inserts regulations 5EA and 5EB into the Automatic Enrolment Regulations, which turn the employer’s duty to automatically enrol or re-enrol a jobholder into a discretion where the jobholder is a director of the company by which that jobholder is employed, or a member of a limited liability partnership and not treated for income tax purposes as being employed by the partnership.

Regulation 2(4) amends regulation 5F of the Automatic Enrolment Regulations so that anything done by the employer when exercising the discretion under regulations 5EA and 5EB is treated as being done in exercise of the duty to automatically enrol or re-enrol a jobholder.

Regulation 2(5) amends regulation 32M of the Automatic Enrolment Regulations, which provides employers with an alternative quality requirement for UK defined benefit schemes based on the costs of accruals, to provide an alternative test for a limited period on the ending of contracting out.

Regulation 3 amends regulations 3 and 4 of the Employers’ Duties (Implementation) Regulations (Northern Ireland) 2010. The amendments remove the requirement on an employer to secure the agreement of the trustees or managers of a pension scheme that it can be used from an early automatic enrolment date where, on the date the employer notifies the Pensions Regulator (“the Regulator”) of the early automatic enrolment date, that employer has no jobholder who qualifies for automatic enrolment. They also allow an employer to notify the Regulator of the early automatic enrolment date at any time on or before that early automatic enrolment date, and allow an employer to choose any date prior to that employer’s staging date as the early automatic enrolment date, where the employer has no jobholder to automatically enrol on the date he notifies the Regulator of the early automatic enrolment date.

Regulation 4 amends the Employers’ Duties (Registration and Compliance) Regulations (Northern Ireland) 2010 so that information can be provided to the Regulator on the staging date, as well as after, and the time at which an employer sends the information required to the Regulator is the same whether or not an employer has any jobholders to re-enrol on the automatic re-enrolment date.

Regulation 5 makes a consequential revocation.

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£4.25

NI201603112 03/2016 19585

<http://www.legislation.gov.uk/id/nisr/2016/142>

ISBN 978-0-33-800475-8



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