

2017 No. 52

PENSIONS

**The Employers' Duties (Implementation) (Amendment)
Regulations (Northern Ireland) 2017**

Made - - - - - *14th March 2017*

Coming into operation - *1st April 2017*

The Department for Communities^(a) makes the following Regulations in exercise of the powers conferred by sections 3(2) and (5), 7(4) and (5), 9(3), 10, 12 and 113(2) of the Pensions (No. 2) Act (Northern Ireland) 2008^(b).

Citation and commencement

1. These Regulations may be cited as the Employers' Duties (Implementation) (Amendment) Regulations (Northern Ireland) 2017 and shall come into operation on 1st April 2017.

Amendment of the Employers' Duties (Implementation) Regulations

2.—(1) The Employers' Duties (Implementation) Regulations (Northern Ireland) 2010^(c) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 1(2) (interpretation) before the definition of "employer" insert—

““deferral date” means the date specified in a notice given by an employer under regulation 4B(1) or (2);”;

(3) In regulation 2 (application of the employers' duties to employers)—

(a) in paragraph (2)(d) after “purposes of these Regulations” insert “(except for regulations 4B and 4C)”;

(b) for paragraph (8)(e) substitute—

“(8) Where—

(a) an employer first pays PAYE income in respect of any worker on or after 1st October 2017, and

(b) the employers' duties do not already apply to that employer,

the employers' duties apply to that employer from the day on which that employer's first worker begins to be employed by that employer.”;

(a) See section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))

(b) 2008 c. 13 (N.I.); section 10 was amended by section 37(1) of the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.))

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

(d) Paragraph (2) was amended by regulation 3(3) of S.R. 2012 No. 232

(e) Paragraph (8) was amended by regulation 2(3)(b) of S.R. 2012 No. 332

- (c) in paragraph (10)(a) for “qualifying earnings are payable to any worker” substitute “the employer’s first worker begins to be employed by the employer”.
- (4) After regulation 4A(b) (staging of the employers’ duties) insert—

“Deferral of automatic enrolment for post-staging employers

4B.—(1) Where—

- (a) an employer (“E”) gives to a worker, on the day on which the worker begins to be employed by E, notice that E intends to defer automatic enrolment for the worker until the deferral date, and
- (b) the requirements in regulation 4C in relation to the notice are met,

the worker’s automatic enrolment date is the deferral date if on that date section 3(c) (automatic enrolment) applies to the worker as a jobholder of E.

(2) Where—

- (a) a worker employed by E becomes a jobholder to whom section 3 applies,
- (b) E gives the worker notice that E intends to defer automatic enrolment until the deferral date, and
- (c) the requirements in regulation 4C in relation to the notice are met,

the worker’s automatic enrolment date is the deferral date if on that date section 3 applies to the worker as a jobholder of E.

(3) If section 3 does not apply to a worker falling within paragraph (1)(a) and (b) or (2)(a) to (c) on the deferral date, arrangements prescribed under section 3(2) do not apply in relation to any employment of the worker by E in the period beginning with the starting day and ending with the deferral date.

(4) A notice under paragraph (1) or (2) may be given on the starting day or within the period of six weeks beginning with the day after the starting day.

(5) The deferral date may be any date in the period of three months beginning with the starting day.

(6) If E gives a worker a notice under paragraph (1), E may not give the worker a notice under paragraph (2) in relation to any occasion on or before the deferral date on which the worker becomes a jobholder to whom section 3 applies.

(7) In this regulation—

- (a) references to “E” (or to an “employer”) are to a person within the meaning of “employer” in section 70(7)—
 - (i) who pays PAYE income, where E’s first worker begins to be employed by E on or after 1st October 2017, or
 - (ii) who does not have a PAYE scheme, where E’s first worker begins to be employed by E after 1st April 2017,

where the employers’ duties did not apply before that date;

(b) “starting day” means—

- (i) in the case of a notice under paragraph (1), the day on which the worker begins to be employed by E, or
- (ii) in the case of a notice under paragraph (2), the day on which the worker becomes a jobholder to whom section 3 applies.

(a) Paragraphs (9) and (10) were added by regulation 2(3)(c) of S.R. 2012 No. 332

(b) Regulation 4A was inserted by regulation 2(6) of S.R. 2012 No. 332

(c) Section 3 was amended by sections 6(1) and (2) and 7(1) of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)) and Article 2(1) of S.R. 2014 No. 81

Deferral of automatic enrolment: notice requirements

4C.—(1) A notice (referred to in this regulation as “the notice”) under regulation 4B(1) or (2) must be in writing.

(2) In the case of workers who are jobholders and who are not active members of a qualifying scheme, the notice must include the information described in paragraph (4) or (6) and the information described in paragraphs (7) to (9).

(3) In the case of workers who are not jobholders and who are not active members of a qualifying scheme, the notice must include the information described in paragraph (5) or (6) and the information described in paragraphs (7) to (9).

(4) The information is a statement that the jobholder may, by giving written notice to the employer, require the employer to make arrangements for the jobholder to become an active member of an automatic enrolment scheme and that the jobholder is entitled to employer’s contributions.

(5) The information is a statement that the worker may, where the worker is working or ordinarily works in Northern Ireland and is aged at least 16 and under 75 and is not a member of a pension scheme that satisfies the requirements of section 9 (workers without qualifying earnings), by giving written notice to the employer, require the employer to make arrangements for the worker to become an active member of such a pension scheme.

(6) The information is a statement—

- (a) that sets out the amount of the lower qualifying earnings limit (“the lower qualifying earnings limit”) specified in section 13(1)(a)(a), and
- (b) that by giving written notice to the employer, the worker who is aged at least 16 and under 75 and—
 - (i) who earns more than the lower qualifying earnings limit 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 is entitled to employer’s contributions; or
 - (ii) who earns no more than the lower qualifying earnings limit and is not a member of a pension scheme that satisfies the requirements of section 9, may require the employer to arrange for that worker to become an active member of such a pension scheme but is not entitled to employer’s contributions.

(7) The information is a statement that the employer has deferred automatic enrolment until the deferral date and which specifies that date.

(8) The information is a statement—

- (a) that sets out the amount of earnings (“the specified amount”) that are payable as specified in section 3(1)(c)(b), and
- (b) that the employer will automatically enrol the worker into an automatic enrolment scheme on the deferral date if, on that date—
 - (i) the worker is aged 22 or more but under state pension age;
 - (ii) the worker is working, or is ordinarily working in Northern Ireland;
 - (iii) earnings of more than the specified amount are payable to the worker, and
 - (iv) the worker is not already an active member of a qualifying scheme.

(9) The information is a statement that a written notice from the worker must be signed by the worker or, if it is given by means of an electronic communication, must include a statement that the worker personally submitted the notice.

(10) In this regulation, “employer” has the meaning given in regulation 4B(7).”.

(a) Section 13(1)(a) was amended by Article 2(a) of S.R. 2015 No. 119

(b) Section 3(1) was substituted by section 6(1) of the Pensions Act (Northern Ireland) 2012 and paragraph (c) was amended by Article 2(1) of S.R. 2014 No. 81

Sealed with the Official Seal of the Department for Communities on 14th March 2017

(L.S.)

Andrew Hamilton

A senior officer of the Department for Communities

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Employers' Duties (Implementation) Regulations (Northern Ireland) 2010 in relation to the date from which the duties to automatically enrol a worker into a pension scheme under the Pensions (No. 2) Act (Northern Ireland) 2008 ("the 2008 Act") first apply to an employer.

Regulation 2(3)(b) changes the date from which the duties first apply to an employer that pays PAYE income, and first did so on or after 1st October 2017, to the date on which such an employer's first worker starts work.

Regulation 2(3)(c) changes the date from which the duties first apply to an employer who does not have a PAYE scheme after 1st April 2017 to the date on which such an employer's first worker starts work.

Regulation 2(4) inserts provision to enable an employer that employs its first worker after 1st April 2017 (in the case of an employer who does not have a PAYE scheme) or on or after 1st October 2017 (in the case of a PAYE income paying employer) to defer the date from which the automatic enrolment duties apply to new workers (inserted regulation 4B(1)) and workers who become jobholders under section 3 of the 2008 Act (inserted regulation 4B(2)).

Regulation 2(4) also makes provision to enable an employer to defer the date from which the duties under sections 2 to 9 of the 2008 Act apply for up to three months from the date that the worker starts work for the employer (in the case of inserted regulation 4B(1)) and from the date that the worker becomes a jobholder under section 3 of the 2008 Act (in the case of inserted regulation 4B(2)).

Regulation 2(4) makes further provision (by inserting regulation 4C) in relation to the various requirements of any notice to defer given under inserted regulation 4B and the different circumstances in which the different requirements apply.

An assessment of the impact of these Regulations is detailed in a Regulatory Impact Assessment, a copy of which is laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Assessment are available from the Department for Communities, Social Security Policy and Legislation Division, Level 8, Causeway Exchange, 1-7 Bedford Street, Belfast BT2 7EG or from the website: <https://www.communities-ni.gov.uk/articles/pension-information>. A copy of the Assessment is also annexed to the Explanatory Memorandum which is available alongside this Statutory Rule on the website: <http://www.legislation.gov.uk/nisr>

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£4.25

NI2017031419 03/2017 19585

<http://www.legislation.gov.uk/id/nisr/2017/52>

ISBN 978-0-33-800735-3



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