

Draft Order laid before Parliament under section 97(7) of the Pensions Act 2008, for approval by resolution of each House of Parliament.

This Draft Statutory Instrument has been printed in substitution of the Draft Statutory Instrument of the same title, published on 1st February 2012, and is being issued free of charge to all known recipients of that Draft Statutory Instrument.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2012 No. []

PENSIONS

The Automatic Enrolment (Offshore Employment) Order 2012

Made - - - - *****

Coming into force - - *1st July 2012*

At the Court at Buckingham Palace, the ***** day of *****

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 97(7) of the Pensions Act 2008(a) a draft of this Order was laid before and approved by a resolution of each House of Parliament.

Accordingly, Her Majesty, in exercise of the powers conferred on Her by sections 97(1), (4) and (5) and 144(2) of the Pensions Act 2008, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, commencement, expiry and interpretation

1.—(1) This Order may be cited as the Automatic Enrolment (Offshore Employment) Order 2012 and comes into force on 1st July 2012.

(2) Subject to article 5, this Order ceases to have effect on 1st July 2020.

(3) In this Order—

“the 2008 Act” means the Pensions Act 2008;

“the (No. 2) 2008 Act” means the Pensions (No. 2) Act (Northern Ireland) 2008(b);

“the English area”, “the Scottish area” and “the Northern Irish area” have the same meaning in each case as in article 1(2) of the Civil Jurisdiction (Offshore Activities) Order 1987(c).

(a) 2008 c. 30.
(b) 2008 c.13 (N.I.).
(c) S.I. 1987/2197.

Application of relevant provisions

2.—(1) Subject to paragraph (2), the relevant provisions apply in relation to a person in offshore employment^(a)—

- (a) in the English area or the Scottish area as if the reference in section 1(1)(a) of the 2008 Act to a worker “who is working or ordinarily works in Great Britain under the worker’s contract” included a reference to such a person; and
- (b) in the Northern Irish area as if the reference in section 1(1)(a) of the (No. 2) 2008 Act to a worker “who is working or ordinarily works in Northern Ireland under the worker’s contract” included a reference to such a person.

(2) The relevant provisions do not apply in relation to a person in offshore employment where the employment is connected with the exploration or exploitation, in a foreign sector of the continental shelf, of a cross-boundary petroleum field.

(3) The relevant provisions apply in relation to—

- (a) a person in offshore employment as referred to in paragraphs (1) and (2), whether or not that person is a British subject; and
- (b) the employer of a person in offshore employment as referred to in paragraphs (1) and (2), where that employer is a body corporate, whether or not the body is incorporated under the law of a part of the United Kingdom.

(4) The relevant provisions apply as referred to in paragraph (3) even where the application may affect the person’s or employer’s activities outside the United Kingdom.

(5) For the purposes of this article, “cross-boundary petroleum field” and “foreign sector of the continental shelf” have the same meaning in each case as in section 201 of the Employment Rights Act 1996^(b).

Jurisdiction

3.—(1) In Great Britain—

- (a) the employment tribunals have jurisdiction to determine complaints;
- (b) the Employment Appeal Tribunal has jurisdiction to determine appeals; and
- (c) the Tribunal has jurisdiction to determine references made to it,

for the purposes of Part 1 of the 2008 Act, or any enactment as amended by that Part, as that Part or that enactment applies by virtue of this Order.

(2) In Northern Ireland—

- (a) proceedings may be brought in any place in Northern Ireland for an offence;
- (b) the industrial tribunals have jurisdiction to determine complaints; and
- (c) the Tribunal has jurisdiction to determine references made to it,

for the purposes of Part 1 of the (No. 2) 2008 Act, or any enactment as amended by that Part, as that Part or that enactment applies by virtue of this Order.

(3) In this article “Tribunal”—

- (a) in relation to Great Britain, has the meaning given in section 44(4A)^(c) of the 2008 Act; and

(a) See section 97 of the 2008 Act for the meaning given to “relevant provisions” and “offshore employment”.
(b) 1996 c.18. Subsection (1) was substituted, and subsection (5) repealed, by the Petroleum Act 1998 (c.17), Schedule 4, paragraph 40, but the amending provisions are not yet in force. There are amendments to subsection (3) but they are not relevant to this Order.
(c) Subsection (4A) was inserted into section 44 of the 2008 Act by S.I. 2010/22. The functions of the Pensions Regulator Tribunal, in so far as relating to Great Britain, were transferred to the Upper Tribunal and the First-Tier Tribunal by the Tribunals Courts and Enforcement Act 2007 (c.15), section 30.

- (b) in relation to Northern Ireland, has the meaning given in section 44(4A)(a) of the (No. 2) 2008 Act.

Review

- 4.—(1) Before the end of the review period, the Secretary of State must—
- (a) carry out a review of this Order;
 - (b) set out the conclusions of the review in a report; and
 - (c) publish the report.
- (2) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by this Order;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (3) “Review period” means the period of six years beginning with 1st July 2012.

Savings

5. This Order does not cease to have effect in relation to an employer and a person in offshore employment whom it employs where, immediately before 1st July 2020—
- (a) the person was a jobholder and an active member of a qualifying scheme; or
 - (b) the employer was required to make arrangements in respect of the person under—
 - (i) in relation to Great Britain, section 5(2) (where section 5 applies by virtue of section 5(1A) or (1B))(b), 7(3) or 9(2) of the 2008 Act; or
 - (ii) in relation to Northern Ireland, any corresponding provisions in force there.

Name
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order in Council has the effect of extending the provisions of Part 1 of the Pensions Act 2008 and Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008 to workers who work, or ordinarily work, in the territorial sea of the United Kingdom or the United Kingdom sector of the continental shelf, where the employment is connected with the exploration of the seabed or its subsoil, or the exploitation of their natural resources.

Article 3 makes provision in relation to tribunals and the criminal courts. It provides that, in Great Britain, the employment tribunal, Employment Appeal Tribunal and the Tribunal have jurisdiction for the purposes of the Pensions Act 2008. It also provides that, in Northern Ireland, proceedings may be brought in any place in Northern Ireland and the industrial tribunal and the Tribunal have jurisdiction, for the purposes of the Pensions (No. 2) Act (Northern Ireland) 2008.

(a) Subsection (4A) was inserted into section 44 of the (No. 2) 2008 Act by the Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4 N. I.), Schedule 1, paragraph 31(c). The functions of the Pensions Regulator Tribunal, in so far as relating to Northern Ireland, were transferred to the Upper Tribunal and the First-Tier Tribunal by that Act of 2010, section 1.

(b) Subsections (1A) and (1B) of section 5 were inserted by the Pensions Act 2011 (c. 19), section 4(2).

Article 1(2) provides that this Order is to cease to have effect eight years after it comes into force (1st July 2020). Article 5 provides that the Order continues to have effect in the specified cases.

Article 4 requires the Secretary of State to review the operation and effect of this Order and publish a report within the period of six years beginning with 1st July 2012. Following the review it will fall to the Secretary of State to consider whether the Order should be allowed to expire as article 1(2) provides, be revoked early, or continue in force with or without amendment. A further instrument would be needed to continue the Order in force with or without amendments or to revoke it early.

An assessment of the impact of this legislation on the private sector and civil society organisations has been made. A copy of this impact assessment is available in the libraries of both Houses of Parliament, and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk. Copies may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.

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