
STATUTORY INSTRUMENTS

2010 No. 772

**The Occupational and Personal Pension Schemes
(Automatic Enrolment) Regulations 2010**

[^{F1}PART 1A

Exemption [^{F2}and Exceptions]

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| <p>F1 Pt. 1A inserted (2.7.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) (No. 2) Regulations 2012 (S.I. 2012/1477), regs. 1, 2</p> <p>F2 Words in Pt. 1A heading added (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, 4</p> |
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Exemption of European employers

5A. Sections 2(1), 3(2), 5(2), 7(3), 9(2) and 54 of the Act (employer’s obligations regarding membership of a qualifying scheme) do not apply in relation to a person’s employment of an individual in relation to whom the person is a European employer.]

[^{F3}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 six 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) of the Act are to be read as if for “must” there were substituted “may”;
- (b) section 7(3) (jobholder’s right to opt in) of the Act 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of employment of that jobholder has been given (and the jobholder and the employer have not agreed that such notice is withdrawn)”.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) of the Act 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of employment of that worker has been given (and the worker and the employer have not agreed that such notice is withdrawn)”.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and employer agree that the notice of termination of the jobholder’s employment referred to in this regulation is withdrawn, paragraphs (1) and (2) cease to apply on the date of that agreement and, subject to paragraph (4), for the purposes of sections 3(2) and 5(2) of the Act, as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.

F3 Regs. 5B-5F inserted (1.4.2015) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) \(Amendment\) Regulations 2015 \(S.I. 2015/501\)](#), regs. 1, 5

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 of the Act (jobholder’s right to opt out).

(3) Where this regulation applies in relation to the jobholder mentioned in paragraphs (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) and 5(2) of the Act are to be read as if for “must” there were substituted “may”; and
- (b) after the expiry of that period, section 3(2) of the Act does not apply.

F3 Regs. 5B-5F inserted (1.4.2015) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) \(Amendment\) Regulations 2015 \(S.I. 2015/501\)](#), regs. 1, 5

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 (primary protection) or 12 (enhanced protection) of Schedule 36 (pension schemes etc: transitional provisions and savings) to the Finance Act 2004;
- (b) paragraph 14 of Schedule 18 to the Finance Act 2011 (fixed protection 2012);
- (c) paragraph 1 of Schedule 22 to the Finance Act 2013 (fixed protection 2014);
- (d) paragraph 1 of Schedule 6 to the Finance Act 2014 (individual protection 2014).

[paragraph 1 (fixed protection 2016) or 9 (individual protection 2016) of Schedule 4 to the ^{F4}(e) Finance Act 2016.]

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

F3 Regs. 5B-5F inserted (1.4.2015) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) \(Amendment\) Regulations 2015 \(S.I. 2015/501\)](#), regs. 1, 5

F4 [Reg. 5D\(1\)\(e\)](#) inserted (6.3.2017) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) \(Amendment\) Regulations 2017 \(S.I. 2017/79\)](#), regs. 1, 2

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 of Schedule 29 to the Finance Act 2004 (winding-up lump sums) (“paragraph 10”);
 - (b) at the time the winding-up lump sum was paid, the worker was employed by the person mentioned in sub-paragraph (1)(c) of paragraph 10; and
 - [^{F5}(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) (automatic enrolment) or 5(1A) or (1B) (automatic re-enrolment) of the Act applies to the worker.]
- (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) and 5(2) of the Act are to be read as if for “must” there were substituted “may”; and
 - (ii) sections 7 and 9 of the Act do not apply; and
 - (b) after the expiry of that period, section 3(2) of the Act does not apply.

F3 Regs. 5B-5F inserted (1.4.2015) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) \(Amendment\) Regulations 2015 \(S.I. 2015/501\)](#), regs. 1, 5

F5 Reg. 5E(1)(c) substituted (6.4.2016) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) \(Miscellaneous Amendments\) Regulations 2016 \(S.I. 2016/311\)](#), regs. 1(1), 4(2)

[^{F6}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) of the Act are to be read as if for “must” there were substituted “may”.

F3 Regs. 5B-5F inserted (1.4.2015) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) \(Amendment\) Regulations 2015 \(S.I. 2015/501\)](#), regs. 1, 5

F6 Reg. 5EA - Reg. 5EB inserted (6.4.2016) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) \(Miscellaneous Amendments\) Regulations 2016 \(S.I. 2016/311\)](#), regs. 1(1), 4(3)

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 (limited liability partnerships: salaried members).

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

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| F3 | Regs. 5B-5F inserted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501) , regs. 1, 5 |
| F6 | Reg. 5EA - Reg. 5EB inserted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/311) , regs. 1(1), 4(3) |

Effect of exercise of discretion

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

- (a) exercises a discretion under section 3(2) or 5(2) of the Act, as conferred by regulations 5B, 5C, 5D^{F7}, 5E, 5EA or 5EB], so that the prescribed arrangements are made whereby the jobholder will become an active member of an automatic enrolment scheme;
- (b) makes the arrangements referred to in section 7(3) of the Act 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) of the Act 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) of the Act or were required to make the arrangements in section 7(3) or 9(2) of the Act but for the provisions of this Part.]

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| F3 | Regs. 5B-5F inserted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501) , regs. 1, 5 |
| F7 | Words in reg. 5F(1)(a) substituted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/311) , regs. 1(1), 4(4) |

Changes to legislation:

There are currently no known outstanding effects for the The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010, PART 1A.