

2015 No. 501

PENSIONS

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

<i>Made</i>	- - - -	<i>4th March 2015</i>
<i>Laid before Parliament</i>		<i>9th March 2015</i>
<i>Coming into force</i>	- -	<i>1st April 2015</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 3(5), 4(1), (2) and (3), 5(2), 9(3), 10, 23A(1)(a) and (b), (2) and (4)(b), 25, 30(7A), 87A(1), (3) and (4), 99 and 144(2) and (4) of the Pensions Act 2008(a).

Citation and commencement

1. These Regulations may be cited as the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 and come into force on 1st April 2015.

Amendment of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010

2. The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(b) are amended in accordance with the following regulations.

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”.

Insertion of regulations 5B to 5F

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

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- (a) 2008 c. 30. Section 4 was substituted by section 6(2) of the Pensions Act 2011 (c. 19). Section 10(1) and (2) was amended by section 38(1) of the Pensions Act 2014 (c. 19) (‘the 2014 Act’). Section 23A was inserted by section 39(2) of the 2014 Act. Section 87A was inserted by section 38(2) of the 2014 Act. Section 99 is cited for the meaning given to “employer”, “jobholder”, “prescribed”, “regulations” and “worker”.
- (b) S.I. 2010/772.
- (c) Regulation 2 was substituted by S.I. 2012/215.
- (d) Part 1A was inserted by S.I. 2012/1477.
- (e) Regulation 5A was inserted by S.I. 2012/1477.

“Notice of termination of employment

5B.—(1) This regulation applies, subject to paragraph (3), where notice of termination of a worker’s(a) 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.

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.

(a) A ‘worker’ includes a jobholder. See section 1 of the Pensions Act 2008.

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(a);
- (b) paragraph 14 of Schedule 18 to the Finance Act 2011(b)(fixed protection 2012);
- (c) paragraph 1 of Schedule 22 to the Finance Act 2013(c) (fixed protection 2014);
- (d) paragraph 1 of Schedule 6 to the Finance Act 2014(d) (individual protection 2014).

(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”.

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 (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
- (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) 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.

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 or 5E, 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

(a) 2004 c. 12. Paragraph 12 was amended by the Finance Act 2005 (c. 7), Schedule 10, paragraph 53(3) to (6); the Finance Act 2007 (c. 11), Schedule 20, paragraph 17, and Schedule 27, Part 3(2); the Equality Act 2010 (c. 15), Schedule 26, Part 1, paragraph 59; and the Corporation Tax Act 2010 (c. 4), Schedule 1, paragraph 432(2).

(b) 2011 c. 11. Paragraph 14 was amended by the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Amendment) Regulations (S.I. 2013/1740), regulation 2(2) to (5); and the Finance Act 2013 (c. 29), section 47(2).

(c) 2013 c. 29.

(d) 2014 c. 26.

(e) Paragraph 10 was amended by the Finance Act 2007, Schedule 20, paragraph 12 and Schedule 27, Part 3(2); and the Finance Act 2011, Schedule 16, paragraph 30 and Schedule 18, paragraph 5.

- (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.”.

Revocation of regulations 14 and 17

6. Regulations 14(a) (jobholders excluded from automatic re-enrolment) and 17(b) (information on the right to opt in to pension saving) are revoked.

Substitution of regulation 21

7. For regulation 21(c) (information) substitute—

“Information to be given to workers

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

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

8. In regulation 23(3) for “one month” substitute “six weeks”.

Amendment of regulation 24

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

- (a) for paragraph (1) substitute—

“(1) A notice under section 4(1), (2) or (3) of the Act (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; and

(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”; and

(a) Regulation 14 was substituted by S.I. 2012/215.
(b) Regulation 17 was amended by S.I. 2012/215 and S.I. 2013/2556.
(c) Regulation 21 was amended by S.I. 2012/215 and S.I. 2013/2556.
(d) Regulation 24 was substituted by S.I. 2012/215.

- (b) omit paragraph (2).

Amendment of regulation 27

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

Alternative quality requirements for UK defined benefits schemes

11. After regulation 32K(b) (definitions for Part 7A) 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) of the Act (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 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.

(3) For the purposes of paragraph (2)(c), pensionable age is to be determined in accordance with paragraph 1 of Schedule 4 to the Pensions Act 1995(d) (pensionable ages for men and women).

(a) Regulation 27 was substituted by S.I. 2012/215.
(b) Regulation 32K was inserted by S.I. 2012/1257.
(c) See section 16(1)(c) of the Pensions Act 2008 in relation to the quality requirement.
(d) 1995 c. 26. Paragraph 1 was amended by the State Pension Credit Act 2002 (c. 16), Schedule 2, paragraph 39; the Welfare Reform Act 2007 (c. 5), Schedule 3, paragraph 13; the Pensions Act 2007 (c. 22), Schedule 3, paragraph 4; the Pensions Act 2011 (c. 19), section 1; and section 26 and Schedule 12, paragraph 30 of the 2014 Act.

32M.—(1) A defined benefit scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if section 23A(1)(b) of the Act 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.

(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 3 to the 1993 Act (methods of revaluing accrued pension benefits)(a);
- (f) the method of an annual increase in the rate of pension provided for under section 51 of the 1995 Act (b) (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 in 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) 1993 c. 48. Schedule 3 was amended by the Pensions Act 2008, section 101(1)(a) and Schedule 2, paragraphs 1 to 3, the Pensions Act 2011, section 19(4) to (6) and the Marriage (Same Sex Couples) Act 2013 (c.30), section 11(4) and Schedule 4, paragraphs 18 and 26.

(b) Section 51 was amended by the Welfare Reform and Pensions Act 1999 (c.30), section 84(1), Schedule 12, paragraphs 43 and 51, the Child Support, Pension and Social Security Act 2000 (c. 19), section 51(1), the Pensions Act 2004 (c. 35), section 278(1) and (2)(b) and (c) and (3) to (6), S.I. 2006/745, article 10(1) and (2), the Pensions Act 2011, section 21(1) to (3) and the 2014 Act, section 24(1) and Schedule 13, paragraphs 58 and 59(1) and (2).

(c) 2000 c. 7.

- (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 per cent of the earnings of those members in the relevant period;
- (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) of the Social Security Contributions and Benefits Act 1992(a) (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) of that Act (b) (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 per cent.;
- (b) paragraph (9)(b), 11 per cent.;
- (c) paragraph (9)(d), 9 per cent.; and
- (d) paragraph (9)(e), 13 per cent..

(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 per cent.

(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 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;

(a) Section 5 was substituted by the Welfare Reform and Pensions Act 1999, Schedule 9, paragraph 1 and amended by the National Insurance Contributions Act 2008 (c. 16), sections 1(1)(a) and 4(2) and Schedule 2.

(b) 1992 c. 4. Section 44(4) was substituted by the Social Security Act 1998 (c. 14), section 68 and amended by the Welfare Reform Act 2007 (c. 5) section 67 and Schedule 8 and S.I. 2014/516, article 4(1) and (3).

“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 180 of the 1993 Act (normal pension age);

“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.”.

Revocation of regulation 33

12. Regulation 33(a) (information) is revoked.

Amendment of regulation 40

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

Amendment of regulation 45

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

- (a) in paragraph (3)(a) for “23 (qualifying requirement: UK defined benefits schemes)” substitute “23A”;
- (b) in paragraph (4) for “section 21 of the Act is” substitute “sections 21 and 23A of the Act are”; and
- (c) in paragraph (6)(b) for “23” substitute “23A”.

Amendment of Schedule 2

15. In Schedule 2(b) (information)—

- (a) In the reference note at the head of Schedule 2, omit “17,” and for “, 27 and 33” substitute “and 27”;
- (b) omit paragraphs 3, 7, 19, 23 and 25;
- (c) for paragraph 1 substitute—

“1 A statement that the jobholder has been, or will be, enrolled into a pension scheme.”;
- (d) in paragraph 6, for “in accordance with section 192 (relief at source) or 193 (relief under net pay arrangements) of the Finance Act 2004” substitute “on employee contributions.”; and
- (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) of the Act (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) of the Act (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 of the Act,

(a) Regulation 33 was substituted by S.I. 2012/215.

(b) Schedule 2 was inserted by S.I. 2012/215.

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.”.

Signed by authority of the Secretary of State for Work and Pensions

4th March 2015

Steve Webb
Minister of State,
Department of Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (S.I. 2010/772) (“the 2010 Regulations”), by reducing the information requirements on employers, introducing certain circumstances where the employer duty is turned into a discretion and also prescribing alternative quality requirements for defined benefits schemes.

Regulation 5 makes provision under section 87A of the Pensions Act 2008 (“the 2008 Act”) introducing further exceptions to the employer duties contained in that Act. Where those exceptions apply, the relevant sections of the Act are modified.

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 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 also 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. Regulation 5 also provides that where the employer exercises the power to make arrangements for the jobholder or worker to join a relevant scheme, the employer is to be treated as if they were discharging a duty. Regulation 6 makes a consequential revocation to regulation 14 of the 2010 Regulations.

Regulation 8 amends 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 one month to six weeks.

Regulation 11 introduces alternative quality requirements for UK defined benefits schemes under section 23A(1)(a) and (b) of the 2008 Act, by inserting new regulations 32L and 32M in 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 new 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 new regulation 32M. New regulation 32M provides definitions for terms used in that requirement. Regulation 13 of these regulations makes consequential changes and regulation 14 makes similar changes in respect of non-UK schemes to reflect the new requirements.

Regulations 3, 7 to 10, 12 and 15 amend the requirements imposed on employers under the 2010 Regulations 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.

Regulation 3 amends the enrolment information to be given to all jobholders upon automatic enrolment and re-enrolment. Regulations 6 and 7 revoke regulation 17 of the 2010 Regulations and substitute a new regulation 21 so that the information to be given to jobholders and workers about opting in or joining pension saving may be combined. The amendments made by regulations 9 and 10 reduce the information to be given to employees in the cases of transition and

postponement. The amendment made by regulation 12 removes the requirement to give any information to jobholders who are already active members of a qualifying scheme. Regulation 15 amends Schedule 2 by removing a number of paragraphs and simplifying the statements of information to be given.

Assessments of the impact of this legislation on business and civil society organisations have been made. Copies of these assessments are available in the libraries of both Houses of Parliament and alongside this 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.

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