

2017 No. 347

PENSIONS

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

<i>Made</i>	- - - -	<i>9th March 2017</i>
<i>Laid before Parliament</i>		<i>10th March 2017</i>
<i>Coming into force</i>	- -	<i>1st April 2017</i>

The Secretary of State 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 144(2) and (4) of the Pensions Act 2008(a).

Citation and commencement

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

Amendment of the Employers' Duties (Implementation) Regulations 2010

2. The Employers' Duties (Implementation) Regulations 2010(b) are amended in accordance with these Regulations.

Amendment of regulations 1 and 2

3.—(1) In regulation 1(2) (interpretation)(c)—

(a) in the appropriate place, insert—

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

(b) in the definition of “employer”, after “employer” insert “, except in regulations 4B and 4C,”.

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

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

(b) for paragraph (8) substitute—

“(8) Where—

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

(a) 2008 c. 30. Section 10 was amended by section 38 of the Pensions Act 2014 (c.19).

(b) S.I. 2010/4.

(c) Regulation 1(2) was amended by S.I. 2012/215 and 2012/1813.

(d) Regulation 2 was amended by S.I. 2012/215 and 2012/1813.

- (b) the employers' duties do not already apply to that employer, the employers' duties apply to that employer from the day on which the employer's first worker begins to be employed by the employer.”;
- (c) in paragraph (10), for “qualifying earnings are payable to any worker” substitute “the employer's first worker begins to be employed by the employer”.

Deferral of automatic enrolment for post-staging employers

4. After regulation 4A(a) 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 of the Act (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 of the Act 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 of the Act applies to the worker as a jobholder of E.

(3) If section 3 of the Act 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) of the Act 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 falling within the meaning of “employer” in section 88(7) of the Act—
 - (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—

(a) Regulation 4A was inserted by S.I. 2012/1813.

- (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 of the Act applies.

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) 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) A statement that the worker may, where he or she is working, or ordinarily works, in Great Britain 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 of the Act, 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) 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) of the Act^(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 of the Act, 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) A statement that the employer has deferred automatic enrolment until the deferral date and which specifies that date.

(8) A statement—

- (a) that sets out the amount of earnings (“the specified amount”) that are payable as specified in section 3(1)(c) of the Act^(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 Great Britain;
 - (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.

^(a) Section 13(1)(a) was amended by S.I. 2015/468.

^(b) Section 3(1) was substituted by section 5 of the Pensions Act 2011 (c.19) and paragraph (c) was amended by S.I. 2014/623.

(9) 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).”.

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

Richard Harrington
Parliamentary Under Secretary of State
Department for Work and Pensions

9th March 2017

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Employers’ Duties (Implementation) Regulations 2010 (S.I. 2010/4) (“the 2010 Regulations”) with respect to the date the duties under the Pension Act 2008 to automatically enrol a worker into a pension scheme first apply to an employer.

Regulation 3(2)(b) changes the date 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 3(2)(c) changes the date the duties first apply to an employer who does have a PAYE scheme after 1st April 2017 to the date on which such an employer’s first worker starts work.

Regulation 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 on which the automatic enrolment duties apply to new workers (inserted regulation 4B(1)) and workers who become jobholders under section 3 of the Pensions Act 2008 (inserted regulation 4B(2)).

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

Regulation 4 also makes provision (by inserting regulation 4C into the 2010 Regulations) about the various requirements of any notice to defer that is given under the inserted regulation 4B and the different circumstances in which the different requirements apply.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk and copies can be obtained from the Department for Work and Pensions, First Floor, Caxton House, Tothill Street, London, SW1H 9NA.

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