

These notes refer to the Pensions (No. 2) Act (Northern Ireland) 2008 (c.13) which received Royal Assent on 15 December 2008

Pensions (No. 2) Act (Northern Ireland) 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 1 – Pension Scheme Membership for Jobholders

CHAPTER 1 – Employers’ Duties

Section 1: Jobholders

This section defines “jobholder” for the purpose of the employer duty as a worker who ordinarily works in Northern Ireland, is aged between 16 and 75 and who earns qualifying earnings (as defined in [section 13](#)). This section also provides that where a jobholder has more than one employer, the employer duty provisions apply separately in relation to each employment.

Section 2: Continuity of scheme membership

This section prevents an employer in any way facilitating the end of a jobholder’s active membership of a qualifying scheme or causing a scheme to cease to be a qualifying scheme (by action or omission) without putting the member into another qualifying scheme (within a time period to be prescribed by the Department). This means that employers have an ongoing duty to ensure that jobholders always have access to a qualifying scheme. This duty does not apply if the jobholder ends membership of their own accord and the duty only applies so long as the jobholder is employed by the employer.

Section 3: Automatic enrolment

[Section 3](#) introduces the employer obligation to automatically enrol jobholders aged between 22 and state pension age into a scheme that fulfils the criteria for an “automatic enrolment scheme” (see [section 17](#)). Automatic enrolment must take place when the individual first meets the relevant criteria (i.e. is a jobholder, is over 22 and is paid qualifying earnings) in that employment. This is known as the “automatic enrolment date” ([subsection \(7\)](#)).

The section contains a power which allows the Department to set out in regulations the steps the employer must take to arrange for the jobholder to be automatically enrolled ([subsection \(2\)](#)).

This obligation does not apply if, within a prescribed period, the jobholder has been an active member of a qualifying scheme in that employment, but chose to end membership (*subsection (4)*). This is to prevent jobholders being automatically enrolled into a scheme soon after they decided to leave.

The employer may be required, as part of the regulated automatic enrolment process, to provide prescribed information to any person, in particular the trustees or managers of an occupational pension scheme or the provider of a personal pension scheme (*subsection (5)*). This will enable the provision of information about a jobholder to the scheme to enable their enrolment.

There is a power which enables the Department to make regulations to deem an agreement to exist between the jobholder and the provider for the purposes of *subsection (2)* where the employer fulfils their employer duty obligation by automatically enrolling the jobholder into a personal pension scheme that meets prescribed conditions (*subsection (6)*).

Section 4: Postponement of automatic enrolment

Section 3 establishes that the effective date of automatic enrolment must be the first day on which the jobholder becomes eligible. *Section 4*, however, provides for the possibility of delaying initial automatic enrolment in circumstances prescribed in regulations. The period of permitted deferral will be established in regulations.

Employers that are permitted to delay automatic enrolment may be required to ensure that members remain in such a scheme for a prescribed period of time, unless the jobholder leaves that employment or chooses to leave the scheme. This will enable the member to make up pension savings foregone during the initial delay period.

Section 4 will operate as part of the ongoing duty and not just during the implementation period.

Section 5: Automatic re-enrolment

This section sets out the duty on employers to periodically automatically “re-enrol” into an automatic enrolment scheme jobholders who are aged at least 22 and under pensionable age who are not already members of a qualifying scheme.

As with automatic enrolment, this obligation does not apply if the jobholder chose to end membership, in that employment, within a prescribed period before the re-enrolment date (*subsection (4)*). This is to prevent re-enrolment soon after the jobholder has chosen to leave the scheme.

There is a power which enables the Department to make regulations to deem an agreement to exist between the jobholder and the provider for the purposes of *subsection (2)* where the employer fulfils their employer duty obligation by automatically enrolling the jobholder into a personal pension scheme that meets prescribed conditions (*subsection (7)*).

Section 6: Timing of automatic re-enrolment

Section 6 provides that regulations will determine that re-enrolment will not occur more frequently than once every three years for either the jobholder or the employer. It then sets out exceptions whereby regulations may be made to enable re-enrolment to take place more frequently than once in a three year period.

Section 7: Jobholder's right to opt in

There may be jobholders who are not participating in workplace saving because they opted out or cancelled their active membership, or do not qualify for automatic enrolment because they are aged between 16 and 22 or between pensionable age and age 75.

Section 7 allows such jobholders to require their employer to make arrangements to enrol them into an automatic enrolment scheme by giving them notice. The jobholder can give notice to opt in under this section more than once in a 12 month period, although the employer is not obliged to accept more than one notice in 12 months. Therefore, employers are not required to keep enrolling a jobholder who has opted out a number of times in the same year.

This process, the details of the notice required and the date from which membership must be effected are to be prescribed in regulations (*subsection (4)*).

Section 8: Jobholder's right to opt out

This section establishes the right of a jobholder who has been automatically enrolled (or re-enrolled) into an automatic enrolment workplace pension scheme to opt out of that membership by providing a signed notice to their employer within a prescribed period indicating that they choose not to participate. The form and content of this notice will be set out in regulations, as will the period during which they can choose to opt out, to whom the jobholder must give notice of opt-out and arrangements which must be made to give effect to an opt out decision. The opt-out notice must include information relating to the effect of opting out on the jobholder. Opting out in this context refers to the specific decision not to participate in a pension scheme from the point of enrolment. Once in a scheme, an active member is subsequently free to cancel membership at any time and this section does not interfere with that established right.

Once a jobholder has opted out they will be treated as if they had never been a member of that qualifying scheme. In effect this means that they will not have any rights in the scheme and any contributions collected from the jobholder and the employer will be refunded (*subsection (2)(b)*).

Regulations will also establish how and by when refunds must be made and how they are calculated.

Section 9: Workers without qualifying earnings

There may be people who do not qualify for automatic enrolment and who are not participating in workplace saving. Although they ordinarily work in

Northern Ireland and are aged at least 16 and under 75 (two of the three qualifying conditions for a jobholder in *section 1*) they do not have qualifying earnings, as defined in *section 13*.

Section 9 allows workers without qualifying earnings to require their employer to make arrangements to enrol them into a pension scheme by giving notice. The worker may give notice to opt in under this section more than once in a 12 month period, although the employer is only obliged to act on one request in a 12 month period. This doesn't prohibit the employer allowing workers to join the scheme at other times by agreement. An employer is not obliged to make any matching contribution but may choose to do so.

The enrolment process, the details of the notice required and the date from which membership must be effected are to be prescribed in regulations (*subsection (3)*).

For the purposes of this section a pension scheme may be either an occupational pension scheme, or a personal pension scheme registered under the Finance Act 2004. Also, a personal pension scheme must have direct payment arrangements, within the meaning of section 107A of the Pension Schemes (Northern Ireland) Act 1993, between the worker and the employer. "Direct payment arrangements" are either where the employer makes a contribution and sends it to the worker's scheme or where the employer deducts contributions from the worker's earnings and forwards these to the worker's scheme on behalf of the worker.

Section 10: Information to be given to workers

This section provides that regulations must require information to be given to the jobholder about the effect on them of automatic enrolment, re-enrolment, postponement of automatic enrolment, giving notice to opt in and the right to opt out. This might include, for example, information about the scheme into which they have been enrolled, what will happen next and their right to opt out of pension saving. The regulations will also prescribe who must provide the information and when it must be provided.

Section 11: Information to be given to the Pensions Regulator

Section 11 gives the Department power to make regulations requiring employers to provide information to the Pensions Regulator about how they are complying, or intend to comply, with the employer duties, including information relating to the pension schemes that are to be used. An example of information that may be required is information about the scheme into which an employer will be automatically enrolling jobholders.

This section works with the provisions in Chapters 2 and 4 of this Part, by enabling the Regulator to obtain the information needed to support the compliance regime.

Section 12: Introduction of employers' duties

This section provides the Department with a power to make regulations permitting employers of any description to start discharging their duties (including those on continuity of scheme membership, automatic enrolment and re-enrolment, and allowing opt-in and opt-out) after other employers. This will allow the introduction of the employer duties to be staged over a period of time.

Section 13: Qualifying earnings

This section defines qualifying earnings, by reference to an earnings band, with lower and upper limits of £5,035 and £33,540 per annum (in 2006/07 earnings terms), on which pensions contributions will be calculated for money purchase schemes. Having qualifying earnings (i.e. above £5,035) is a criterion of being a "jobholder" and so is a factor in determining whether a worker is to be automatically enrolled.

The section defines "earnings" as monetary sums comprising: wages/salary, commissions, bonuses, overtime and certain statutory benefits. It also enables the Department to set out in regulations other sums that can be considered as part of "earnings".

Section 14: Review of qualifying earnings band

Section 14 of the Pensions Act 2008 requires the Secretary of State to review annually the value of the qualifying earnings lower and upper limits and amend them to maintain their value. *Section 14* enables the Department to make corresponding provision for Northern Ireland.

Section 15: Pay reference period

The pay reference period is the period of earnings over which the calculation is made to (a) determine whether the jobholder should be automatically enrolled (i.e. with earnings more than £5,035 per annum) and (b) calculate the level of contributions that the jobholder and employer need to pay for money purchase schemes. While the qualifying earnings band established in *section 13* is expressed in annual terms (and 12 months is the default pay reference period), this section allows the Department to prescribe alternative periods because of the different types of workers and different pay periods used by employers. There is a need to enable the pay reference period to be tailored to specific worker and payment type. For example, agency workers might require a much shorter calculation period than salaried employees.

Section 16: Qualifying schemes

This section defines a qualifying scheme. Qualifying schemes are those that meet minimum standards and quality requirements, which can be used by employers in discharging their obligations under *section 2*.

A qualifying scheme can be either an occupational pension scheme or a personal pension scheme. Qualifying schemes must meet the quality requirement for the scheme type (see [sections 20 to 27](#)). They must also be registered under Chapter 2 of Part 4 of the Finance Act 2004, which means that they are registered for tax relief.

Subsection (2) enables regulations to dis-apply the requirement to be tax registered for schemes based outside of the United Kingdom if they meet further requirements to be prescribed in regulations. The further requirements are likely to refer to schemes operating outside the United Kingdom with members who will receive United Kingdom tax relief on their contributions.

The Department may by regulations set out the circumstances in which a scheme, that would otherwise qualify, is not a qualifying scheme. This can be where the payments and contributions – for example annual management charges - that must be made to the scheme exceed a prescribed amount (*subsection 3(a) and (b)*); or the scheme provides average salary benefits and contains prescribed features (*subsection 3(c)*).

Section 17: Automatic enrolment schemes

There will be additional requirements on schemes that are used for the purposes of automatic enrolment, automatic re-enrolment and allowing opt-in. These schemes must be qualifying occupational pension schemes or qualifying personal pension schemes and must also enable automatic enrolment to take place. An automatic enrolment scheme must not require jobholders who are enrolled to express a choice, or provide information, in order to remain active members. For example, a jobholder will not be required to make a choice about the fund into which their contributions may be invested. Nor can the scheme refuse membership on the grounds that the jobholder does not provide information. An automatic enrolment scheme must also satisfy any further conditions that may be prescribed in secondary legislation.

Section 18: Occupational pension schemes

For the purposes of this Part, occupational pension schemes are those which fall within the definitions set out in *paragraphs (a) and (b)* or are of a prescribed description if they are based outside the European Economic Area.

Section 19: Personal pension schemes

Personal pension schemes are defined as those that fall outside the definition of an occupational pension scheme (see [section 18](#)).

Section 20: Quality requirement: UK money purchase schemes

In order to be deemed a qualifying scheme, a United Kingdom occupational money purchase scheme must have rules that assure an employer contribution of at least 3% of qualifying earnings and total contributions paid by the employer and jobholder of at least 8% (including tax relief).

The Pensions Act (Northern Ireland) 2008 legislates for the repeal of contracting out arrangements for money purchase schemes currently provided for under the Pension Schemes (Northern Ireland) Act 1993. However, in the event that this has not occurred when the employer duties commence, *subsection (2)* enables regulations to be made to modify the contributions required for money purchase schemes with members whose employment is contracted-out of the State Second Pension Scheme.

Section 20 also contains a regulation-making power that allows the Department to set an amount below which trustees and employers could choose to decline to accept contributions. This could be used, for example, to enable schemes to not have to deal with such minor amounts of contributions which are uneconomic to administer.

Section 21: Quality requirement: UK defined benefits schemes

Section 22: Test scheme standard

Section 23: Test scheme

Section 21 provides that the quality requirement for defined benefits schemes depends on whether or not the jobholder is in contracted-out employment, as defined under the Pension Schemes (Northern Ireland) Act 1993.

If a jobholder is in contracted-out employment, evidenced by a certificate issued under section 3(1) of the Pension Schemes (Northern Ireland) Act 1993, the scheme satisfies the quality requirement in relation to that jobholder. *Subsection (3)* enables the Department to change, by order, the quality requirement so that a scheme does not qualify on the evidence of contracting out alone, but is required to meet a modified version of the test scheme standard (see *sections 22* and *23*) with an accrual rate of no more than 1/80th rather than 1/120th as set out in *section 23(4)(a)*.

For jobholders who are members of a defined benefits scheme and are not in contracted-out employment, the scheme must meet the test scheme standard (see *section 22*).

Section 22 provides that a scheme satisfies the test scheme standard if it provides benefits for the relevant members of the scheme that are broadly equivalent to, or better than, the benefits provided by a model test scheme – set out in *section 23*. Relevant members are (*subsection (2)*):

- for a jobholder who is not in contracted-out employment, the jobholder and all active members who are not in contracted-out employment and are jobholders of the same employer;
- for a jobholder who is in contracted-out employment, the jobholder and all active members who are in contracted-out employment and are jobholders of the same employer.

In making a comparison when applying this section, the pensions of relevant members must be considered as a whole (*subsection (3)*). A regulation-making power enables the Department to set out detail on how comparison with the model test scheme will be done (*subsection (4)*). Regulations under *subsection (4)* may provide for the determination to be made in accordance with guidance issued by the Department (*subsection (5)*).

Under *subsection (6)*, the Department may provide, by regulations, that an actuary will be required to confirm that a scheme meets the test.

The model test scheme on which the comparison is made is set out at [section 23](#). It provides a pension for life based on a maximum of 40 years of accruals at an annual rate of 1/120th.

Section 24: Quality requirement: UK hybrid schemes

Hybrid schemes have a mix of defined benefits and money purchase elements. In order to qualify they will be required to satisfy the quality requirement for either money purchase schemes ([section 20](#)) or defined benefits schemes ([sections 21 to 23](#)). The quality requirements set out in *subsections (1)(a)* and *(1)(b)*, which are those for money purchase schemes and defined benefits schemes, respectively, can be modified by regulations in their application to certain hybrid schemes.

Employers will be directed to the quality requirement they should use for a hybrid scheme in rules made by the Department (*subsection (2)*).

Section 25: Quality requirement: non-UK occupational pension schemes

[Section 25](#) enables the Department to regulate for the quality criteria of non-United Kingdom based occupational pension schemes.

Section 26: Quality requirement: UK personal pension schemes

[Section 26](#) provides the conditions which a United Kingdom personal pension scheme must meet in order to satisfy the quality requirement. In order to qualify, personal pension schemes must only provide money purchase benefits (*subsection (3)*). The employer must be required to contribute at least 3% of qualifying earnings (*subsection (4)*) and the jobholder must be required to make up any shortfall in contributions up to a contributions total of 8% (to include 1% tax relief) of qualifying earnings in the pay reference period (*subsections (5) and (6)*). There will need to be agreements between the scheme, the employer and the jobholder confirming the contributions required. The employer must be required to pass over contributions to the scheme on the basis of direct payment arrangements within the meaning of section 107A of the Pension Schemes (Northern Ireland) Act 1993 (*subsection (7)*).

As with money purchase schemes ([section 20](#)) there is also a provision to alter contribution levels should the repeal of contracting-out for money purchase schemes not have occurred by the time these duties commence.

Subsection (9) contains a regulation-making power that allows the Department to set an amount below which trustees and employers could choose to decline to accept contributions. This could be used, for example, to enable schemes to not have to deal with minor amounts of contributions which are uneconomic to administer.

Section 27: Quality requirement: other personal pension schemes

This section allows the Department to prescribe quality requirements for non-United Kingdom personal pension schemes.

Section 28: Sections 20, 24 and 26: certification that quality requirement is satisfied.

This section confers a power on the Department to make regulations which will enable employers to certify that a scheme satisfies the relevant quality requirement under *sections 20, 24 or 26*. This is subject to any provision made by the regulations as to cases where the requirements of a scheme, and any agreement under section 26, for payment of contributions did not satisfy prescribed conditions.

Section 29: Transitional periods for money purchase and personal pension schemes

This section sets out how employers operating qualifying occupational money purchase schemes and personal pension schemes will be able to phase in their contributions over two transitional periods.

This is achieved by setting lower contributions in the quality requirements over two transitional periods. Both transitional periods shall last at least 1 year and the exact duration of both will be prescribed in regulations.

In the first period, scheme rules must require employer contributions of at least 1% and a total contribution of at least 2% of the jobholder's qualifying earnings in the pay reference period. For the second period, the minimum contributions will increase to 2% from the employer and 5% overall.

Section 30: Transitional period for defined benefits and hybrid schemes

This section sets out the phasing arrangements for employers operating defined benefits or hybrid schemes. It enables those employers to delay automatic enrolment, for a specific group of jobholders for a transitional period to be prescribed in regulations.

Subsection (2) defines the conditions which must be satisfied for inclusion in this group of jobholders. They must be existing jobholders of the employer who have previously been, and remain, able to join a qualifying defined benefits or hybrid scheme.

The employer must automatically enrol such jobholders into a qualifying defined benefits or hybrid scheme by the end of the transitional period. If, before

the transitional period ends, a jobholder ceases to be able to join a defined benefits or hybrid scheme or if the scheme they are eligible for ceases to qualify (*subsection (4)*), then the employer must automatically enrol the jobholder into alternative qualifying provision.

If the alternative scheme is another defined benefits or hybrid scheme, the employer must ensure membership is effective from the date on which the original scheme ceased to qualify or be available for the jobholder (i.e. the scheme closure date) (*subsection (5)*). *Subsection (6)* provides that if the alternative scheme is a money purchase scheme, then the employer must make membership effective from the original automatic enrolment date by paying backdated employer contributions.

Section 31: Effect of freezing order or assessment period

This section provides that active membership of a qualifying scheme does not cease for a jobholder or worker (this includes where a worker has opted in to the scheme under *section 9*) for the purposes of the employer duties when the accrual of benefits in that scheme has been frozen either by an order imposed by the Pensions Regulator or because of an assessment by the Pension Protection Fund. Nor will the scheme cease to be a qualifying scheme in such circumstances.

Section 32: Power of trustees to modify by resolution

Subsection (1)(a) enables trustees to make changes to a scheme necessary to comply with the conditions in *section 17(2)* (automatic enrolment schemes), for example, making a scheme suitable for automatic enrolment by removing any condition of membership which requires a choice of investment to be made.

Subsection (1)(b) allows changes to enable contributions payable to a scheme to be increased to comply with *section 20* or *section 24(1)(a)*. The permitted changes are to increase the contribution rate, the basis on which it is calculated or the frequency of its payment (*subsection (2)*). However, changes cannot be made without consent of the employer (*subsection (3)*).

Subsection (4) makes separate provision for those schemes where there is more than one employer.

Regulations may provide that this section does not apply to prescribed occupational pension schemes (*subsection (5)*).

Section 33: Deduction of contributions

An employer who automatically enrolls, re-enrolls or arranges opt in for a jobholder into a scheme is permitted to deduct the jobholder's contributions from the jobholder's remuneration and pay them to the scheme.

Regulations may require the employer to make such a deduction at any time on or after the date from which the jobholder becomes a scheme member (*subsection (2)*).