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## 2008 CHAPTER 13

### PART 1

#### PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

**Modifications etc. (not altering text)**

- C1 Pt. 1 applied (with modifications) (1.7.2012) by [The Automatic Enrolment \(Offshore Employment\) Order 2012 \(S.I. 2012/1388\)](#), arts. 1(1), 2 (with art. 5)

#### CHAPTER 1

#### EMPLOYERS' DUTIES

##### *Jobholders*

#### **Jobholders**

- 1.—(1) For the purposes of this Part a jobholder is a worker—
- (a) who is working or ordinarily works in Northern Ireland under the worker's contract,
  - (b) who is aged at least 16 and under 75, and
  - (c) to whom qualifying earnings are payable by the employer in the relevant pay reference period (see sections 13 and 15).
- (2) Where a jobholder has more than one employer, or a succession of employers, this Chapter applies separately in relation to each employment.
- (3) Accordingly—
- (a) references to the employer are references to the employer concerned;

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- (b) references to membership of a pension scheme are references to membership in relation to the employment concerned.

#### Commencement Information

- II** S. 1 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, **Sch. Pt. 2**

### *Employers' duties*

#### **Continuity of scheme membership**

**2.—(1)** If a jobholder is an active member of a qualifying scheme, the employer must not take any action, or make any omission, by which (without the jobholder ceasing to be employed by the employer)—

- (a) the jobholder ceases to be an active member of the scheme, or  
(b) the scheme ceases to be a qualifying scheme.

(2) Subsection (1) is not contravened if the jobholder remains an active member of another qualifying scheme.

[<sup>F1</sup>(3) Subsection (1) is not contravened if by virtue of section 5 the jobholder becomes an active member of an automatic enrolment scheme with effect from—

- (a) the day after the cessation referred to in paragraph (a) or (b) of subsection (1), or  
(b) a day within the prescribed period (if a period is prescribed).]

(4) Subsection (1) is not contravened if the action or omission is at the jobholder's request.

(5) In this Part as it applies in the case of any jobholder, references to a qualifying scheme are references to a pension scheme which is a qualifying scheme in relation to that jobholder (see section 16).

#### Textual Amendments

- F1** S. 2(3) substituted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 5(1), 34(1)(3)**; [S.R. 2012/265](#), art. 2(1)(a)

#### Modifications etc. (not altering text)

- C2** S. 2(1): power to exclude conferred by [SI 2005/255 \(N.I. 1\)](#), art. 268A (as inserted (2.6.2012 for specified purposes) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 19, 34(1)(3)**)

#### Commencement Information

- I2** S. 2 partly in force; s. 2 in force for certain purposes at Royal Assent see s. 118(2)

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**I3** S. 2 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

### **Automatic enrolment**

**[<sup>F2</sup>3.—**(1) This section applies to a jobholder—

- (a) who is aged at least 22,
- (b) who has not reached pensionable age, and
- (c) to whom earnings of more than [<sup>F3</sup>£9,440 ]are payable by the employer in the relevant pay reference period (see section 15).]

(2) The employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date.

(3) Subsection (2) does not apply if the jobholder was an active member of a qualifying scheme on the automatic enrolment date.

(4) Subsection (2) does not apply if, within the prescribed period before the automatic enrolment date, the jobholder ceased to be an active member of a qualifying scheme because of any action or omission by the jobholder.

(5) For the purposes of arrangements under subsection (2) regulations may require information to be provided to any person by the employer or—

- (a) where the arrangements relate to an occupational pension scheme, the trustees or managers of the scheme;
- (b) where the arrangements relate to a personal pension scheme, the provider of the scheme.

(6) For the purposes of arrangements made under subsection (2) in relation to a personal pension scheme, regulations may deem an agreement to exist (subject to section 8) between the jobholder and the provider of the scheme for the jobholder to be an active member of the scheme on terms and conditions determined in accordance with the regulations.

[<sup>F4</sup>(6A) In this section “earnings” has the meaning given in section 13(3).

(6B) In the case of a pay reference period of less or more than 12 months, subsection (1) applies as if the amount in paragraph (c) were proportionately less or more.]

(7) The automatic enrolment date, in relation to any person, is the first day on which this section applies to the person as a jobholder of the employer.[<sup>F5</sup>This is subject to section 4.]

(8) In this Part as it applies in the case of any jobholder, references to an automatic enrolment scheme are references to a pension scheme which is an automatic enrolment scheme in relation to that jobholder (see section 17).

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#### Textual Amendments

- F2** S. 3(1) substituted (30.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 6\(1\), 34\(3\)](#); [S.R. 2012/265, art. 2\(2\)\(a\)](#)
- F3** Sum in s. 3(1)(c) substituted (6.4.2013) by [The Automatic Enrolment \(Earnings Trigger and Qualifying Earnings Band\) Order \(Northern Ireland\) 2013 \(S.R. 2013/79\), arts. 1\(1\), 2\(1\), 3](#)
- F4** S. 3(6A)(6B) inserted (30.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 6\(2\), 34\(3\)](#); [S.R. 2012/265, art. 2\(2\)\(a\)](#)
- F5** Words in s. 3(7) added (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 7\(1\), 34\(1\)\(3\)](#); [S.R. 2012/265, art. 2\(1\)\(b\)](#)

#### Modifications etc. (not altering text)

- C3** S. 3(2): power to exclude conferred by [S.I. 2005/255 \(N.I. 1\), art. 268A](#) (as inserted (2.6.2012 for specified purposes) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 19, 34\(1\)\(3\)](#))

#### Commencement Information

- I4** S. 3 partly in force; s. 3 in force for certain purposes at Royal Assent see [s. 118\(2\)](#)
- I5** S. 3 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

### Postponement or disapplication of automatic enrolment

[<sup>F6</sup>4.—(1) Where—

- (a) an employer (E) gives to a person employed by E on E's staging date (“the worker”) notice that E intends to defer automatic enrolment for the worker until a date specified in the notice (“the deferral date”), and
- (b) any prescribed requirements in relation to the notice are met,

the worker's automatic enrolment date is the deferral date if on that date section 3 applies to the worker as a jobholder of E; if not, subsection (4) applies.

(2) Where—

- (a) a person (“the worker”) begins to be employed by an employer (E) after E's staging date,
- (b) E gives the worker notice that E intends to defer automatic enrolment until a date specified in the notice (“the deferral date”), and
- (c) any prescribed requirements in relation to the notice are met,

the worker's automatic enrolment date is the deferral date if on that date section 3 applies to the worker as a jobholder of E; if not, subsection (4) applies.

(3) Where—

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- (a) a person (“the worker”) employed by an employer (E) becomes, after E's staging date, a jobholder to whom section 3 applies,
- (b) E gives the worker notice that E intends to defer automatic enrolment until a date specified in the notice (“the deferral date”), and
- (c) any prescribed requirements in relation to the notice are met,

the worker's automatic enrolment date is the deferral date if on that date section 3 applies to the worker as a jobholder of E; if not, subsection (4) applies.

(4) Where this subsection applies, section 3(2) does 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.

(5) A notice under this section may be given on or before the starting day or within a prescribed period after that day.

(6) The deferral date may be any date in the period of 3 months after the starting day.

(7) An employer who gives a worker a notice under subsection (1) or (2) may not give the worker a notice under subsection (3) in relation to any occasion on or before the deferral date specified in the notice on which the worker becomes a jobholder to whom section 3 applies.

(8) In this section—

“staging date”, in relation to an employer of a particular description, means the date prescribed under section 12 in relation to employers of that description;

“starting day” means—

- (a) E's staging date, in the case of a notice under subsection (1);
- (b) the day on which the worker begins to be employed by E, in the case of a notice under subsection (2);
- (c) the day on which the worker becomes a jobholder to whom section 3 applies, in the case of a notice under subsection (3).]

#### Textual Amendments

- F6** S. 4 substituted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 7\(2\), 34\(1\)\(3\)](#); S.R. 2012/265, art. 2(1)(b)

#### Commencement Information

- I6** S. 4 partly in force; s. 4 in force for certain purposes at Royal Assent see s. 118(2)

### Automatic re-enrolment

5.—<sup>F7</sup>(1) This section applies to a jobholder—

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- (a) who is aged at least 22,
- (b) who has not reached pensionable age, and
- (c) to whom earnings of more than [<sup>F8</sup>£9,440 ]are payable by the employer in the relevant pay reference period (see section 15).]

[<sup>F9</sup>(1A) This section also applies to a jobholder who—

- (a) is aged at least 22,
- (b) has not reached pensionable age, and
- (c) is not an active member of a qualifying scheme because there has been a period beginning at any time after the jobholder's automatic enrolment date during which the requirements of section 1(1)(a) or (c) were not met (so that the person was not a jobholder for that period).

(1B) This section also applies to a jobholder who has ceased to be an active member of a qualifying scheme because of something other than an action or omission by the jobholder.]

(2) The employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic re-enrolment date.

(3) Subsection (2) does not apply if the jobholder was an active member of a qualifying scheme on the automatic re-enrolment date.

[<sup>F10</sup>(4) Regulations may provide for subsection (2) not to apply in relation to a jobholder who in prescribed circumstances—

- (a) has ceased to be an active member of a qualifying scheme because of any action or omission by the jobholder, or by the employer at the jobholder's request, or
- (b) is treated as not being an active member of a qualifying scheme because the jobholder has given notice under section 8.]

<sup>F11</sup>(5) .....

(6) For the purposes of arrangements under subsection (2) regulations may require information to be provided to any person by the employer or—

- (a) where the arrangements relate to an occupational pension scheme, the trustees or managers of the scheme;
- (b) where the arrangements relate to a personal pension scheme, the provider of the scheme.

(7) For the purposes of arrangements made under subsection (2) in relation to a personal pension scheme, regulations may deem an agreement to exist (subject to section 8) between the jobholder and the provider of the scheme for the jobholder to be an active member of the scheme on terms and conditions determined in accordance with the regulations.

[<sup>F12</sup>(7A) In this section “earnings” has the meaning given in section 13(3).

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(7B) In the case of a pay reference period of less or more than 12 months, subsection (1) applies as if the amount in paragraph (c) were proportionately less or more.]

(8) Automatic re-enrolment dates are dates<sup>F13</sup>... that are to be determined in accordance with regulations.

#### Textual Amendments

- F7** S. 5(1) substituted (30.6.2012) by Pensions Act (Northern Ireland) 2012 (c. 3), ss. 6(3), 34(3); S.R. 2012/265, art. 2(2)(a)
- F8** Sum in S. 5(1)(c) substituted (6.4.2013) by The Automatic Enrolment (Earnings Trigger and Qualifying Earnings Band) Order (Northern Ireland) 2013 (S.R. 2013/79), arts. 1(1), 2(1), 3
- F9** S. 5(1A)-(1B) inserted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by Pensions Act (Northern Ireland) 2012 (c. 3), ss. 5(2), 34(1)(3); S.R. 2012/265, art. 2(1)(a)
- F10** S. 5(4) substituted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by Pensions Act (Northern Ireland) 2012 (c. 3), ss. 5(3), 34(1)(3); S.R. 2012/265, art. 2(1)(a)
- F11** S. 5(5) omitted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by virtue of Pensions Act (Northern Ireland) 2012 (c. 3), ss. 7(3), 34(1)(3); S.R. 2012/265, art. 2(1)(a)
- F12** S. 5(7A)(7B) inserted (30.6.2012) by Pensions Act (Northern Ireland) 2012 (c. 3), ss. 6(4), 34(3); S.R. 2012/265, art. 2(2)(a)
- F13** Words in s. 5(8) omitted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by virtue of Pensions Act (Northern Ireland) 2012 (c. 3), ss. 5(4), 34(1)(3); S.R. 2012/265, art. 2(1)(a)

#### Modifications etc. (not altering text)

- C4** S. 5(2): power to exclude conferred by SI 2005/255 (N.I. 1), art. 268A (as inserted (2.6.2012 for specified purposes) by Pensions Act (Northern Ireland) 2012 (c. 3), ss. 19, 34(1)(3))
- C5** S. 5(2) excluded by S.R. 2010/122, reg. 14 (as substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/232), regs., 2(8))

#### Commencement Information

- I7** S. 5 partly in force; s. 5 in force for certain purposes at Royal Assent see s. 118(2)
- I8** S. 5 in operation at 30.6.2012 in so far as not already in operation by S.R. 2012/266, art. 2, Sch. Pt. 1

### Timing of automatic re-enrolment

6.—(1) Regulations under section 5(8) must either—

- (a) secure that for any jobholder there is no automatic re-enrolment date less than three years after the jobholder's automatic enrolment date, and that

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there is not more than one automatic re-enrolment date in any period of three years, or

(b) secure that for any employer there is not more than one automatic re-enrolment date in any period of [<sup>F14</sup>2 years and 9 months] .

(2) Subsection (1) does not restrict the provision that regulations may make about the timing of a jobholder's automatic re-enrolment date (“the relevant date”) in the following cases.

<sup>F15</sup>(3) . . . . .

(4) The [<sup>F16</sup>first case] is where—

(a) <sup>F17</sup>... the jobholder ceases to be an active member of a qualifying scheme  
<sup>F18</sup> . . . . .

(b) that event is not the effect of any action or omission by the jobholder <sup>F19</sup> . . . . .  
and

(c) the relevant date is the jobholder's first automatic re-enrolment date after that [<sup>F20</sup>event] .

(5) The [<sup>F21</sup>second case] is where—

(a) there is a period beginning at any time after the jobholder's automatic enrolment date during which the requirements of section 1(1)(a) or (c) are not met (so that the person is not a jobholder for that period), and

(b) the relevant date is the jobholder's first automatic re-enrolment date after that period.

<sup>F22</sup>(6) . . . . .

#### Textual Amendments

**F14** Words in s. 6(1)(b) substituted (2.6.2012 for specified purposes) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 8, 34\(1\)\(3\)](#)

**F15** S. 6(3) omitted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by virtue of [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 7\(4\)\(a\), 34\(1\)\(3\); S.R. 2012/265, art. 2\(1\)\(b\)](#)

**F16** Words in s. 6(4) substituted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 7\(4\)\(b\), 34\(1\)\(3\); S.R. 2012/265, art. 2\(1\)\(b\)](#)

**F17** Words in s. 6(4)(a) omitted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by virtue of [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 5\(5\)\(a\), 34\(1\)\(3\); S.R. 2012/265, art. 2\(1\)\(a\)](#)

**F18** Words in s. 6(4)(a) omitted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by virtue of [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 5\(5\)\(b\), 34\(1\)\(3\); S.R. 2012/265, art. 2\(1\)\(a\)](#)



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- F19** Words in s. 6(4)(b) omitted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by virtue of [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 5\(5\)\(c\), 34\(1\)\(3\)](#); [S.R. 2012/265, art. 2\(1\)\(a\)](#)
- F20** Word in s. 6(4)(c) substituted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 5\(5\)\(d\), 34\(1\)\(3\)](#); [S.R. 2012/265, art. 2\(1\)\(a\)](#)
- F21** Words in s. 6(5) substituted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 7\(4\)\(c\), 34\(1\)\(3\)](#); [S.R. 2012/265, art. 2\(1\)\(b\)](#)
- F22** S. 6(6) omitted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by virtue of [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 7\(4\)\(a\), 34\(1\)\(3\)](#); [S.R. 2012/265, art. 2\(1\)\(b\)](#)

**Commencement Information**

- I9** S. 6 partly in force; s. 6 in force for certain purposes at Royal Assent see s. 118(2)
- I10** S. 6 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

**Jobholder's right to opt in**

7.—(1) This section applies to a jobholder who is not an active member of a qualifying scheme.

(2) But it does not apply at a time when—

(a) arrangements are required to be made under section 3 or 5 in respect of the jobholder, <sup>F23</sup> ...

<sup>F23</sup>(b) .....

(3) The jobholder may by notice require the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme.

(4) The Department may by regulations make provision—

- (a) about the form and content of the notice;
- (b) about the arrangements that the employer is required to make;
- (c) for determining the date with effect from which the jobholder is to become an active member under the arrangements.

(5) For the purposes of arrangements under subsection (3) regulations may require information to be provided to any person by the employer or—

- (a) where the arrangements relate to an occupational pension scheme, the trustees or managers of the scheme;
- (b) where the arrangements relate to a personal pension scheme, the provider of the scheme.

(6) For the purposes of arrangements made under subsection (3) in relation to a personal pension scheme, regulations may deem an agreement to exist

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(subject to section 8) between the jobholder and the provider of the scheme for the jobholder to be an active member of the scheme on terms and conditions determined in accordance with the regulations.

(7) Subsections (8) and (9) apply where a jobholder becomes an active member of an automatic enrolment scheme in pursuance of a notice under this section and, within the period of 12 months beginning with the day on which that notice was given—

- (a) ceases to be an active member of that scheme, and
- (b) gives the employer a further notice under this section.

(8) The further notice does not have effect to require the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme.

(9) But any arrangements the employer makes for the jobholder to become, within that period, an active member of such a scheme must be made in accordance with regulations under this section.

#### Textual Amendments

- F23** S. 7(2)(b) and preceding word omitted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by virtue of [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 7\(5\), 34\(1\)\(3\)](#); [S.R. 2012/265, art. 2\(1\)\(b\)](#)

#### Modifications etc. (not altering text)

- C6** S. 7(3): power to exclude conferred by SI 2005/255 (N.I. 1), art. 268A (as inserted (2.6.2012 for specified purposes) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 19, 34\(1\)\(3\)](#))

#### Commencement Information

- I11** S. 7 partly in force; s. 7 in force for certain purposes at Royal Assent see s. 118(2)
- I12** S. 7 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

### Jobholder's right to opt out

**8.—**(1) This section applies on any occasion when arrangements under section 3(2), 5(2) or 7(3) apply to a jobholder (arrangements for the jobholder to become an active member of an automatic enrolment scheme).

- (2) If the jobholder gives notice under this section—
- (a) the jobholder is to be treated for all purposes as not having become an active member of the scheme on that occasion;
  - (b) any contributions paid by the jobholder or by the employer on behalf or in respect of the jobholder, on the basis that the jobholder has become

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an active member of the scheme on that occasion must be refunded in accordance with prescribed requirements.

(3) Regulations under subsection (2)(b) may, in particular, make provision about—

- (a) the time within which contributions must be refunded;
- (b) how the amount to be refunded is calculated;
- (c) the procedure for refunding contributions.

(4) The Department may by regulations make further provision in relation to notices under this section.

(5) The regulations may in particular make provision—

- (a) as to the form and content of a notice;
- (b) as to the period within which a notice must be given;
- (c) as to the person to whom a notice must be given;
- (d) requiring any person to make prescribed arrangements for enabling notices to be given;
- (e) requiring any person to take prescribed action in consequence of a notice (in addition to any action prescribed under subsection (2)(b)).

(6) The regulations must provide for the notice—

- (a) to include information about the effect in relation to jobholders of giving notice under this section, and
- (b) to be signed or otherwise authorised by the jobholder.

#### Commencement Information

**I13** S. 8 partly in force; s. 8 in force for certain purposes at Royal Assent see s. 118(2)

**I14** S. 8 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

### *Duty in relation to workers without qualifying earnings*

#### **Workers without qualifying earnings**

**9.—**(1) This section applies to a worker—

- (a) to whom paragraphs (a) and (b) of section 1(1) apply (working in Northern Ireland and aged between 16 and 75),
- (b) to whom paragraph (c) of section 1(1) does not apply (qualifying earnings), and
- (c) who is not an active member of a pension scheme that satisfies the requirements of this section.

**Status:** Point in time view as at 06/04/2013. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Pensions (No. 2) Act (Northern Ireland) 2008 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(2) The worker may by notice require the employer to arrange for the worker to become an active member of a pension scheme that satisfies the requirements of this section.

(3) The Department may by regulations make provision—

- (a) about the form and content of the notice;
- (b) about the arrangements that the employer is required to make;
- (c) for determining the date with effect from which the worker is (subject to compliance with any requirements of the scheme) to become an active member under the arrangements.

(4) Subsections (5) and (6) apply where a worker becomes an active member of a pension scheme in pursuance of a notice under this section and, within the period of 12 months beginning with the day on which that notice was given—

- (a) ceases to be an active member of that scheme because of any action or omission by the worker, and
- (b) gives the employer a further notice under this section.

(5) The further notice does not have effect to require the employer to arrange for the worker to become an active member of a pension scheme.

(6) But any arrangements the employer makes for the worker to become, within that period, an active member of a pension scheme that satisfies the requirements of this section must be made in accordance with regulations under this section.

(7) A pension scheme satisfies the requirements of this section if—

- (a) it is registered under Chapter 2 of Part 4 of the Finance Act 2004 (c. 12), and
- (b) in the case of a personal pension scheme, there are, in relation to the worker concerned, direct payment arrangements (within the meaning of section 107A of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (in this Act referred to as “the Pension Schemes Act”)) between the worker and the employer.

#### **Modifications etc. (not altering text)**

- C7** S. 9(2): power to exclude conferred by SI 2005/255 (N.I. 1), art. 268A (as inserted (2.6.2012 for specified purposes) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 19, 34(1)(3)**)

#### **Commencement Information**

- I15** S. 9 partly in force; s. 9 in force for certain purposes at Royal Assent see s. 118(2)
- I16** S. 9 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266](#), **art. 2**, [Sch. Pt. 1](#)

*Status: Point in time view as at 06/04/2013. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: Pensions (No. 2) Act (Northern Ireland) 2008 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *Supplementary provision about the duties*

#### **Information to be given to workers**

- 10.**—(1) The Department must make provision by regulations—
- (a) for all jobholders to be given information about the effect of sections 2 to 8 in relation to them;
  - (b) for all workers to whom section 9 applies to be given information about the effect of that section in relation to them;
  - (c) for a prescribed person to be required to provide the information.
- (2) Regulations under this section must state—
- (a) what information must be given;
  - (b) in what circumstances it must be given;
  - (c) how and when it must be given.

#### **Commencement Information**

**I17** S. 10 partly in force; s. 10 in force for certain purposes at Royal Assent see s. 118(2)

**I18** S. 10 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

#### **Information to be given to the Pensions Regulator**

**11.**—(1) The Department may make regulations requiring employers to provide the Pensions Regulator (“the Regulator”) with information about action they have taken or intend to take for the purposes of any provision of, or of regulations under, sections 2 to 10.

- (2) The regulations may in particular—
- (a) require an employer to provide information about pension schemes to which any action relates;
  - (b) require an employer to identify which of any prescribed descriptions a scheme falls within;
  - (c) require an employer to provide information that appears to the Department to be required for the performance by the Regulator of its functions under Chapter 2;
  - (d) make provision about how and in what form any information is to be provided.

**Status:** Point in time view as at 06/04/2013. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Pensions (No. 2) Act (Northern Ireland) 2008 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

#### Commencement Information

**I19** S. 11 partly in force; s. 11 in force for certain purposes at Royal Assent see s. 118(2)

### Introduction of employers' duties

**12** The Department may by regulations provide that sections 2 to 9 do not apply in the case of an employer of any description until such date after the coming into operation of those sections as is prescribed in relation to employers of that description.

#### Commencement Information

**I20** S. 12 partly in force; s. 12 in force for certain purposes at Royal Assent see s. 118(2)

### *[<sup>F24</sup>Qualifying earnings and earnings trigger]*

#### Textual Amendments

**F24** S. 13 crossheading substituted (7.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), ss. [9\(2\)](#), [34\(3\)](#); S.R. 2012/233, art. 2(2)(d)

### Qualifying earnings

**13.—(1)** A person's qualifying earnings in a pay reference period of 12 months are the part (if any) of the gross earnings payable to that person in that period that is—

- (a) more than [<sup>F25</sup>£5,668,] and
- (b) not more than [<sup>F26</sup>£41,450.]

(2) In the case of a pay reference period of less or more than 12 months, subsection (1) applies as if the amounts in paragraphs (a) and (b) were proportionately less or more.

(3) In this section, “earnings”, in relation to a person, means sums of any of the following descriptions that are payable to the person in connection with the person's employment—

- (a) salary, wages, commission, bonuses and overtime;
- (b) statutory sick pay under Part 11 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) (in this Act referred to as “the Contributions and Benefits Act”);
- (c) statutory maternity pay under Part 12 of that Act;

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**Changes to legislation:** Pensions (No. 2) Act (Northern Ireland) 2008 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (d) ordinary statutory paternity pay or additional statutory paternity pay under Part 12ZA of that Act;
- (e) statutory adoption pay under Part 12ZB of that Act;
- (f) sums prescribed for the purposes of this section.

#### Textual Amendments

- F25** Sum in s. 13(1)(a) substituted (6.4.2013) by [The Automatic Enrolment \(Earnings Trigger and Qualifying Earnings Band\) Order \(Northern Ireland\) 2013 \(S.R. 2013/79\)](#), arts. 1(1), **2(2)(a)**, 3
- F26** Sum in s. 13(1)(b) substituted (6.4.2013) by [The Automatic Enrolment \(Earnings Trigger and Qualifying Earnings Band\) Order \(Northern Ireland\) 2013 \(S.R. 2013/79\)](#), arts. 1(1), **2(2)(b)**, 3

#### Commencement Information

- I21** S. 13 partly in force; s. 13 in force for certain purposes at Royal Assent see s. 118(2)
- I22** S. 13 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266](#), art. 2, [Sch. Pt. 1](#)

### Review of [<sup>F27</sup> earnings trigger and] qualifying earnings band

**14** Whenever the Secretary of State makes an order under section 14 of the Pensions Act 2008 (c. 30) (review of [<sup>F28</sup> earnings trigger and] qualifying earnings band), the Department may make a corresponding order for Northern Ireland.

#### Textual Amendments

- F27** Words in s. 14 heading inserted (7.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 9(1)**, 34(3); [S.R. 2012/233](#), art. 2(2)(d)
- F28** Words in s. 14 inserted (7.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 9(1)**, 34(3); [S.R. 2012/233](#), art. 2(2)(d)

#### Commencement Information

- I23** S. 14 partly in force; s. 14 in force for certain purposes at Royal Assent see s. 118(2)
- I24** S. 14 in operation at 8.6.2012 in so far as not already in operation by [S.R. 2012/236](#), **art. 2(a)**

### Pay reference period

**15.—(1)** In relation to any person a pay reference period is the period prescribed.

- (2) The Department may by regulations—

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- (a) make provision for determining a person's earnings in any pay reference period;
- (b) make provision for determining the first date of each pay reference period in relation to a person.

(3) A reference in any provision to the relevant pay reference period is a reference to the period determined in accordance with regulations under this section, as they apply for the purposes of that provision in the case concerned.

#### Commencement Information

**I25** S. 15 partly in force; s. 15 in force for certain purposes at Royal Assent see s. 118(2)

**I26** S. 15 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

#### [<sup>F29</sup>Power to specify rounded figures

**15A.**—(1) Whenever the Secretary of State makes an order under section 15A of the Pensions Act 2008 specifying rounded figures for the purposes of section 3(6B), 5(7B) or 13(2) of that Act, the Department may make an order specifying corresponding rounded figures for the purposes of section 3(6B), 5(7B) or 13(2) of this Act.

(2) A rounded figure so specified applies in place of the amount that would otherwise apply.]

#### Textual Amendments

**F29** S. 15A inserted (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 10, 34\(1\)\(3\); S.R. 2012/233, art. 2\(1\)\(a\)](#)

### *Qualifying schemes and automatic enrolment schemes*

#### Qualifying schemes

**16.**—(1) A pension scheme is a qualifying scheme in relation to a jobholder (J) if—

- (a) it is an occupational pension scheme or a personal pension scheme,
- (b) it is registered under Chapter 2 of Part 4 of the Finance Act 2004 (c. 12), and
- (c) while J is an active member, the scheme satisfies the quality requirement in relation to J.



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(2) The Department may by regulations provide that subsection (1)(b) does not apply in relation to a scheme to which section 25 or 27 applies, if prescribed requirements are satisfied.

(3) The Department may by regulations provide that a scheme is not a qualifying scheme in relation to J if—

- [<sup>F30</sup>(a) administration charges due from J while J is an active member exceed a prescribed amount,
- (aa) administration charges due from former active members while J is an active member exceed a prescribed amount,
- (ab) while J is an active member, the scheme contains provision under which administration charges that will be due from J when J is no longer an active member will exceed a prescribed amount, or will do so in particular circumstances,]
- (b) while J is an active member, the contributions that must be paid to the scheme by, or on behalf or in respect of, J exceed a prescribed amount, or
- (c) the scheme provides for average salary benefits to be provided to or in respect of J and contains prescribed features.

[<sup>F31</sup>(4) For the purposes of subsection (3) administration charges are due from a person to the extent that—

- (a) any payments made to the scheme by, or on behalf or in respect of, the person,
- (b) any income or capital gain arising from the investment of such payments, or
- (c) the value of the person's rights under the scheme,

may be used to defray the administrative expenses of the scheme, to pay commission or in any other way that does not result in the provision of pension benefits for or in respect of members.

(5) In subsection (3)(aa) “former active member” means a person who at some time after the automatic enrolment date was both a jobholder and an active member but is no longer an active member.]

#### Textual Amendments

**F30** S. 16(3)(a)-(ab) substituted for s. 16(3)(a) (2.6.2012 for specified purposes) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 11(2)**, 34(1)(3)

**F31** S. 16(4)(5) inserted (2.6.2012 for specified purposes) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 11(3)**, 34(1)(3)

#### Commencement Information

**I27** S. 16 partly in force; s. 16 in force for certain purposes at Royal Assent see s. 118(2)

**Status:** Point in time view as at 06/04/2013. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Pensions (No. 2) Act (Northern Ireland) 2008 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**I28** S. 16 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

### Automatic enrolment schemes

**17.—(1)** A pension scheme is an automatic enrolment scheme in relation to a jobholder (J) if—

- (a) it is a qualifying scheme in relation to J,
- (b) it satisfies the conditions in subsection (2), and
- (c) it satisfies any further conditions prescribed.

(2) The conditions mentioned in subsection (1)(b) are that—

- (a) no provision of the scheme prevents the employer from making arrangements prescribed under section 3(2), 5(2) or 7(4) for J to become an active member of the scheme;
- (b) no provision of the scheme requires J to express a choice in relation to any matter, or to provide any information, in order to remain an active member.

#### Commencement Information

**I29** S. 17 partly in force; s. 17 in force for certain purposes at Royal Assent see s. 118(2)

**I30** S. 17 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

### Occupational pension schemes

**18** For the purposes of this Part, each of these is an occupational pension scheme—

- (a) an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act that has its main administration in the United Kingdom;
- (b) an institution for occupational retirement provision within the meaning of Article 6(a) of the IORP Directive that has its main administration in an EEA state other than the United Kingdom;
- (c) a pension scheme that is prescribed or is of a prescribed description and that has its main administration elsewhere than in an EEA state.

#### Commencement Information

**I31** S. 18 partly in force; s. 18 in force for certain purposes at Royal Assent see s. 118(2)

**I32** S. 18 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

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## Personal pension schemes

**19** For the purposes of this Part, a personal pension scheme is a pension scheme that is not an occupational pension scheme.

### Commencement Information

**I33** S. 19 in operation at 30.6.2012 by S.R. 2012/266, art. 2, Sch. Pt. 2

## Quality requirements

### Quality requirement: UK money purchase schemes

**20.—(1)** A money purchase scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if under the scheme—

- (a) the jobholder's employer must pay contributions in respect of the jobholder;
- (b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period;
- (c) the total amount of contributions paid by the jobholder and the employer, however calculated, must be equal to or more than 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.

<sup>F32</sup>(2) .....

(3) A scheme does not fail to satisfy the quality requirement under this section merely because the trustees or managers of the scheme may on any occasion refuse to accept a contribution below an amount prescribed for the purposes of this section on the grounds that it is below that amount.

### Textual Amendments

**F32** S. 20(2) omitted (6.4.2012) by virtue of [The Pensions \(2008 Act\) \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Provisions\) Regulations \(Northern Ireland\) 2012](#) (S.R. 2012/120), regs. 1(a), **3(2)**

### Modifications etc. (not altering text)

**C8** S. 20(1) modified (1.7.2012) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) Regulations \(Northern Ireland\) 2010](#) (S.R. 2010/122), regs. 1(1), **45(2)** (as amended (1.7.2012) by [S.R. 2012/237](#), regs. 1(1)(b), **2(2)**)

### Commencement Information

**I34** S. 20 partly in force; s. 20 in force for certain purposes at Royal Assent see s. 118(2)

**Status:** Point in time view as at 06/04/2013. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Pensions (No. 2) Act (Northern Ireland) 2008 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

**I35** S. 20 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

### Quality requirement: UK defined benefits schemes

**21.—(1)** Subject to subsection (3), a defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if the jobholder is in contracted-out employment.

(2) A defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder who is not in contracted-out employment if it satisfies the test scheme standard in relation to that jobholder.

(3) The Department may by order provide that a scheme does not satisfy the quality requirement in relation to a jobholder who is in contracted-out employment unless it satisfies the test scheme standard in relation to that jobholder, with the substitution of a higher fraction, not exceeding 1/80th, for the fraction of 1/120th in section 23(4)(a).

(4) In relation to any scheme, a jobholder is in contracted-out employment for the purposes of this section and section 22 if a certificate has been issued in respect of the jobholder under section 3(1) of the Pension Schemes Act stating that the employment of the jobholder is contracted-out employment by reference to the scheme.

#### Modifications etc. (not altering text)

**C9** S. 21 modified (1.7.2012) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/122\)](#), regs. 1(1), **45(4)** (as amended (1.7.2012) by [S.R. 2012/237](#), regs. 1(1)(b), 2(2))

#### Commencement Information

**I36** S. 21 partly in force; s. 21 in force for certain purposes at Royal Assent see s. 118(2)

**I37** S. 21 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

### Test scheme standard

**22.—(1)** A scheme satisfies the test scheme standard in relation to a jobholder (J) if the pensions to be provided for the relevant members of the scheme are broadly equivalent to, or better than, the pensions which would be provided for them under a test scheme.

(2) Subject to subsection (3), the relevant members are J and—

(a) if J is not in contracted-out employment, all active members who are not in contracted-out employment and are jobholders of the same employer as J;

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(b) if J is in contracted-out employment, all active members who are in contracted-out employment and are jobholders of the same employer as J.

(3) In applying this section the pensions to be provided for relevant members must be considered as a whole.

(4) The Department may by regulations make provision for the manner of, and criteria for, determining whether the pensions to be provided for the relevant members under a scheme are broadly equivalent to, or better than, the pensions which would be provided for them under a test scheme.

(5) Regulations under subsection (4) may provide for the determination to be made in accordance with guidance issued from time to time by the Department.

(6) The Department may by regulations provide that a scheme only satisfies the test scheme standard if the scheme actuary certifies that it does.

(7) Except in prescribed circumstances, the scheme actuary is the actuary appointed under Article 47(1)(b) of the Pensions (Northern Ireland) Order 1995 (NI 22) (in this Act referred to as “the 1995 Order”) (professional advisers) in relation to the scheme.

[<sup>F33</sup>(8) In the case of a scheme under which a sum of money is made available for the provision of benefits to a relevant member, references in this section to pensions are to be read as references to such sums.]

#### Textual Amendments

**F33** S. 22(8) added (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 12(1), 34(1)(3)**; [S.R. 2012/265](#), art. 2(1)(c)

#### Commencement Information

**I38** S. 22 partly in force; s. 22 in force for certain purposes at Royal Assent see s. 118(2)

**I39** S. 22 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266](#), art. 2, [Sch. Pt. 1](#)

#### Test scheme

[<sup>F34</sup>**23.**—(1) A test scheme is an occupational pension scheme which satisfies—

- (a) the requirement in subsection (2),
- (b) the requirement in subsection (4) or requirements prescribed under subsection (6) (as appropriate), and
- (c) any further requirements that are prescribed.

(2) The scheme must either—

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- (a) provide for a member to be entitled to a pension commencing at the appropriate age and continuing for life, or
  - (b) provide for a sum of money to be made available for the provision of benefits to a member commencing at the appropriate age and continuing for life.
- (3) The appropriate age is 65 or any higher age prescribed.
- (4) In the case of a scheme that provides entitlement to a pension as mentioned in subsection (2)(a), the annual rate of the pension at the appropriate age must be—
- (a)  $\frac{1}{120}$ th of average qualifying earnings in the last three tax years preceding the end of pensionable service,
- multiplied by
- (b) the number of years of pensionable service, up to a maximum of 40.
- (5) Section 13(1) (qualifying earnings) applies for the purposes of subsection (4) as if the reference to a pay reference period were a reference to a tax year.
- (6) In the case of a scheme that provides for a sum of money to be made available as mentioned in subsection (2)(b), regulations must prescribe requirements relating to that sum.]

#### Textual Amendments

**F34** S. 23 substituted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 12(2), 34(1)(3)**; [S.R. 2012/265](#), art. 2(1)(c)

#### Commencement Information

**I40** S. 23 partly in force; s. 23 in force for certain purposes at Royal Assent see s. 118(2)

### Quality requirement: UK hybrid schemes

**24.—(1)** A hybrid scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if it satisfies the requirements mentioned in whichever of these is the appropriate paragraph—

- (a) the requirements for a money purchase scheme under section 20, subject to any prescribed modifications;
  - (b) the requirements for a defined benefits scheme under sections 21 to 23, subject to any prescribed modifications.
- (2) Which paragraph of subsection (1) is appropriate for any hybrid scheme is to be determined by rules made by the Department.

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(3) The rules may provide for different paragraphs to be appropriate for different provisions of a scheme.

(4) The rules may provide for the paragraphs to be appropriate as alternatives, for any scheme or any provisions of a scheme.

**Modifications etc. (not altering text)**

**C10** S. 24 applied (with modifications) (1.7.2012) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/122\)](#), regs. 1(1), **45(5)(6)** (as amended (1.7.2012) by [S.R. 2012/237](#), regs. 1(1)(b), **2(2)**)

**Commencement Information**

**I41** S. 24 partly in force; s. 24 in force for certain purposes at Royal Assent see s. 118(2)

**I42** S. 24 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266](#), art. 2, [Sch. Pt. 1](#)

**Quality requirement: non-UK occupational pension schemes**

**25** The Department may by regulations make provision as to the quality requirement to be satisfied in the case of an occupational pension scheme within section 18(b) or (c).

**Commencement Information**

**I43** S. 25 partly in force; s. 25 in force for certain purposes at Royal Assent see s. 118(2)

**Quality requirement: UK personal pension schemes**

**26.—(1)** This section applies to a personal pension scheme if the operation of the scheme—

- (a) is carried on in such a way as to be a regulated activity for the purposes of the Financial Services and Markets Act 2000 (c. 8), and
- (b) is carried on in the United Kingdom by a person who is in relation to that activity an authorised person or an exempt person under section 19 of that Act.

(2) The scheme satisfies the quality requirement in relation to a jobholder if the following conditions are satisfied.

(3) The first condition is that all of the benefits that may be provided to the jobholder under the scheme are money purchase benefits.

(4) The second condition is that, in relation to the jobholder, there is an agreement between the provider of the scheme and the employer under which—

- (a) the employer must pay contributions in respect of the jobholder;

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- (b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.
- (5) In subsection (6), “shortfall” means the difference (if any) between—
- (a) the employer's contribution in respect of the jobholder under the agreement referred to in subsection (4), and
- (b) 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.
- (6) The third condition is that if there is a shortfall there is an agreement between the provider of the scheme and the jobholder under which the jobholder must pay contributions which, however calculated, are equal to or more than the shortfall.
- (7) The fourth condition is that, in relation to the jobholder, there are direct payment arrangements (within the meaning of section 107A of the Pension Schemes Act) between the jobholder and the employer.
- <sup>F35</sup>(8) . . . . .
- (9) A scheme does not fail to satisfy the quality requirement under this section merely because the provider of the scheme may on any occasion refuse to accept a contribution below an amount prescribed for the purposes of this section on the grounds that it is below that amount.

#### Textual Amendments

- F35** S. 26(8) omitted (6.4.2012) by virtue of [The Pensions \(2008 Act\) \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Provisions\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/120\)](#), regs. 1(a), **3(3)**

#### Commencement Information

- I44** S. 26 partly in force; s. 26 in force for certain purposes at Royal Assent see s. 118(2)
- I45** S. 26 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266](#), art. 2, [Sch. Pt. 1](#)

### Quality requirement: other personal pension schemes

**27** The Department may by regulations make provision as to the quality requirement to be satisfied in the case of a personal pension scheme to which section 26 does not apply.

#### Commencement Information

- I46** S. 27 partly in force; s. 27 in force for certain purposes at Royal Assent see s. 118(2)



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**[<sup>F36</sup>Certification that quality requirement or alternative requirement is satisfied]**

<sup>F37</sup>**28.**—(1) The Department may by regulations provide that, subject to provision within subsection (6)(f), a scheme to which this section applies is to be taken to satisfy the relevant quality requirement in relation to [<sup>F38</sup>each of an employer's relevant jobholders ] if a certificate given in accordance with the regulations is in force in relation to the employer.

[<sup>F39</sup>(1A) In this section—

- (a) “relevant jobholder” means a jobholder to whom the certificate in question applies;
- (b) a reference to a scheme includes a reference to part of a scheme.]

(2) The certificate must [<sup>F40</sup>state—

- (a) that], in relation to [<sup>F41</sup>relevant jobholders ] of the employer who are active members of the scheme, the scheme is in the opinion of the person giving the certificate able to satisfy the relevant quality requirement throughout the certification period[<sup>F42</sup>, or
- (b) that, in relation to those jobholders, the scheme is in that person's opinion able to satisfy a prescribed alternative requirement throughout the certification period.]

(3) This section applies to—

- (a) a money purchase scheme to which section 20 applies;
- (b) a personal pension scheme to which section 26 applies;
- (c) a hybrid scheme, to the extent that requirements within section 24(1)(a) apply.

[<sup>F43</sup>(3A) This section also applies to—

- (a) a money purchase scheme that is an occupational pension scheme within section 18(b);
- (b) a personal pension scheme of a prescribed description for which provision is made under section 27;
- (c) a hybrid scheme that is an occupational pension scheme within section 18(b), to the extent prescribed.]

(4) The “relevant quality requirement”—

- (a) for a scheme within subsection (3)(a), means the quality requirement under section 20;
- (b) for a scheme within subsection (3)(b), means the quality requirement under section 26;
- (c) for a scheme within paragraph (c) of subsection (3), means the requirements mentioned in that paragraph.

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- [<sup>F44</sup>(d) for a scheme within subsection (3A), means a prescribed requirement.]
- (5) Regulations may make further provision in relation to certification under this section.
- (6) Regulations may in particular make provision—
- (a) as to the period for which a certificate is in force (the “certification period”);
  - (b) as to the persons by whom a certificate may be given;
  - (c) as to procedures in connection with certification or where a certificate has been given;
  - (d) requiring persons to have regard to guidance issued by the Department;
  - (e) requiring an employer to calculate the amount of contributions that a scheme, and any [<sup>F45</sup>contribution agreements] , required to be paid by or in respect of [<sup>F46</sup>any relevant jobholder] in the certification period;
  - (f) as to cases where the requirements of a scheme, and any [<sup>F47</sup>contribution agreements] , as to payment of contributions by or in respect of [<sup>F48</sup>relevant jobholders] of an employer did not satisfy prescribed conditions.
- (7) Provision within subsection (6)(f) includes in particular provision for a scheme not to be treated by virtue of regulations under this section as having satisfied the relevant quality requirement unless prescribed steps are taken (which may include the making of prescribed payments).
- (8) In subsection (6) [<sup>F49</sup>“contribution agreements” means—
- (a) the agreement] required, in the case of a scheme within subsection (3)(b), by section 26(4) and any agreement required, in the case of such a scheme, by section 26(6).<sup>F50</sup>, or
  - (b) any agreement of the same or a similar kind that is required, in the case of a scheme within subsection (3A)(b), by regulations under section 27.]
- (9) The Department may by order repeal this section.

#### Textual Amendments

- F36** S. 28 heading substituted (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 13\(2\), 34\(1\)\(3\)](#); S.R. 2012/233, art. 2(1)(b)
- F37** S. 28 applied by S.R. 2010/122, reg. 32J (as inserted (1.7.2012) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) \(Amendment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/237\)](#), regs. 1(1)(a), **2(3)**)
- F38** Words in s. 28(1) substituted (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 13\(3\), 34\(1\)\(3\)](#); S.R. 2012/233, art. 2(1)(b)

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- F39** S. 28(1A) inserted (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 13(4)**, 34(1)(3); S.R. 2012/233, art. 2(1)(b)
- F40** Words in s. 28(2) substituted (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 13(5)(a)**, 34(1)(3); S.R. 2012/233, art. 2(1)(b)
- F41** Words in s. 28(2) substituted (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 13(5)(b)**, 34(1)(3); S.R. 2012/233, art. 2(1)(b)
- F42** S. 28(2)(b) and preceding word added (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 13(5)(c)**, 34(1)(3); S.R. 2012/233, art. 2(1)(b) S.R. 2012/233, art. 2(1)(b)
- F43** S. 28(3A) inserted (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 14(2)**, 34(1)(3); S.R. 2012/233, art. 2(1)(c)
- F44** S. 28(4)(d) added (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 14(3)**, 34(1)(3); S.R. 2012/233, art. 2(1)(c)
- F45** Words in s. 28(6)(e) substituted (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 14(4)**, 34(1)(3); S.R. 2012/233, art. 2(1)(c)
- F46** Words in s. 28(6)(e) substituted (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 13(6)(a)**, 34(1)(3); S.R. 2012/233, art. 2(1)(b)
- F47** Words in s. 28(6)(f) substituted (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 14(4)**, 34(1)(3); S.R. 2012/233, art. 2(1)(c)
- F48** Words in s. 28(6)(f) substituted (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 13(6)(b)**, 34(1)(3); S.R. 2012/233, art. 2(1)(b)
- F49** Words in s. 28(8) substituted (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 14(5)(a)**, 34(1)(3); S.R. 2012/233, art. 2(1)(c)
- F50** S. 28(8)(b) and preceding word added (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 14(5)(b)**, 34(1)(3); S.R. 2012/233, art. 2(1)(c)

#### Commencement Information

- I47** S. 28 partly in force; s. 28 in force for certain purposes at Royal Assent see s. 118(2)
- I48** S. 28 in operation at 8.6.2012 in so far as not already in operation by [S.R. 2012/236](#), **art. 2(b)**

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### *Transitional*

#### **Transitional periods for money purchase and personal pension schemes**

**29.**—(1) During the first transitional period for money purchase and personal pension schemes—

- (a) sections 20(1)(b) and 26(4)(b) have effect as if for “3%” there were substituted “ 1% ”;
- (b) sections 20(1)(c) and 26(5)(b) have effect as if for “8%” there were substituted “ 2% ”.

(2) The first transitional period is a prescribed period of at least one year, beginning with the coming into operation of section 20.

(3) During the second transitional period for money purchase and personal pension schemes—

- (a) sections 20(1)(b) and 26(4)(b) have effect as if for “3%” there were substituted “ 2% ”;
- (b) sections 20(1)(c) and 26(5)(b) have effect as if for “8%” there were substituted “ 5% ”.

(4) The second transitional period is a prescribed period of at least one year, beginning with the end of the first transitional period.

#### **Commencement Information**

**I49** S. 29 partly in force; s. 29 in force for certain purposes at Royal Assent see s. 118(2)

**I50** S. 29 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2](#), [Sch. Pt. 1](#)

#### **Transitional period for defined benefits and hybrid schemes**

**30.**—(1) Subsection (3) applies if, in relation to a person who on the employer's first enrolment date is a jobholder to whom section 3 applies, the conditions in subsection (2) are satisfied, and continue to be satisfied during the transitional period for defined benefits and hybrid schemes.

(2) The conditions are that—

- (a) the jobholder has been employed by the employer for a continuous period beginning before the employer's first enrolment date,
- (b) at a time in that period before the employer's first enrolment date, the jobholder became entitled to become an active member of a defined benefits scheme or a hybrid scheme,
- (c) the jobholder is, and has always since that time been, entitled to become an active member of a defined benefits scheme or a hybrid scheme, and

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(d) the scheme to which that entitlement relates is a qualifying scheme, and any scheme to which it has related on or after the employer's first enrolment date has been a qualifying scheme.

(3) <sup>F51</sup>If by the end of the prescribed period the employer has given the jobholder notice that the employer intends to defer automatic enrolment until the end of the transitional period for defined benefits and hybrid schemes ], section 3 has effect in relation to the jobholder with the substitution for subsection (2) of the following subsection—

“(2) The employer must make prescribed arrangements by which the jobholder becomes an active member, with effect from the end of the transitional period for defined benefits and hybrid schemes, of an automatic enrolment scheme which is a defined benefits scheme or a hybrid scheme.”.

(4) If <sup>F52</sup>a notice is given under subsection (3) and at any later time] in the transitional period for defined benefits and hybrid schemes the condition in subsection (2)(c) or (d) ceases to be satisfied, subsection (5) applies instead of subsection (3) (and the day after the last day on which that condition is satisfied is referred to as “the closure date”).

(5) Where this subsection applies, section 3 has effect in relation to the jobholder with the substitution for subsection (2) of the following subsection—

“(2) The employer must make prescribed arrangements by which the jobholder either—

(a) becomes an active member, with effect from the closure date, of an automatic enrolment scheme which is a defined benefits scheme or a hybrid scheme, or

(b) becomes an active member, with effect from the automatic enrolment date, of an automatic enrolment scheme which is a money purchase scheme <sup>F53</sup>or personal pension scheme].”.

(6) If the jobholder becomes a member of a scheme under arrangements made under subsection (2)(b) of that section (as substituted by subsection (5))—

(a) the employer's contributions are payable with effect from the automatic enrolment date;

(b) any requirement of the scheme <sup>F54</sup>... for contributions to be payable by the jobholder does not apply in respect of the period of the jobholder's membership before the closure date;

(c) regulations made for the purposes of section 3(2)(b) must secure that the jobholder may pay, within a period prescribed by the regulations, any contributions which would have been payable by the jobholder but for paragraph (b) of this subsection.

(7) Where subsection (3) or (5) <sup>F55</sup>applies—

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(a) section] 3(3) and (4) applies as if references to the automatic enrolment date were references to the [<sup>F56</sup>day with effect from which] arrangements would by virtue of this section fall to be made in respect of the jobholder.

[<sup>F57</sup>(b) section 4 applies as if—

(i) the reference in subsection (1) to the employer's staging date were a reference to the employer's first enrolment date;

(ii) in that subsection, for “the worker's automatic enrolment date is the deferral date” there were substituted “ the day with effect from which arrangements fall to be made by virtue of section 30 in respect of the jobholder is changed to the deferral date ”;

(iii) in subsections (4) to (6), references to the starting day were references to the day with effect from which arrangements would by virtue of this section fall to be made in respect of the jobholder.]

[<sup>F58</sup>(7A) The Department may by regulations make provision about the form and content of a notice under subsection (3).]

(8) The transitional period for defined benefits and hybrid schemes is a prescribed period beginning with the day on which section 3 comes into operation.

(9) In this section, the “employer's first enrolment date” means the first day on which section 3 applies in the case of the employer (where that day falls within the transitional period for defined benefits and hybrid schemes).

#### Textual Amendments

**F51** Words in s. 30(3) substituted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 15\(2\), 34\(1\)\(3\)](#); S.R. 2012/265, art. 2(1)(d)

**F52** Words in s. 30(4) substituted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 15\(3\), 34\(1\)\(3\)](#); S.R. 2012/265, art. 2(1)(d)

**F53** Words in s. 30(5) (in the substituted ss. (2)) inserted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 16\(2\), 34\(1\)\(3\)](#); S.R. 2012/265, art. 2(1)(e)

**F54** Words in s. 30(6)(b) omitted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by virtue of [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 16\(3\), 34\(1\)\(3\)](#); S.R. 2012/265, art. 2(1)(e)

**F55** Words in s. 30(7) substituted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 7\(6\)\(a\), 34\(1\)\(3\)](#); S.R. 2012/265, art. 2(1)(b)

**F56** Words in s. 30(7) substituted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 7\(6\)\(b\), 34\(1\)\(3\)](#); S.R. 2012/265, art. 2(1)(b)

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- F57** S. 30(7)(b) added (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 7\(6\)\(c\), 34\(1\)\(3\)](#); S.R. 2012/265, art. 2(1)(b)
- F58** S. 30(7A) inserted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 15\(4\), 34\(1\)\(3\)](#); S.R. 2012/265, art. 2(1)(d)

#### Commencement Information

- I51** S. 30 partly in force; s. 30 in force for certain purposes at Royal Assent see s. 118(2)
- I52** S. 30 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

### Miscellaneous

#### Effect of freezing order or assessment period

**31.—(1)** Where a jobholder is an active member of a qualifying scheme and a freezing event occurs in relation to the scheme, the jobholder does not, for the purposes of this Chapter, cease to be an active member of the scheme, and the scheme does not, for those purposes, cease to be a qualifying scheme, by virtue of any relevant provision.

(2) Where a worker is an active member of a scheme that satisfies the requirements of section 9 and a freezing event occurs in relation to the scheme, the worker does not, for the purposes of section 9(1)(c), cease to be an active member of the scheme by virtue of any relevant provision.

(3) In this section—

“freezing event” in relation to a scheme means—

- (a) the making of a freezing order under Article 19 of the Pensions (Northern Ireland) Order 2005 (NI 1) (in this Act referred to as “the 2005 Order”) in relation to the scheme, or
- (b) the beginning of an assessment period within the meaning of Article 116 of that Order in relation to the scheme;

“relevant provision” means—

- (a) in relation to a freezing order, provision contained in the order, or the provision made with respect to the order by Article 19 of the 2005 Order;
- (b) in relation to an assessment period, the provision made with respect to the period by Article 117 of that Order.

#### Commencement Information

- I53** S. 31 in operation at 30.6.2012 by [S.R. 2012/266, art. 2, Sch. Pt. 2](#)

*Status: Point in time view as at 06/04/2013. This version of this Act contains provisions that are not valid for this point in time.*

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### **Power of trustees [<sup>F59</sup>or managers] to modify by resolution**

**32.—(1)** The trustees [<sup>F60</sup>or managers] of an occupational pension scheme may by resolution modify the scheme—

- (a) with a view to enabling the scheme to comply with the conditions in section 17(2), or
- (b) by increasing the amount required to be paid in contributions in order for the scheme<sup>F61</sup>to satisfy—
  - (i) the requirements contained in section 20(1),
  - (ii) those requirements as modified under section 24(1)(a), or
  - (iii) a requirement prescribed under section 28(2)(b).]

(2) An increase under subsection (1)(b) may be made only—

- (a) by increasing the amount of any contribution, directly or by modifying the basis on which it is calculated, or
- (b) by increasing the frequency of any contributions.

(3) No modification may be made by virtue of subsection (1) without the consent of the employer in relation to the scheme.

(4) In the application of subsection (3) to a scheme in relation to which there is more than one employer, references to the employer have effect as if they were references to a person nominated by the employers, or by the scheme, to act as the employers' representative for the purposes of this section or, if no such nomination is made, to all of the employers.

(5) Regulations may provide that this section does not apply to occupational pension schemes within a prescribed class or description.

#### **Textual Amendments**

**F59** Words in s. 32 heading inserted (30.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 17, 34\(3\); S.R. 2012/265, art. 2\(2\)\(b\)](#)

**F60** Words in s. 32(1) inserted (30.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 17, 34\(3\); S.R. 2012/265, art. 2\(2\)\(b\)](#)

**F61** Words in s. 32(1)(b) substituted (2.6.2012 for specified purposes, 7.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 13\(7\), 34\(1\)\(3\); S.R. 2012/233, art. 2\(1\)\(b\)](#)

#### **Commencement Information**

**I54** S. 32 partly in force; s. 32 in force for certain purposes at Royal Assent see s. 118(2)

**I55** S. 32 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)



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## Deduction of contributions

**33.—(1)** An employer who arranges for a person to become a member of a scheme in accordance with section 3(2), 5(2) or 7(3), or of an occupational pension scheme in accordance with section 9(2), may deduct the person's contributions to the scheme from the person's remuneration and pay them to the trustees or managers of the scheme (in the case of an occupational pension scheme) or the provider of the scheme (in the case of a personal pension scheme).

(2) Regulations prescribing arrangements for the purposes of section 3(2), 5(2), 7(3) or 9(2), may require the employer to make such a deduction or payment at any time on or after the date with effect from which the jobholder is to become an active member of a scheme under the arrangements.

### Commencement Information

**I56** S. 33 partly in force; s. 33 in force for certain purposes at Royal Assent see s. 118(2)

**I57** S. 33 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2](#), [Sch. Pt. 1](#)

## CHAPTER 2

### COMPLIANCE

#### *Effect of failure to comply*

### Effect of failure to comply

**34.—(1)** Contravention of any of the employer duty provisions does not give rise to a right of action for breach of statutory duty.

(2) But nothing in the employer duty provisions or this Chapter affects any right of action arising apart from those provisions.

(3) In this Chapter, references to the employer duty provisions are references to any provision of sections 2 to 11 or of regulations under those sections.

### Commencement Information

**I58** S. 34 in operation at 30.6.2012 by [S.R. 2012/266, art. 2](#), [Sch. Pt. 2](#)

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### *Compliance notices and unpaid contributions notices*

#### **Compliance notices**

**35.—**(1) The Regulator may issue a compliance notice to a person if it is of the opinion that the person has contravened one or more of the employer duty provisions.

(2) A compliance notice is a notice directing the person to whom it is issued to take, or refrain from taking, the steps specified in the notice in order to remedy the contravention.

(3) A compliance notice may, in particular—

- (a) state the period within which any step must be taken or must cease to be taken;
- (b) require the person to whom it is issued to provide within a specified period specified information relating to the contravention;
- (c) require the person to inform the Regulator, within a specified period, how the person has complied or is complying with the notice;
- (d) state that, if the person fails to comply with the requirements of the notice, the Regulator may issue a fixed penalty notice under section 40.

(4) The steps specified in the notice may, in particular, include such steps as the Regulator thinks appropriate for placing the worker in the same position (as nearly as possible) as if the contravention had not occurred.

(5) If the compliance notice is issued in respect of a failure to comply with an enrolment duty and the specified steps relate to membership of a defined benefits scheme or a hybrid scheme, the notice may, in particular, require the employer to ensure that the worker is entitled to the same benefits under the scheme as if the employer had complied with that duty.

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#### **Commencement Information**

**I59** S. 35 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

#### **Third party compliance notices**

**36.—**(1) The Regulator may issue a third party compliance notice if it is of the opinion that—

- (a) a person has contravened one or more of the employer duty provisions,
- (b) the contravention is or was, wholly or partly, a result of a failure of another person (the “third party”) to do any thing, and
- (c) that failure is not itself a contravention of any of the employer duty provisions.

*Status: Point in time view as at 06/04/2013. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: Pensions (No. 2) Act (Northern Ireland) 2008 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) A third party compliance notice is a notice directing the third party to take, or refrain from taking, the steps specified in the notice in order to remedy or prevent a recurrence of the failure.
- (3) A third party notice may, in particular—
- (a) state the period within which any step must be taken or must cease to be taken;
  - (b) require the third party to inform the Regulator, within a specified period, how the third party has complied or is complying with the notice;
  - (c) state that, if the third party fails to comply with the requirements of the notice, the Regulator may issue a fixed penalty notice under section 40.
- (4) A third party notice may give the third party a choice between different ways of remedying or preventing the recurrence of the third party's failure.

#### Commencement Information

**160** S. 36 in operation at 30.6.2012 by S.R. 2012/266, art. 2, Sch. Pt. 2

#### Unpaid contributions notices

**37.—(1)** The Regulator may issue an unpaid contributions notice to an employer if it is of the opinion that relevant contributions have not been paid on or before the due date.

(2) An unpaid contributions notice is a notice requiring an employer to pay into a pension scheme by a specified date an amount in respect of relevant contributions that have not been paid.

(3) “Due date” has the meaning prescribed.

(4) An unpaid contributions notice may, in particular—

- (a) specify the scheme to which the contributions are due;
- (b) specify the workers, or category of workers, in respect of whom the contributions are due;
- (c) state the period in respect of which the contributions are due;
- (d) state the due date in respect of the contributions;
- (e) require the employer to take such other steps in relation to remedying the failure to pay the contributions as the Regulator considers appropriate;
- (f) state that if the employer fails to comply with the notice, the Regulator may issue a fixed penalty notice under section 40.

(5) In this section, “employer” in relation to a worker means the person by whom the worker is or, if the employment has ceased, was employed.

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**Changes to legislation:** Pensions (No. 2) Act (Northern Ireland) 2008 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

#### Commencement Information

**I61** S. 37 partly in force; s. 37 in force for certain purposes at Royal Assent see s. 118(2)

**I62** S. 37 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2](#),  
[Sch. Pt. 1](#)

### Calculation and payment of contributions

**38.—(1)** This section applies to—

- (a) a compliance notice issued to an employer in respect of a contravention of section 2(1) or a failure to comply with an enrolment duty;
- (b) an unpaid contributions notice.

**(2)** The notice may, in particular, include—

- (a) a requirement to calculate the amount of relevant contributions that are of a description specified in the notice (“unpaid relevant contributions”);
- (b) if the contributions are being paid within the prescribed period after the appropriate date, a requirement to pay an amount equal to the amount of unpaid relevant contributions within section 39(2)(a);
- (c) if the contributions are not being paid within the prescribed period after the appropriate date, a requirement to pay (on the employer's own account) an amount equal to the amount of unpaid relevant contributions;
- (d) if paragraph (b) applies, a requirement to ensure—
  - (i) that the worker is not required to pay an amount equal to the balance of the unpaid relevant contributions during the prescribed period, and
  - (ii) that, if the worker chooses to pay that amount, it may be paid in instalments;
- (e) if the contributions are payable to a money purchase scheme, a hybrid scheme or a personal pension scheme, a requirement to pay interest on the amount required by the notice to be paid in respect of unpaid relevant contributions, at a rate and in respect of a period determined in accordance with regulations.

**(3)** The Department may by regulations make provision about the way in which the Regulator may (without prejudice to subsection (2)(a)) estimate the amount of contributions that an employer has failed to pay on behalf or in respect of a worker.

**(4)** Regulations under subsection (3) may include, in particular, provision about the sources of information that the Regulator may use in estimating that amount, other than information provided by the employer.

**(5)** In this section, “appropriate date” means—

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- (a) in the case of a compliance notice, such date as may be specified in the notice;
- (b) in the case of an unpaid contributions notice, the due date within the meaning of section 37(3).

(6) In this section, “employer” in relation to a worker means the person by whom the worker is or, if the employment has ceased, was employed.

#### Commencement Information

**I63** S. 38 partly in force; s. 38 in force for certain purposes at Royal Assent see s. 118(2)

**I64** S. 38 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2](#), [Sch. Pt. 1](#)

#### Meaning of “relevant contributions”

**39.—**(1) In sections 37 and 38 “relevant contributions” are—

- (a) in relation to a jobholder, employer contributions payable to a qualifying scheme in relation to the jobholder;
- (b) in relation to a worker to whom section 9 applies, employer contributions payable to a pension scheme which satisfies the requirements of that section.

(2) In subsection (1), “employer contributions” means contributions payable by the employer—

- (a) on the employer's own account (but in respect of the worker), or
- (b) on behalf of the worker out of deductions from the worker's earnings.

#### Commencement Information

**I65** S. 39 in operation at 30.6.2012 by [S.R. 2012/266, art. 2](#), [Sch. Pt. 2](#)

### *Penalty notices*

#### Fixed penalty notices

**40.—**(1) The Regulator may issue a fixed penalty notice to a person if it is of the opinion that the person has failed to comply with—

- (a) a compliance notice under section 35,
- (b) a third party compliance notice under section 36,
- (c) an unpaid contributions notice under section 37, or

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- (d) a notice issued under Article 67 of the 2005 Order (provision of information).
- (2) The Regulator may issue a fixed penalty notice to a person if it is of the opinion that the person has contravened—
- (a) any provision of regulations under section 3(2) or 5(2) (prescribed arrangements for automatic enrolment or re-enrolment),
  - (b) any provision of regulations under section 7(4) (prescribed arrangements: jobholder's right to opt in),
  - (c) section 8(2)(b) (refund of contributions if jobholder opts out of scheme membership), and any provision of regulations under that provision,
  - (d) section 10 (requirement to give information to workers) and any provision of regulations under that section, or
  - (e) any provision of regulations under section 59 (requirement to keep records).
- (3) A fixed penalty notice is a notice requiring the person to whom it is issued to pay a penalty within the period specified in the notice.
- (4) The penalty—
- (a) is to be determined in accordance with regulations, and
  - (b) must not exceed £50,000.
- (5) A fixed penalty notice must—
- (a) state the amount of the penalty;
  - (b) state the date, which must be at least four weeks after the date on which the notice is issued, by which the penalty must be paid;
  - (c) state the period to which the penalty relates;
  - (d) if the notice is issued under subsection (1), specify the failure to which the notice relates;
  - (e) if the notice is issued under subsection (2), specify the provision or provisions that have been contravened;
  - (f) if the notice is issued under subsection (1), state that, if the failure to comply continues, the Regulator may issue an escalating penalty notice under section 41;
  - (g) notify the person to whom the notice is issued of the review process under section 43 and the right of referral to [<sup>F62</sup>a tribunal] under section 44.

#### Textual Amendments

**F62** Words in s. 40(5)(g) substituted (6.4.2010) by [Pensions Regulator Tribunal \(Transfer of Functions\) Act \(Northern Ireland\) 2010 \(c. 4\), ss. 3\(1\), 5\(2\), Sch. 1 para. 29](#) (with [Sch. 2](#)); [S.R. 2010/101, art. 2](#)

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#### Commencement Information

- I66** S. 40 partly in force; s. 40 in force for certain purposes at Royal Assent see s. 118(2)
- I67** S. 40(1)(a)-(c) in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)
- I68** S. 40(1)(d) in operation at 30.6.2012 for specified purposes by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)
- I69** S. 40(2)-(5) in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

#### Escalating penalty notices

**41.—(1)** The Regulator may issue an escalating penalty notice to a person if it is of the opinion that the person has failed to comply with—

- (a) a compliance notice under section 35,
- (b) a third party compliance notice under section 36,
- (c) an unpaid contributions notice under section 37, or
- (d) a notice under Article 67 of the 2005 Order (provision of information).

**(2)** But the Regulator may not issue an escalating penalty notice if—

- (a) it relates to failure to comply with a notice within subsection (1)(a), (b) or (c), the person to whom that notice was issued has applied for a review of it under section 43, and any review has not been completed;
- (b) it relates to failure to comply with any notice within subsection (1), the person has exercised the right of referral to <sup>F63</sup>a tribunal] under section 44 in respect of a fixed penalty notice issued in relation to that notice, and the reference has not been determined.

**(3)** An escalating penalty notice is a notice requiring a person to pay an escalating penalty if the person fails to comply with a notice referred to in subsection (1) before a specified date.

**(4)** An escalating penalty is a penalty which is calculated by reference to a prescribed daily rate.

**(5)** The prescribed daily rate—

- (a) is to be determined in accordance with regulations, and
- (b) must not exceed £10,000.

**(6)** An escalating penalty notice must—

- (a) specify the failure to which the notice relates;
- (b) state that, if the person fails to comply with the notice referred to in subsection (1) before a specified date, the person will be liable to pay an escalating penalty;

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- (c) state the daily rate of the escalating penalty and the way in which the penalty is calculated;
- (d) state the date from which the escalating penalty will be payable, which must not be earlier than the date specified in the fixed penalty notice under section 40(5)(b);
- (e) state that the escalating penalty will continue to be payable at the daily rate until the date on which the person complies with the notice referred to in subsection (1) or such earlier date as the Regulator may determine;
- (f) notify the person of the review process under section 43 and the right of referral to [<sup>F64</sup>a tribunal] under section 44.

#### Textual Amendments

- F63** Words in s. 41(2)(b) substituted (6.4.2010) by [Pensions Regulator Tribunal \(Transfer of Functions\) Act \(Northern Ireland\) 2010 \(c. 4\), ss. 3\(1\), 5\(2\), Sch. 1 para. 30 \(with Sch. 2\); S.R. 2010/101, art. 2](#)
- F64** Words in s. 41(6)(f) substituted (6.4.2010) by [Pensions Regulator Tribunal \(Transfer of Functions\) Act \(Northern Ireland\) 2010 \(c. 4\), ss. 3\(1\), 5\(2\), Sch. 1 para. 30 \(with Sch. 2\); S.R. 2010/101, art. 2](#)

#### Commencement Information

- I70** S. 41 partly in force; s. 41 in force for certain purposes at Royal Assent see s. 118(2)
- I71** S. 41(1)(a)-(c) in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)
- I72** S. 41(1)(d) in operation at 30.6.2012 for specified purposes by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)
- I73** S. 41(2)-(6) in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2, Sch. Pt. 1](#)

#### Penalty notices: recovery

**42.—(1)** Any penalty payable under section 40 or section 41 is recoverable by the Regulator.

**(2)** The Regulator must pay into the Consolidated Fund any penalty recovered under this section.

#### Commencement Information

- I74** S. 42 in operation at 30.6.2012 by [S.R. 2012/266, art. 2, Sch. Pt. 2](#)



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## Reviews and references

### Review of notices

- 43.—**(1) The Regulator may review a notice to which this section applies—
- (a) on the written application of the person to whom the notice was issued, or
  - (b) if the Regulator otherwise considers it appropriate.
- (2) This section applies to—
- (a) a compliance notice issued under section 35;
  - (b) a third party compliance notice issued under section 36;
  - (c) an unpaid contributions notice issued under section 37;
  - (d) a fixed penalty notice issued under section 40;
  - (e) an escalating penalty notice issued under section 41.
- (3) Regulations may prescribe the period within which—
- (a) an application to review a notice may be made under subsection (1)(a);
  - (b) a notice may be reviewed under subsection (1)(b).
- (4) On a review of a notice, the effect of the notice is suspended for the period beginning when the Regulator determines to carry out the review and ending when the review is completed.
- (5) In carrying out a review, the Regulator must consider any representations made by the person to whom the notice was issued.
- (6) The Regulator's powers on a review include power to—
- (a) confirm, vary or revoke the notice;
  - (b) substitute a different notice.

#### Commencement Information

**I75** S. 43 partly in force; s. 43 in force for certain purposes at Royal Assent see s. 118(2)

**I76** S. 43 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266, art. 2](#),  
[Sch. Pt. 1](#)

### References to <sup>F65</sup>First-tier Tribunal or Upper Tribunal]

- 44.—**(1) A person to whom a notice is issued under section 40 or section 41 may, if one of the conditions in subsection (2) is satisfied, make a reference to <sup>F66</sup>the Tribunal] in respect of—
- (a) the issue of the notice;
  - (b) the amount of the penalty payable under the notice.
- (2) The conditions are—

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- (a) that the Regulator has completed a review of the notice under section 43;
- (b) that the person to whom the notice was issued has made an application for the review of the notice under section 43(1)(a) and the Regulator has determined not to carry out such a review.

(3) On a reference to [<sup>F67</sup>the Tribunal] in respect of a notice, the effect of the notice is suspended for the period beginning when the Tribunal receives notice of the reference and ending—

- (a) when the reference is withdrawn or completed, or
- (b) if the reference is made out of time, on the Tribunal determining not to allow the reference to proceed.

(4) For the purposes of subsection (3), a reference is completed when—

- (a) the reference has been determined,
- (b) the Tribunal has remitted the matter to the Regulator, and
- (c) any directions of the Tribunal for giving effect to its determination have been complied with.

[<sup>F68</sup>(4A) In this section “the Tribunal”, in relation to a reference under this section, means—

- (a) the Upper Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the Upper Tribunal is to hear the reference;
- (b) the First-tier Tribunal, in any other case.]

<sup>F69</sup>(5) .....

<sup>F70</sup>(6) .....

#### Textual Amendments

**F65** S. 44: words in heading substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 31(a)** (with Sch. 2); S.R. 2010/101, **art. 2**

**F66** Words in s. 44(1) substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 31(b)** (with Sch. 2); S.R. 2010/101, **art. 2**

**F67** Words in s. 44(3) substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 31(b)** (with Sch. 2); S.R. 2010/101, **art. 2**

**F68** S. 44(4A) inserted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 31(c)** (with Sch. 2); S.R. 2010/101, **art. 2**

**F69** S. 44(5) repealed (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(3), 5(2), **Sch. 3** (with Sch. 2); S.R. 2010/101, **art. 2**

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**F70** S. 44(6) repealed (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(3), 5(2), **Sch. 3** (with Sch. 2); S.R. 2010/101, **art. 2**

#### Commencement Information

**I77** S. 44 in operation at 30.6.2012 by S.R. 2012/266, art. 2, **Sch. Pt. 2**

### *Offences and monitoring*

#### **Offences of failing to comply**

**45.—**(1) An offence is committed by an employer who wilfully fails to comply with—

- (a) the duty under section 3(2) (automatic enrolment),
- (b) the duty under section 5(2) (automatic re-enrolment), or
- (c) the duty under section 7(3) (jobholder's right to opt in).

(2) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or both;
- (b) on summary conviction to a fine not exceeding the statutory maximum.

#### Commencement Information

**I78** S. 45 in operation at 30.6.2012 by S.R. 2012/266, art. 2, **Sch. Pt. 2**

#### **Offences by bodies corporate**

**46** For the purposes of an offence under section 45, section 20(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) applies with the omission of the words “the liability of whose members is limited” and where the affairs of a body corporate are managed by its members, applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

#### Commencement Information

**I79** S. 46 in operation at 30.6.2012 by S.R. 2012/266, art. 2, **Sch. Pt. 2**

#### **Offences by partnerships and unincorporated associations**

**47.—**(1) Proceedings for an offence under section 45 alleged to have been committed by a partnership or an unincorporated association may be brought in the name of the partnership or association.

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- (2) For the purposes of such proceedings—
- (a) rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate;
  - (b) Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26) applies in relation to the partnership or association as it applies in relation to a body corporate.
- (3) A fine imposed on a partnership or association on its conviction of an offence under section 45 is to be paid out of the funds of the partnership or association.
- (4) Subsection (5) applies where an offence under section 45 committed by a partnership is proved—
- (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to any neglect on the part of a partner.
- (5) The partner, as well as the partnership, is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (6) Subsection (7) applies where an offence under section 45 committed by an unincorporated association is proved—
- (a) to have been committed with the consent or connivance of an officer of the association, or
  - (b) to be attributable to any neglect on the part of an officer of the association.
- (7) The officer, as well as the association, is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (8) “Officer” in this section means—
- (a) an officer of the association or a member of its governing body, or
  - (b) a person purporting to act in such capacity.
- (9) “Partner” in this section includes a person purporting to act as a partner.

#### **Commencement Information**

**I80** S. 47 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

### **Offences of providing false or misleading information**

**48** In Article 75(1)(a) of the 2005 Order (offences of providing false or misleading information)—

- (a) at the end of head (iv) add “or
  - (v) regulations under section 11 of the Pensions (No. 2) Act (Northern Ireland) 2008 (information to be given to the Pensions Regulator);”;

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(b) omit “or” at the end of head (iii).

**Commencement Information**

**I81** S. 48 in operation at 30.6.2012 by [S.R. 2012/266](#), [art. 2](#), [Sch. Pt. 2](#)

**Monitoring of employers' payments to personal pension schemes**

**49** In section 107A of the Pension Schemes Act, at the end add—

“(18) In this section, “employee” includes a jobholder within the meaning of section 1 of the Pensions (No. 2) Act (Northern Ireland) 2008 and “employer” is to be read accordingly.”.

**Commencement Information**

**I82** S. 49 in operation at 3.1.2012 for specified purposes by [S.R. 2011/441](#), [art. 2\(a\)](#)

**I83** S. 49 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266](#), [art. 2](#), [Sch. Pt. 1](#)

CHAPTER 3

SAFEGUARDS: EMPLOYMENT AND PRE-EMPLOYMENT

*Prohibited recruitment conduct*

**Prohibited recruitment conduct**

**50.—(1)** An employer contravenes this section if any statement made or question asked by or on behalf of the employer for the purposes of recruitment indicates (expressly or impliedly) that an application for employment with the employer may be determined by reference to whether or not an applicant might opt out of automatic enrolment.

(2) The reference in subsection (1) to a statement made or a question asked for the purposes of recruitment is a reference to one made or asked in the course of any of the following—

- (a) inviting applications for employment;
- (b) requesting information from an applicant, referee or other person in connection with an application for employment;
- (c) providing information about employment;
- (d) proposing terms or conditions of employment.

(3) The reference in subsection (1) to an applicant opting out of automatic enrolment is a reference to the applicant, if becoming at any time in the course of the employment a jobholder to whom section 3 or 5 applies, giving notice

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in accordance with section 8 in relation to arrangements made by the employer under the relevant section.

(4) In this section and sections 51 and 52, “employer” means the prospective employer in relation to any employment.

**Commencement Information**

**184** S. 50 in operation at 30.6.2012 by S.R. 2012/266, art. 2, Sch. Pt. 2

**Compliance notices**

**51.**—(1) The Regulator may issue a compliance notice to an employer if it is of the opinion that the employer has contravened section 50.

(2) A compliance notice is a notice directing the employer to take, or refrain from taking, the steps specified in the notice in order to—

- (a) remedy the contravention, or
- (b) prevent the contravention being repeated.

(3) A compliance notice may, in particular—

- (a) state the period within which any step must be taken or must cease to be taken;
- (b) require the employer to provide within a specified period specified information relating to the contravention;
- (c) require the employer to inform the Regulator, within a specified period, how the employer has complied or is complying with the notice;
- (d) state that, if the employer fails to comply with the requirements of the notice, the Regulator may issue a penalty notice under section 52.

(4) A compliance notice must specify the contravention to which the notice relates.

**Commencement Information**

**185** S. 51 in operation at 30.6.2012 by S.R. 2012/266, art. 2, Sch. Pt. 2

**Penalty notices**

**52.**—(1) The Regulator may issue a penalty notice to an employer if it is of the opinion that the employer—

- (a) has contravened section 50, or
- (b) has failed to comply with a compliance notice under section 51.

*Status: Point in time view as at 06/04/2013. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: Pensions (No. 2) Act (Northern Ireland) 2008 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(2) A penalty notice is a notice requiring the person to whom it is issued to pay a penalty within the period specified in the notice.

(3) The penalty—

- (a) is to be determined in accordance with regulations, and
- (b) must not exceed £50,000.

(4) A penalty notice must—

- (a) state the amount of the penalty;
- (b) state the date, which must be at least four weeks after the date on which the notice is issued, by which the penalty must be paid;
- (c) specify the contravention or failure to which the notice relates;
- (d) notify the employer of the review process under section 43 and the right to make a reference under section 44 (as applied by section 53).

(5) Section 42 (penalty notices: recovery) applies to a penalty payable under this section, and to a notice under this section, as it applies to a penalty payable under section 40, and to a notice under that section.

#### Commencement Information

**I86** S. 52 partly in force; s. 52 in force for certain purposes at Royal Assent see s. 118(2)

**I87** S. 52 in operation at 30.6.2012 in so far as not already in operation by [S.R. 2012/266](#), [art. 2](#), [Sch. Pt. 1](#)

#### Review of notices and references to the [<sup>F71</sup>First-tier Tribunal or Upper Tribunal]

**53.**—(1) Section 43 (review of notices) also applies to a compliance notice issued under section 51 and to a penalty notice issued under section 52.

(2) Section 44 (references to the [<sup>F72</sup>First-tier Tribunal or Upper Tribunal]) applies in relation to a penalty notice issued under section 52 as it applies in relation to a notice issued under section 40 or 41.

#### Textual Amendments

**F71** S. 53: words in heading substituted (6.4.2010) by [Pensions Regulator Tribunal \(Transfer of Functions\) Act \(Northern Ireland\) 2010](#) (c. 4), ss. 3(1), 5(2), [Sch. 1 para. 32](#) (with [Sch. 2](#)); [S.R. 2010/101](#), [art. 2](#)

**F72** Words in s. 53(2) substituted (6.4.2010) by [Pensions Regulator Tribunal \(Transfer of Functions\) Act \(Northern Ireland\) 2010](#) (c. 4), ss. 3(1), 5(2), [Sch. 1 para. 32](#) (with [Sch. 2](#)); [S.R. 2010/101](#), [art. 2](#)

**Status:** Point in time view as at 06/04/2013. This version of this Act contains provisions that are not valid for this point in time.

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#### Commencement Information

**I88** S. 53 in operation at 30.6.2012 by S.R. 2012/266, art. 2, Sch. Pt. 2

### *Inducements*

#### **Inducements**

**54.—(1)** An employer contravenes this section if the employer takes any action for the sole or main purpose of—

- (a) inducing a worker to give up membership of a relevant scheme without becoming an active member of another relevant scheme [<sup>F73</sup>with effect from—
  - (i) the day after the membership is given up, or
  - (ii) a day within the prescribed period (if a period is prescribed)], or
- (b) inducing a jobholder to give a notice under section 8 without becoming an active member of a qualifying scheme [<sup>F74</sup>with effect from—
  - (i) the day on which the jobholder became an active member of the scheme to which the notice relates, or
  - (ii) a day within the prescribed period (if a period is prescribed)].

(2) Section 35 applies in relation to a contravention of this section as it applies in relation to a contravention of section 2(1), and sections 38 to 44 apply accordingly.

(3) But the Regulator may not issue a compliance notice in respect of a contravention of this section unless the contravention occurred within the prescribed period before—

- (a) the time when a complaint was made to the Regulator about the contravention, or
- (b) the time when the Regulator informed the employer of an investigation of the contravention, if no complaint was made before that time.

(4) A compliance notice in respect of a contravention of this section may direct the employer to take or refrain from taking specified steps in order to prevent the contravention being repeated.

(5) For the purposes of this section a worker gives up membership of a relevant scheme if the worker—

- (a) takes action or makes an omission by which the worker, without ceasing to be employed by the employer, ceases to be an active member of the scheme, or
- (b) requests or authorises the employer to take such action or to make such an omission.



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- (6) In this section, “relevant scheme” means—
- (a) in relation to a jobholder, a qualifying scheme;
  - (b) in relation to a worker to whom section 9 applies, a scheme which satisfies the requirements of that section.

#### Textual Amendments

- F73** Words in s. 54(1)(a) substituted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 5(6)(a)**, 34(1)(3); [S.R. 2012/265](#), art. 2(1)(a)
- F74** Words in s. 54(1)(b) substituted (2.6.2012 for specified purposes, 30.6.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 5(6)(b)**, 34(1)(3); [S.R. 2012/265](#), art. 2(1)(a)

#### Modifications etc. (not altering text)

- C11** S. 54: power to exclude conferred by SI 2005/255 (N.I. 1), art. 268A (as inserted (2.6.2012 for specified purposes) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 19**, 34(1)(3))

#### Commencement Information

- I89** S. 54 partly in force; s. 54 in force for certain purposes at Royal Assent see s. 118(2)
- I90** S. 54 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, **Sch. Pt. 1**

### *Protection of employment rights*

#### **The right not to suffer detriment**

**55.—**(1) A worker has the right not to be subjected to any detriment by an act, or a deliberate failure to act, by the worker's employer, done on the ground that—

- (a) any action was taken, or was proposed to be taken, with a view to enforcing in favour of the worker a requirement to which this section applies,
  - (b) the employer was prosecuted for an offence under section 45 as a result of action taken for the purpose of enforcing in favour of the worker a requirement to which this section applies, or
  - (c) any provision of Chapter 1 applies to the worker, or will or might apply.
- (2) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1)—
- (a) whether or not the requirement applies in favour of the worker, or
  - (b) whether or not the requirement has been contravened,

but, for that subsection to apply, the claim that the requirement applies and, if applicable, the claim that it has been contravened must be made in good faith.

(3) This section applies to any requirement imposed on the employer by or under any provision of Chapter 1.

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(4) This section does not apply where the detriment in question amounts to dismissal within the meaning of Part 11 of the Employment Rights (Northern Ireland) Order 1996 (NI 16) (in this Act referred to as “the Employment Rights Order”) (unfair dismissal).

(5) In this section references to enforcing a requirement include references to securing its benefit in any way.

#### Commencement Information

**I91** S. 55 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

#### Enforcement of the right

**56.—**(1) A worker may present a complaint to an industrial tribunal that the worker has been subjected to a detriment in contravention of section 55.

(2) Subject to the following provisions of this section, the provisions of Articles 71(2) to (4) and 72 of the Employment Rights Order (complaints to industrial tribunals and remedies), apply in relation to a complaint under this section as they apply in relation to a complaint under Article 71 of that Order, but taking references in those provisions to the employer as references to the employer within the meaning of section 55(1).

(3) Where—

- (a) the detriment to which the worker is subjected is the termination of the worker's contract, but
- (b) that contract is not a contract of employment,

any compensation awarded under Article 72 of the Employment Rights Order by virtue of subsection (2) must not exceed the limit specified in subsection (4).

(4) The limit is the total of—

- (a) the sum which would be the basic award for unfair dismissal, calculated in accordance with Article 153 of the Employment Rights Order, if the worker had been an employee within the meaning of that Order and the contract terminated had been a contract of employment, and
- (b) the sum for the time being specified in Article 158(1) of that Order which is the limit for a compensatory award to a person calculated in accordance with Article 157 of that Order.

(5) Where the worker has been working under arrangements which do not fall to be regarded as a worker's contract for the purposes of the Employment Rights Order, the worker is to be treated for the purposes of subsections (3) and (4) as if any arrangements under which the worker has been working constituted a worker's contract falling within Article 3(3)(b) of that Order.

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(6) In Article 20(1) of the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) (proceedings where conciliation is available), after sub-paragraph (q) add “, or

(r) under section 56 of the Pensions (No. 2) Act (Northern Ireland) 2008.”.

#### Commencement Information

**I92** S. 56 in operation at 30.6.2012 by S.R. 2012/266, art. 2, Sch. Pt. 2

### Right of employee not to be unfairly dismissed

**57.**—(1) The Employment Rights Order is amended as follows.

(2) After Article 135C (flexible working) insert—

#### “Pension enrolment

**135D.**—(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

- (a) any action was taken, or was proposed to be taken, with a view to enforcing in favour of the employee a requirement to which this Article applies;
- (b) the employer was prosecuted for an offence under section 45 of the Pensions (No. 2) Act (Northern Ireland) 2008 as a result of action taken for the purposes of enforcing in favour of the employee a requirement to which this Article applies; or
- (c) any provision of Chapter 1 of that Part of that Act applies to the employee, or will or might apply.

(2) It is immaterial for the purposes of sub-paragraph (a) or (b) of paragraph (1)—

- (a) whether or not the requirement applies in favour of the employee, or
- (b) whether or not the requirement has been contravened,

but, for that paragraph to apply, the claim that the requirement applies and, if applicable, the claim that it has been contravened must be made in good faith.

(3) This Article applies to any requirement imposed on the employer by or under any provision of Chapter 1 of Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008.

(4) In this Article references to enforcing a requirement include references to securing its benefit in any way.”.

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(3) In Article 137 (redundancy as unfair dismissal), in paragraph (1)(c) (which refers to any of paragraphs (2A) to (7I) of that Article applying) for “(7I)” substitute “(7J)”.

(4) After paragraph (7I) of that Article insert—

“(7J) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135D (read with paragraph (2) of that Article).”.

(5) In Article 140 (exclusion of right: qualifying period of employment) in paragraph (3) (cases where no qualifying period is required) after sub-paragraph (fh) insert—

“(fi) paragraph (1) of Article 135D (read with paragraph (2) of that Article) applies.”.

(6) In Article 143(2) (cases where employee may complain of unfair dismissal despite participation in unofficial industrial action), after sub-paragraph (d) insert—

“(dd) Article 135D applies.”.

(7) In Article 144(2) (cases where industrial tribunal to determine whether dismissal of an employee is unfair despite limitation in paragraph (1) of that Article), after sub-paragraph (d) insert—

“(dd) Article 135D applies.”.

#### **Commencement Information**

**I93** S. 57(1)(2)(4)(5)(6)(7) in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

#### **Restrictions on agreements to limit operation of this Part**

**58.**—(1) Any provision in any agreement (whether a worker's contract or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of this Part, or
- (b) to preclude a person from bringing proceedings under section 56 before an industrial tribunal.

(2) The fact that an agreement is to any extent void under subsection (1) does not entitle the employer to recover any property transferred, or the value of any benefit conferred, as an inducement to enter into, or otherwise in connection with, the agreement.

(3) Subsection (1) does not apply to any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under

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Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) (conciliation).

(4) Subsection (1) does not apply to any agreement to refrain from instituting or continuing before an industrial tribunal any proceedings within Article 20(1)(r) of the Industrial Tribunals (Northern Ireland) Order 1996 (NI 18) (proceedings under this Act where conciliation is available) if the conditions regulating compromise agreements under this Act are satisfied in relation to the agreement.

(5) For the purposes of subsection (4) the conditions regulating compromise agreements under this Act are that—

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular proceedings,
- (c) the worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an industrial tribunal,
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or a professional body, covering the risk of a claim by the worker in respect of loss arising in consequence of the advice,
- (e) the agreement must identify the adviser, and
- (f) the agreement must state that the conditions regulating compromise agreements under this Act are satisfied.

(6) A person is a relevant independent adviser for the purposes of subsection (5)(c) if that person—

- (a) is a qualified lawyer,
- (b) is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union,
- (c) works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre, or
- (d) is a person of a description specified in an order made by the Department.

(7) But a person is not a relevant independent adviser for the purposes of subsection (5)(c) in relation to the worker—

- (a) if the person is employed by, or is acting in the matter for, the employer or an associated employer,
- (b) in the case of a person within subsection (6)(b) or (c), if the trade union or advice centre is the employer or an associated employer,

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- (c) in the case of a person within subsection (6)(c), if the worker makes a payment for the advice received from the person, or
  - (d) in the case of a person of a description specified in an order under subsection (6)(d), if any condition specified in the order in relation to the giving of advice by persons of that description is not satisfied.
- (8) In this section “qualified lawyer” means—
- (a) a barrister (whether in practice as such or employed to give legal advice), or
  - (b) a solicitor who holds a practising certificate.
- (9) For the purposes of this section any two employers are associated if—
- (a) one is a company of which the other (directly or indirectly) has control, or
  - (b) both are companies of which a third person (directly or indirectly) has control,
- and “associated employer” is to be read accordingly.

#### Commencement Information

**I94** S. 58 partly in force; s. 58 in force for certain purposes at Royal Assent see s. 118(2)

**I95** S. 58 in operation at 30.6.2012 in so far as not already in force by [S.R. 2012/266](#), [art. 2](#), [Sch. Pt. 1](#)

## CHAPTER 4

### SUPPLEMENTARY PROVISION ABOUT COMPLIANCE AND INFORMATION-SHARING

#### *Records and information*

#### **Requirement to keep records**

**59.—**(1) For the purposes of Chapter 1 or 2, the Department may by regulations make provision requiring any person—

- (a) to keep, in such form and manner as may be prescribed, such records as may be prescribed;
- (b) to preserve those records for such period, not exceeding 6 years, as may be prescribed;
- (c) to provide those records [<sup>F75</sup>to the Regulator on receiving a notification requesting them] .

(2) Regulations under subsection (1) may provide that Article 10 of the 1995 Order (civil penalties) applies to a person who fails to comply with those requirements.

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### Textual Amendments

**F75** Words in s. 59(1)(c) substituted (7.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), [ss. 33\(2\), 34\(3\)](#); S.R. 2012/233, art. 2(2)(i)

### Commencement Information

**I96** S. 59 partly in force; s. 59 in force for certain purposes at Royal Assent see s. 118(2)

## Powers to require information and to enter premises

**60.—(1)** The 2005 Order is amended as follows.

**(2)** In Article 67 (provision of information), after paragraph (1) insert—

“(1A) If the Regulator requires information which is relevant to the exercise of its functions under Chapter 2 of Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008 or section 51 of that Act, the Regulator may, by notice in writing, require a person to whom paragraph (2) applies—

- (a) to furnish the Regulator with an explanation of any document or information required under paragraph (1);
- (b) to attend before the Regulator at such time and place as may be specified in the notice under that paragraph to furnish any such explanation.

(1B) The Regulator may not require a person to answer any question or furnish any information which might incriminate the person or, if that person is married or a civil partner, the person's spouse or civil partner.”

**(3)** In Article 69 (inspection of premises in respect of employers' obligations), before paragraph (1) insert—

“(A1) An inspector may, for the purposes of investigating whether an employer is contravening, or has contravened—

- (a) any provision of, or of regulations under, Chapter 1 of Part 1, or section 50 or 54, of the Pensions (No. 2) Act (Northern Ireland) 2008, or
- (b) any corresponding provision in force in Great Britain,

at any reasonable time enter premises liable to inspection.

(B1) Premises are liable to inspection for the purposes of paragraph (A1) if the inspector has reasonable grounds to believe that—

- (a) the employer employs workers there,
- (b) documents relevant to any of the following are being kept there—
  - (i) the administration of the employer's business,

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(ii) the duties of the employer under Chapter 1 of Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008 or any corresponding provision in force in Great Britain,

(iii) the administration of a pension scheme that is relevant to the discharge of those duties, or

(c) the administration of the employer's business, or work connected with that administration, is being carried out there.

(C1) In paragraphs (A1) and (B1) “employer” and “worker” have the meaning given by section 70 of the Pensions (No. 2) Act (Northern Ireland) 2008.

(D1) In the application of paragraphs (A1) and (B1) in relation to any provision mentioned in paragraph (A1)(b) (a “corresponding GB provision”), references in those paragraphs to “employer” or “worker” are to be read as having the meaning that they have for the purposes of the corresponding GB provision.”

(4) In Article 70(1) (inspection of premises: powers of inspectors), after “paragraph” (in the third place where it occurs) insert “ (A1), ”.

(5) In Article 71(9) (inspection of premises: supplementary), after “paragraph” (in the second place where it occurs) insert “ (A1), ”.

#### Commencement Information

**I97** S. 60 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

#### Disclosure of tax information etc.

**61.—**(1) In the 2005 Order, for Article 83 (tax information) substitute—

##### “Tax information etc.

**83.—**(1) This Article applies to information held by the Revenue and Customs if it is held by them in connection with a function of the Revenue and Customs that relates to any of these matters—

- (a) tax or duty;
- (b) national insurance contributions;
- (c) the national minimum wage.

(2) An officer of Revenue and Customs may disclose to the Regulator information to which this Article applies, if the disclosure is made for the purpose of enabling or assisting the Regulator to discharge its functions.

(3) Where information to which this Article applies is disclosed to the Regulator by virtue of paragraph (2) or section 19 of the Anti-terrorism,



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Crime and Security Act 2001 (disclosure of information held by revenue departments), it must, subject to paragraphs (4) and (5), be treated for the purposes of Article 77 as restricted information.

(4) Information to which this Article applies which is disclosed to the Regulator as mentioned in paragraph (3) may not be disclosed by the Regulator or any person who receives the information directly or indirectly from the Regulator except—

- (a) to, or in accordance with authority given by, the Commissioners for Her Majesty's Revenue and Customs,
- (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings,
- (c) with a view to the institution of any other proceedings by the Regulator, or for the purposes of any such proceedings instituted by the Regulator,
- (d) in accordance with Article 79, otherwise than for the purposes of any proceedings, or
- (e) in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(5) Accordingly Articles 77(3), 78 and 80 to 82, and section 235 of and paragraph 4 of Schedule 10 to, the Pensions Act 2004, do not apply to such information, and Article 79 applies subject to paragraph (4)(d).

(6) In paragraph (4)(c) and (d), “proceedings” includes the issue of notices or any other enforcement action taken by the Regulator under Chapter 2 of Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008 or any other provision.

(7) In this Article “the Revenue and Customs” and a “function of the Revenue and Customs” have the same meaning as in section 18 of the Commissioners for Revenue and Customs Act 2005 (confidentiality).”.

(2) In Article 77 of that Order (restricted information) in paragraph (3) for “83(4)” substitute “ 83(4)(d) ”.

### **Penalty for disclosure**

**62** In Article 77(5)(a) of the 2005 Order (penalty for disclosure of restricted information, on summary conviction) at the end add “ , or imprisonment for a term not exceeding six months, or both ”.

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*Objectives of the Regulator*

**Objectives of the Regulator**

**63** In Article 4(1) of the 2005 Order (Regulator's objectives), before “and” at the end of sub-paragraph (c) insert—

“(ca) to maximise compliance with the duties under Chapter 1 of Part 1 (and the safeguards in sections 50 and 54) of the Pensions (No. 2) Act (Northern Ireland) 2008.”.

*Functions of the Pensions Ombudsman*

**Functions of the Pensions Ombudsman**

**64.**—(1) Section 142 of the Pension Schemes Act (functions of the Pensions Ombudsman) is amended as follows.

(2) In subsection (7), after paragraph (ba) insert—

“(bb) a person who has given notice in accordance with section 8 of the Pensions (No. 2) Act (Northern Ireland) 2008 (right to opt out of membership of an automatic enrolment scheme);”.

(3) In paragraph (c)(i) of that subsection, for “or (ba)” substitute “, (ba) or (bb)”.

<p>.....</p> <p><b>Commencement Information</b></p> <p><b>I98</b> S. 64 in operation at 30.6.2012 by <a href="#">S.R. 2012/266</a>, art. 2, <a href="#">Sch. Pt. 2</a></p>
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CHAPTER 5

PERSONAL ACCOUNTS DELIVERY AUTHORITY

*Functions*

**Functions and winding up**

- 65.**—(1) <sup>F76</sup> .....
- (2) <sup>F76</sup> .....
- (3) <sup>F76</sup> .....
- (4) <sup>F76</sup> .....
- (5) <sup>F76</sup> .....

(6) If the Secretary of State makes an order containing provision under section 23(7) of the Pensions Act 2007 (c. 22), the Department may by order make corresponding provision in relation to Northern Ireland.

*Status: Point in time view as at 06/04/2013. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: Pensions (No. 2) Act (Northern Ireland) 2008 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Textual Amendments**

**F76** Art. 65(1)-(5) repealed (5.7.2010) by [Personal Accounts Delivery Authority Winding Up \(Consequential Provisions\) Order \(Northern Ireland\) 2010 \(S.R. 2010/212\)](#), **art. 2(b)**

**Principles**

**66** <sup>F77</sup> .....

**Textual Amendments**

**F77** Arts. 66-68 repealed (5.7.2010) by [Personal Accounts Delivery Authority Winding Up \(Consequential Provisions\) Order \(Northern Ireland\) 2010 \(S.R. 2010/212\)](#), **art. 2(b)**

**Directions and guidance**

**67** <sup>F78</sup> .....

**Textual Amendments**

**F78** Arts. 66-68 repealed (5.7.2010) by [Personal Accounts Delivery Authority Winding Up \(Consequential Provisions\) Order \(Northern Ireland\) 2010 \(S.R. 2010/212\)](#), **art. 2(b)**

**Disclosure of information by the Regulator**

**68** <sup>F79</sup> .....

**Textual Amendments**

**F79** Arts. 66-68 repealed (5.7.2010) by [Personal Accounts Delivery Authority Winding Up \(Consequential Provisions\) Order \(Northern Ireland\) 2010 \(S.R. 2010/212\)](#), **art. 2(b)**

CHAPTER 6

STAKEHOLDER PENSION SCHEMES

**Stakeholder pension schemes**

**69.**—(1) The Welfare Reform and Pensions (Northern Ireland) Order 1999 (NI 11) is amended as follows.

(2) Article 5 (duty of employers to facilitate access to stakeholder pension schemes) is amended as follows.

(3) In paragraph (1), for “the requirements set out below” substitute “ the requirement in paragraph (5) ”.

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(4) After paragraph (1) insert—

“(1A) A relevant employee, in relation to an employer, is an employee of the employer who, on the relevant date, satisfies the conditions in paragraph (1B).

(1B) The conditions are that—

- (a) the employee is a member of a stakeholder pension scheme;
- (b) the employee made a request under paragraph (5) before the relevant date and that request has not been withdrawn;
- (c) the employee pays contributions (which are deducted in accordance with that request) to the scheme at regular intervals;
- (d) at least one deduction has been made before the relevant date in accordance with that request.

(1C) A person ceases to be a relevant employee—

- (a) on ceasing to be employed by the employer;
- (b) on withdrawing a request under paragraph (5);
- (c) on ceasing to pay contributions at regular intervals.”.

(5) Omit paragraphs (2) to (4).

(6) In paragraph (5)—

- (a) omit the word “fourth”;
- (b) omit the words from “of his” to “qualifying scheme”;
- (c) in sub-paragraph (a), for “scheme” substitute “ stakeholder pension scheme ”.

(7) After paragraph (5) insert—

“(5A) That requirement only applies in relation to a request to make deductions made before the relevant date (whether or not that request is varied after that date).”.

(8) Omit paragraph (6).

(9) In paragraph (7), for “any of the requirements” substitute “ the requirement ”.

(10) In paragraph (8)—

- (a) for the words from “whether before” to “those purposes” substitute “ while subject to the requirement in paragraph (5) ”;
- (b) omit sub-paragraph (a)(ii) and (iii).

(11) In paragraph (9), after the definition of “regulations” insert—

““relevant date” means the date on which section 69 of the Pensions (No. 2) Act (Northern Ireland) 2008 comes into operation.”.

(12) In that paragraph—

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- (a) omit the definition of “qualifying scheme”;
- (b) omit the definition of “relevant employees”.

(13) In Article 8 (application of certain statutory provisions) omit paragraphs (1), (2) and (4).

(14) In Article 9 (interpretation), in paragraph (1), omit the definition of “designated scheme”.

**Commencement Information**

**I99** S. 69 in operation at 1.10.2012 by S.R. 2012/372, art. 2(a)

CHAPTER 7

APPLICATION AND INTERPRETATION

*Workers*

**“Employer”, “worker” and related expressions**

**70.**—(1) This section applies for the purposes of this Part.

(2) “Contract of employment” means a contract of service or apprenticeship whether express or implied, and (if it is express) whether oral or in writing.

(3) “Worker” means an individual who has entered into or works under—

- (a) a contract of employment, or
- (b) any other contract by which the individual undertakes to do work or perform services personally for another party to the contract.

(4) But a contract is not within subsection (3)(b) if the status of the other party is by virtue of the contract that of a client or customer of a profession or business undertaking carried on by the individual concerned.

(5) For the purposes of subsection (3)(b), it does not matter whether the contract is express or implied or (if it is express) whether it is oral or in writing.

(6) Any reference to a worker's contract is to be read in accordance with subsections (3) to (5).

(7) “Employer”, in relation to a worker, means the person by whom the worker is employed (subject to sections 37(5) and 38(6)).

(8) “Employment” in relation to a worker, means employment under the worker's contract.

**Commencement Information**

**I100** S. 70 in operation at 30.6.2012 by S.R. 2012/266, art. 2, Sch. Pt. 2

*Status: Point in time view as at 06/04/2013. This version of this Act contains provisions that are not valid for this point in time.*

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## Agency workers

- 71.—**(1) This section applies to an individual (“the agency worker”)—
- (a) who is supplied by a person (“the agent”) to do work for another person (“the principal”) under a contract or other arrangements made between the agent and the principal,
  - (b) who is not, as respects that work, a worker, because of the absence of a worker's contract between the individual and the agent or the principal, and
  - (c) who is not a party to a contract under which the agency worker undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of a profession or business undertaking carried on by the individual.
- (2) Where this section applies, the other provisions of this Part have effect—
- (a) as if there were a worker's contract for the doing of the work by the agency worker, made between the agency worker and the relevant person under subsection (3), and
  - (b) as if that person were the agency worker's employer.
- (3) The relevant person is—
- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work, or
  - (b) if neither the agent nor the principal is responsible for doing so, whichever of them pays the agency worker in respect of the work.

### Commencement Information

**I101** S. 71 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

## Directors

- 72.—**(1) A person who holds office as a director of a company is not, by virtue of that office or of any employment by the company, a worker for the purposes of this Part, unless—
- (a) the person is employed by the company under a contract of employment, and
  - (b) there is at least one other person who is employed by the company under a contract of employment.
- (2) In this section, “company” includes any body corporate.

### Commencement Information

**I102** S. 72 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

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## Crown employment

**73.—**(1) This Part has effect in relation to employment by or under the Crown as it has effect in relation to other employment.

(2) For the purposes of the application of the provisions of this Part in accordance with subsection (1)—

- (a) references to a worker are to be construed as references to a person employed by or under the Crown;
- (b) references to a worker's contract are to be construed as references to the terms of employment of a person employed by or under the Crown.

(3) This section does not impose criminal liability on the Crown.

(4) But on the application of the Regulator the High Court may declare unlawful a failure by the Crown to comply with any of the duties mentioned in section 45(1).

### Commencement Information

**I103** S. 73 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

## Armed forces

**74.—**(1) A person serving as a member of the naval, military or air forces of the Crown is not, by virtue of that service, a worker for the purposes of this Part.

(2) A member of any of the forces specified in subsection (3) who assists the activities of any of those forces is not, by virtue of anything done in assisting those activities, a worker for the purposes of this Part.

(3) The forces are—

- (a) the Combined Cadet Force;
- (b) the Sea Cadet Corps;
- (c) the Army Cadet Force;
- (d) the Air Training Corps.

### Commencement Information

**I104** S. 74 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

## Police

**75** This Part has effect in relation to a person who—

- (a) (subject to such exceptions as may be prescribed), holds the office of constable as a police officer or an appointment as a police trainee or police

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reserve trainee under section 39 or 40 of the Police (Northern Ireland) Act 2000 (c. 32) or as a police cadet under section 42 of that Act, and

(b) does not hold that office or appointment under a contract of employment, as if the person were employed by the Chief Constable under a worker's contract.

#### Commencement Information

**I105** S. 75 partly in force; s. 75 in force for certain purposes at Royal Assent see s. 118(2)

**I106** S. 75 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

#### Persons working on vessels

**76.—**(1) Subject to regulations under section 96 of the Pensions Act 2008 (c. 30), a person employed or engaged in any capacity on board a ship is not, by virtue of that employment or engagement, a worker for the purposes of this Part.

(2) In this section, “ship” includes—

- (a) a hovercraft within the meaning of the Hovercraft Act 1968 (c. 59), and
- (b) every description of vessel used in navigation.

#### Commencement Information

**I107** S. 76 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

#### Extension of definition of worker

**77** The Department may by regulations make provision for this Part to apply with or without modifications—

- (a) as if any individual of a prescribed description (who would not otherwise be a worker) were a worker,
- (b) as if there were in the case of any such individual a worker's contract of a prescribed description under which the individual works, and
- (c) as if a person of a prescribed description were the employer under that contract.

#### Commencement Information

**I108** S. 77 partly in force; s. 77 in force for certain purposes at Royal Assent see s. 118(2)



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## General

### Interpretation of Part

#### 78 In this Part—

“active member”—

- (a) in relation to an occupational pension scheme, means a person who is in pensionable service under the scheme;
- (b) in relation to a personal pension scheme, means a jobholder in relation to whom there is an agreement within section 26(4) between the provider of the scheme and the employer or (where section 9 applies) a worker in relation to whom there are direct payment arrangements (within the meaning of section 107A of the Pension Schemes Act) between the worker and the employer;

“automatic enrolment scheme” is to be read in accordance with section 3(8);

“average salary benefits” means benefits the rate or amount of which is calculated by reference to the average salary of a member over the period of service on which the benefits are based;

“contract of employment” has the meaning given by section 70;

“defined benefits”, in relation to a member of an occupational pension scheme, means benefits which are not money purchase benefits (but the rate or amount of which is calculated by reference to earnings or service of the member or any other factor other than an amount available for their provision);

“defined benefits scheme” means an occupational pension scheme under which all the benefits that may be provided are defined benefits;

“employer” and “employment” have the meaning given by section 70;

“enrolment duty” means a duty under section 3(2), 5(2), 7(3) or 9(2);

“hybrid scheme” means an occupational pension scheme which is neither a defined benefits scheme nor a money purchase scheme;

the “IORP Directive” means Directive [2003/41/EC](#) of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision;

“jobholder” has the meaning given by section 1(1);

“money purchase benefits”, in relation to a member of a pension scheme, means benefits the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member and <sup>F80</sup>which fall within section 78A];

“money purchase scheme” means an occupational pension scheme under which all the benefits that may be provided are money purchase benefits;

“occupational pension scheme” has the meaning given by section 18;

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“pension scheme” has the meaning given by section 1(5) of the Pension Schemes Act;

“pensionable age” has the meaning given by the rules in paragraph 1 of Schedule 2 to the 1995 Order;

“pensionable service”, in relation to a member of an occupational pension scheme, means service in any description of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme;

“personal pension scheme” has the meaning given by section 19;

“provider”—

(a) in relation to a personal pension scheme to which section 26 applies, means the person referred to in subsection (1)(b) of that section;

(b) in relation to any other personal pension scheme, has the meaning prescribed;

“qualifying earnings” has the meaning given by section 13;

“qualifying scheme” is to be read in accordance with section 2(5);

“tax year” means the 12 months beginning with 6th April in any year;

“trustee or manager” is to be construed in accordance with section 173 of the Pension Schemes Act (trustees or managers of schemes);

“worker” has the meaning given by section 70.

#### Textual Amendments

**F80** Words in s. 78 substituted (retrospectively) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), ss. 27(3)(6), 34(3); S.R. 2014/203, [art. 2](#)

#### Commencement Information

**I109** S. 78 wholly in operation at 5.7.2010; s. 78 in operation for certain purposes at Royal Assent see s. 118(2); s. 78 in operation at 5.7.2010 in so far as not already in operation by [S.R. 2010/50](#), [art. 2\(2\)](#)

#### [<sup>F81</sup>Money purchase benefits: supplementary

**78A.—**(1) This section applies for the purposes of the definition of “money purchase benefits” in section 78.

(2) A benefit other than a pension in payment falls within this section if its rate or amount is calculated solely by reference to assets which (because of the nature of the calculation) must necessarily suffice for the purpose of its provision to or in respect of the member.

(3) A benefit which is a pension in payment falls within this section if—

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- (a) its provision to or in respect of the member is secured by an annuity contract or insurance policy made or taken out with an insurer, and
- (b) at all times before coming into payment the pension was a benefit falling within this section by virtue of subsection (2).

(4) For the purposes of subsection (2) it is immaterial if the calculation of the rate or amount of the benefit includes deductions for administrative expenses or commission.

(5) In this section references to a pension do not include income withdrawal or dependants' income withdrawal (within the meaning of paragraphs 7 and 21 of Schedule 28 to the Finance Act 2004).]

#### Textual Amendments

**F81** S. 78A inserted (retrospectively) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), ss. 27(3) (6), 34(3); S.R. 2014/203, [art. 2](#)

## PART 2

### SIMPLIFICATION ETC.

#### *Private pensions*

#### **Abolition of safeguarded rights**

**79** Part 3A of the Pension Schemes Act (safeguarded rights) ceases to have effect.

#### **Revaluation of accrued benefits etc.**

**80.**—(1) Schedule 1, which—

- (a) amends Schedule 2 to the Pension Schemes Act (methods of revaluing accrued pension benefits),
- (b) amends Schedule 6 to the 2005 Order (pension compensation provisions), and
- (c) makes consequential amendments,

has effect.

(2) The amendments made by Parts 1 and 3 of Schedule 1 do not apply in relation to a revaluation period ending before this section comes into operation.

(3) In subsection (2) “revaluation period” has the same meaning as in paragraph 2(2) of Schedule 2 to the Pension Schemes Act.

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#### Commencement Information

**I110** S. 80 partly in operation; s. 80 not in operation at Royal Assent see s. 118(1); s. 80 in operation for certain purposes at 6.4.2009 by S.R. 2009/22, **art. 2(2)(c)**; s. 80(1) in operation for certain purposes at 6.4.2009 by S.R. 2009/147, **art. 3**

#### *State pensions etc.*

PROSPECTIVE

#### Consolidation of additional pension

**F82** **81** .....

#### Textual Amendments

**F82** S. 81 never in operation, repealed (16.7.2015) by Pensions Act (Northern Ireland) 2015 (c. 5), s. 53(3), **Sch. 12 para. 81(a)**; S.R. 2015/307, art. 2(1)(k)

PROSPECTIVE

#### Effect of entitlement to guaranteed minimum pension

**F83** **82** .....

#### Textual Amendments

**F83** S. 82 repealed (16.7.2015) by Pensions Act (Northern Ireland) 2015 (c. 5), s. 53(3), **Sch. 12 para. 81(a)**; S.R. 2015/307, art. 2(1)(k)

#### **Additional State Pension etc.: minor and consequential amendments**

**83** Schedule 3 (Additional State Pension etc.: minor and consequential amendments) has effect.

#### Commencement Information

**I111** S. 83 in operation at 3.1.2012 for specified purposes by S.R. 2011/441, **art. 2(b)**

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### **State pension credit: extension of assessed income period for those aged 75 or over**

**84.**—(1) Section 9 of the State Pension Credit Act (Northern Ireland) 2002 (c. 14) (duration of assessed income period) is amended as set out in subsections (2) to (4).

(2) For subsection (1) substitute—

“(1) An assessed income period shall (subject to the following subsections) be—

- (a) in the case of a claimant who is under the age of 75 on the day on which the relevant decision takes effect, the period of 5 years beginning with that day;
- (b) in the case of a claimant who is aged 75 or over on that day, an indefinite period beginning with that day.”.

(3) In paragraph (b) of subsection (2), for the words from “may” to “years” substitute “shall specify a period that is shorter than 5 years”.

(4) After subsection (5) add—

“(6) Where—

- (a) an assessed income period is brought to an end by the expiry of a period of 5 years or more, and
- (b) the claimant is aged 80 or over at that time,

the assessed income period shall be treated as not ending at that time but, subject to subsection (4) and provision made under subsection (5), as continuing indefinitely.”.

(5) The amendments made by subsections (2) and (3) apply only where the relevant decision (within the meaning given by section 6(5) of the State Pension Credit Act (Northern Ireland) 2002) takes effect on or after 6th April 2009.

(6) The subsection added by subsection (4) ceases to have effect on 6th April 2014.

### **Contracting-out: abolition of all protected rights**

**85.**—(1) As from the contracting-out abolition date, pension schemes are not required to make special provision in relation to the protected rights of members.

(2) Accordingly—

- (a) the provisions of the Pension Schemes Act within subsection (3) cease to have effect as from that date, and
- (b) sections 21A, 23A and 28A of the Pension Schemes Act (as inserted by paragraphs 9, 10 and 12 of Schedule 4 to the Pensions Act (Northern Ireland) 2008 (c. 1)) are not to have any effect as from that date (in spite of section 13(4) of that Act of 2008).

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(3) The provisions of the Pension Schemes Act within this subsection are—

- (a) section 6 (protected rights and money purchase benefits),
- (b) section 22 (persons who may establish scheme),
- (c) section 23 (identification and valuation of protected rights),
- (d) section 26 (securing of liability for protected rights),
- (e) section 28 (suspension or forfeiture), and
- (f) section 29A (appropriate schemes: “blowing the whistle”).

(4) In this section—

“the contracting-out abolition date” means the day appointed under section 21 of the Pensions Act (Northern Ireland) 2008 for the coming into operation of section 13(1) of that Act (abolition of contracting-out for defined contribution pension schemes), and

“protected rights” has the same meaning as in the Pension Schemes Act (see section 6 of that Act).

#### Commencement Information

**I112** S. 85 in operation at 6.4.2012 by [S.R. 2012/119](#), **art. 2(a)**

## PART 3

### PENSION COMPENSATION

#### CHAPTER 1

#### PENSION COMPENSATION ON DIVORCE ETC.

#### Scope of mechanism

**86.—(1)** Pension compensation sharing is available under this Chapter in relation to a person's shareable rights to PPF compensation.

(2) For the purposes of this Chapter, a right of a person to PPF compensation is “shareable” unless it is of a description specified by regulations made by the Department.

#### Commencement Information

**I113** S. 86 wholly in operation; s. 86 in operation for certain purposes at Royal Assent see s. 118(2); s. 86 in operation at 6.4.2011 in so far as not already in operation by [S.R. 2011/108](#), **art. 2(2)**, [Sch.](#)

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## Interpretation

**87** In this Chapter—

“the Board” means the Board of the Pension Protection Fund;

“PPF compensation” means compensation payable under the pension compensation provisions;

“the pension compensation provisions” means—

- (a) Chapter 3 of Part 3 of the 2005 Order (pension protection) and any regulations or order made under it,
- (b) this Chapter and any regulations or order made under it, and
- (c) any provision corresponding to the provisions mentioned in paragraph (a) or (b) in force in Great Britain;

“the relevant order or provision” means the pension compensation sharing order, or provision contained in a qualifying agreement, which gives rise to the pension compensation sharing;

“the transfer day” means the day on which the relevant order or provision takes effect;

“the transferee” means the person for whose benefit the relevant order or provision is made;

“the transferor” means the person to whose rights the relevant order or provision relates.

## Activation of pension compensation sharing

**88** Section 89 applies on the taking effect of any of the following relating to a person's shareable rights to PPF compensation—

- (a) a pension compensation sharing order under the Matrimonial Causes (Northern Ireland) Order 1978 (NI 15);
- (b) a pension compensation sharing order under Schedule 15 to the Civil Partnership Act 2004 (c. 33) (financial relief in the High Court or a county court: Northern Ireland);
- (c) an order under Part 4 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (NI 4) (financial relief in Northern Ireland in relation to overseas divorce etc.) corresponding to such an order as is mentioned in paragraph (a);
- (d) an order under Schedule 17 to the Civil Partnership Act 2004 (financial relief in Northern Ireland after overseas dissolution etc. of a civil partnership) corresponding to such an order as is mentioned in paragraph (b);

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- (e) an order or provision to which any of paragraphs (a) to (d), (f) or (g) of section 109 of the Pensions Act 2008 (c. 30) applies (orders or provisions in Great Britain).

### **Creation of pension compensation debits and credits**

**89.—**(1) On the application of this section—

- (a) the transferor's shareable rights to PPF compensation that derive from rights under the specified scheme become subject to a debit of the appropriate amount, and
- (b) the transferee becomes entitled to a credit of that amount as against the Board.

(2) For the purposes of subsection (1) “the appropriate amount” means—

- (a) where the relevant order or provision specifies a percentage to be transferred, that percentage of the cash equivalent of the relevant compensation on the valuation day;
- (b) where the relevant order or provision specifies an amount to be transferred, the lesser of—
  - (i) that specified amount, and
  - (ii) the cash equivalent of the relevant compensation on the valuation day.

(3) For the purposes of subsection (2) “the relevant compensation” means the payments or future payments to which, immediately before the transfer day, the transferor is entitled under the pension compensation provisions by virtue of the transferor's shareable rights to PPF compensation that derive from rights under the specified scheme.

(4) The Department may by regulations provide for any description of payment to be disregarded for the purposes of subsection (3).

(5) For the purposes of this section—

“the specified scheme” means the pension scheme specified in the relevant order or provision;

“the valuation day” means such day within the implementation period for the credit under subsection (1)(b) as the Board may specify by notice in writing to the transferor and transferee.

(6) The credit to which the transferee becomes entitled under subsection (1) (b) is referred to in this Chapter as a “pension compensation credit”.



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#### Commencement Information

**I114** S. 89 wholly in operation; s. 89 in operation for certain purposes at Royal Assent see s. 118(2); s. 89 in operation at 6.4.2011 in so far as not already in operation by [S.R. 2011/108](#), [art. 2\(2\)](#), Sch.

### Cash equivalents

**90.—(1)** The Department may by regulations make provision about the calculation and verification of cash equivalents for the purposes of section 89.

(2) Regulations under this section may include provision for calculation and verification in a manner approved by the Board.

#### Commencement Information

**I115** S. 90 wholly in operation; s. 90 in operation for certain purposes at Royal Assent see s. 118(2); s. 90 in operation at 6.4.2011 in so far as not already in operation by [S.R. 2011/108](#), [art. 2\(2\)](#), Sch.

### Reduction of compensation

**91.—(1)** Where any of a person's shareable rights to PPF compensation are subject to a pension compensation debit, each payment or future payment—

- (a) to which the person is entitled under the pension compensation provisions by virtue of those rights, and
- (b) which is a qualifying payment,

is reduced by the appropriate percentage.

(2) For the purposes of subsection (1) a payment is “a qualifying payment” if the cash equivalent by reference to which the amount of the pension compensation debit is determined includes an amount in respect of it.

(3) In this section “the appropriate percentage”, in relation to a pension compensation debit, means—

- (a) the percentage specified in the pension compensation sharing order or provision on which the debit depends; or
- (b) if the pension compensation sharing order or provision on which the debit depends specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 89 represents of the amount mentioned in subsection (2)(b)(ii) of that section.

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### Time for discharge of liability

**92.—(1)** This section applies where the Board is subject to a liability in respect of a pension compensation credit.

(2) The Board must discharge the liability before the end of the implementation period for the credit.

(3) The Department may make provision by regulations as to circumstances in which the implementation period for the credit is extended for the purposes of this section.

#### Commencement Information

**I116** S. 92 wholly in operation; s. 92 in operation for certain purposes at Royal Assent see s. 118(2); s. 92 in operation at 6.4.2011 in so far as not already in operation by [S.R. 2011/108](#), [art. 2\(2\)](#), Sch.

### “Implementation period”

**93.—(1)** For the purposes of this Chapter, the implementation period for a pension compensation credit is the period of 4 months beginning with the later of—

- (a) the transfer day, and
- (b) the first day on which the Board is in receipt of—
  - (i) the relevant documents, and
  - (ii) such information relating to the transferor and transferee as the Department may prescribe by regulations.

(2) In subsection (1)(b)(i) “the relevant documents” means copies of—

- (a) the relevant order or provision, and
- (b) the order, decree or declarator responsible for the divorce, dissolution or annulment to which it relates.

(3) Subsection (1) is subject to any provision made by regulations under section 95(2)(a).

(4) The Department may by regulations—

- (a) make provision requiring the Board to notify the transferor and transferee of the day on which the implementation period for the credit begins;
- (b) provide for this section to have effect with modifications where the credit depends on a pension compensation sharing order and the order is the subject of an application for leave to appeal out of time.

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#### Commencement Information

**I117** S. 93 wholly in operation; s. 93 in operation for certain purposes at Royal Assent see s. 118(2); s. 93 in operation at 6.4.2011 in so far as not already in operation by [S.R. 2011/108](#), [art. 2\(2\)](#), Sch.

#### Discharge of liability

**94.—(1)** This section applies where the Board is subject to a liability in respect of a pension compensation credit.

(2) The Board must discharge the liability by sending a notice to the transferee.

(3) On the sending of the notice the transferee becomes entitled, with effect from (and including) the transfer day, to compensation calculated in accordance with Schedule 4.

(4) For the purposes of that calculation, the initial annual rate of compensation is an amount determined by the Board.

(5) The Board must determine that amount in such a way as to secure that the cash equivalent value of the compensation to which the transferee becomes entitled under subsection (3) equals the amount of the credit.

(6) The Department may by regulations make provision about the calculation of cash equivalents for the purposes of subsection (5).

(7) The notice sent under this section must—

(a) state that the transferee is entitled to periodic pension compensation calculated under Schedule 4, and

(b) specify the amount determined under subsection (4).

(8) Where the transferee dies before liability in respect of the credit has been discharged—

(a) subsections (2) to (7) do not have effect in relation to the discharge of liability in respect of the credit, and

(b) liability in respect of the credit must be discharged in accordance with regulations made by the Department.

#### Commencement Information

**I118** S. 94 wholly in operation; s. 94 in operation for certain purposes at Royal Assent see s. 118(2); s. 94 in operation at 6.4.2011 in so far as not already in operation by [S.R. 2011/108](#), [art. 2\(2\)](#), Sch.

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### **Charges in respect of pension compensation sharing costs**

**95.—**(1) The Department may by regulations make provision for the purpose of enabling the Board to recover from the parties to pension compensation sharing prescribed charges in respect of prescribed descriptions of pension compensation sharing activity.

(2) Regulations under subsection (1) may include—

- (a) provision for the start of the implementation period for a pension compensation credit to be postponed in prescribed circumstances;
- (b) provision enabling the Board to set off against any PPF compensation payable to a party to pension compensation sharing any charges owed to it by that party under the regulations;
- (c) provision, in relation to payments in respect of charges recoverable under the regulations, for reimbursement as between the parties to pension compensation sharing.

(3) For the purposes of regulations under subsection (1), the question of how much of a charge recoverable under the regulations is attributable to a party to pension compensation sharing is to be determined as follows—

- (a) where the relevant order or provision includes provision (“provision for apportionment”) about the apportionment of charges under this section, there is attributable to the party so much of the charge as is apportioned to that party by that provision for apportionment;
- (b) where the relevant order or provision does not include provision for apportionment, the charge is attributable to the transferor.

(4) In subsection (1) the reference to pension compensation sharing activity is to activity attributable directly or indirectly to the application of section 89 by virtue of the relevant order or provision.

#### **Commencement Information**

**I119** S. 95 wholly in operation; s. 95 in operation for certain purposes at Royal Assent see s. 118(2); s. 95 in operation at 6.4.2011 in so far as not already in operation by [S.R. 2011/108](#), [art. 2\(2\)](#), Sch.

### **Supply of information about pension compensation in relation to divorce etc.**

**96.—**(1) The Department may by regulations—

- (a) make provision imposing on the Board requirements with respect to the supply of information relevant to any power with respect to—
  - (i) financial relief under Part 3 of the Matrimonial Causes (Northern Ireland) Order 1978 (NI 15) or Part 4 of the Matrimonial and Family

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Proceedings (Northern Ireland) Order 1989 (NI 4) (Northern Ireland powers in relation to domestic and overseas divorce etc.),

(ii) financial relief under Schedule 15 or 17 to the Civil Partnership Act 2004 (c. 33) (Northern Ireland powers in relation to domestic and overseas dissolution of civil partnerships etc.),

(iii) financial relief, orders for financial provision or provision as to pension sharing or pension compensation sharing to which any of sub-paragraphs (i), (ii), (iv) or (v) of subsection (1)(a) of section 118 of the Pensions Act 2008 (c. 30) applies (financial relief etc. in Great Britain);

(b) make provision about calculation and verification in relation to the valuation of PPF compensation for the purposes of regulations under paragraph (a);

(c) make provision for the purpose of enabling the Board to recover prescribed charges in respect of providing information in accordance with regulations under paragraph (a).

(2) Regulations under subsection (1)(b) may include provision for calculation and verification in a manner approved by the Board.

(3) Regulations under subsection (1)(c) may include provision for the application in prescribed circumstances, with or without modification, of any provision made by virtue of section 95(2).

#### Commencement Information

**I120** S. 96 wholly in operation; s. 96 in operation for certain purposes at Royal Assent see s. 118(2); s. 96 in operation at 6.4.2011 in so far as not already in operation by [S.R. 2011/108](#), [art. 2\(2\)](#), Sch.

### Supply of information about pension compensation sharing

**97** The Department may by regulations require the Board to supply, to such persons as the Department may specify in the regulations, such information relating to anything which follows from the application of section 89 as the Department may so specify.

#### Commencement Information

**I121** S. 97 wholly in operation; s. 97 in operation for certain purposes at Royal Assent see s. 118(2); s. 97 in operation at 6.4.2011 in so far as not already in operation by [S.R. 2011/108](#), [art. 2\(2\)](#), Sch.

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### **Pension compensation sharing and attachment on divorce etc.**

**98** Schedule 5 (which amends matrimonial and civil partnership legislation for the purpose of enabling the court to make pension compensation sharing orders, and orders for the attachment of pension compensation, in connection with proceedings in Northern Ireland) has effect.

## CHAPTER 2

### OTHER PROVISION ABOUT PENSION COMPENSATION

### **Charges in respect of pension sharing etc.**

**99** After Article 152 of the 2005 Order (administration of compensation) insert—

*“Charges in respect of pension sharing etc.*

### **Charges in respect of pension sharing etc.**

**152A.**—(1) Regulations may make provision for the purpose of enabling the Board to recover prescribed charges in respect of complying with a relevant order or provision.

(2) In paragraph (1) “a relevant order or provision” means any of the following—

- (a) an order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978 (financial provision in connection with divorce etc.) so far as the order—
  - (i) includes provision made by virtue of Article 27B or 27C of that Order (powers to include provision about pensions), and
  - (ii) applies in relation to the Board by virtue of Article 27E of that Order;
- (b) an order under Article 25 of that Order so far as the order includes provision made by virtue of Article 27F of that Order (attachment of pension compensation on divorce etc.);
- (c) an order under Part 1 of Schedule 15 to the Civil Partnership Act 2004 (financial provision orders in connection with dissolution of civil partnerships etc.: Northern Ireland) so far as the order—
  - (i) includes provision made by virtue of Part 5 of that Schedule (powers to include provision about pensions), and
  - (ii) applies in relation to the Board by virtue of Part 6 of that Schedule;
- (d) an order under Part 1 of that Schedule so far as the order includes provision made by virtue of paragraph 29A of that

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Schedule (attachment of pension compensation on dissolution of civil partnership etc.: Northern Ireland);

- (e) an order made under any provision corresponding to a provision mentioned in sub-paragraphs (a) to (d) in force in England and Wales;
- (f) an order or provision to which any of paragraphs (f) and (g) of section 168A(2) of the Pensions Act 2004 applies;
- (g) an order or provision of a kind mentioned in Article 25(1) of the 1999 Order (pension sharing) so far as the order or provision applies in relation to the Board by virtue of Article 199 of this Order.

(3) Regulations under paragraph (1) may include provision enabling the Board to set off against any PPF compensation payable to a person any charges owed to it by that person under the regulations.

- (4) In this Article “PPF compensation” means compensation payable—
  - (a) under or by virtue of this Chapter, or
  - (b) under or by virtue of Chapter 1 of Part 3 of the Pensions (No. 2) Act (Northern Ireland) 2008 (pension compensation on divorce etc.).”.

#### Commencement Information

**I122** S. 99 wholly in operation; s. 99 not in operation at Royal Assent see s. 118(1); s. 99 in operation for certain purposes at 16.3.2011 by [S.R. 2011/108](#), [art. 2\(1\)\(b\)](#); s. 99 in operation at 6.4.2011 in so far as not already in operation by [S.R. 2011/108](#), [art. 2\(2\)](#), [Sch.](#)

#### Amendments of Schedule 6 to the 2005 Order

**100** Schedule 6 (amendments of Schedule 6 to the 2005 Order) has effect.

#### Commencement Information

**I123** S. 100 partly in operation; s. 100 not in operation at Royal Assent see s. 118(1); s. 100 in operation for certain purposes at 1.4.2009 by [S.R. 2009/147](#), [art. 2\(b\)](#)

#### Consequential amendments

**101.**—(1) The 2005 Order is amended as follows.

(2) After paragraph 2(2)(d) of Schedule 4 (Board of the Pension Protection Fund) insert—

“(da) Article 152A (charges in respect of pension sharing etc.);”.

(3) After paragraph 2(2)(g) of that Schedule insert—

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- “(ga) section 94 of, and Schedule 4 to, the Pensions (No. 2) Act (Northern Ireland) 2008 (discharge of liability in respect of pension compensation credit);
  - (gb) section 95 of that Act (charges in respect of pension compensation sharing costs);
  - (gc) section 96 of that Act (supply of information about pension compensation in relation to divorce etc.);
  - (gd) section 97 of that Act (supply of information about pension compensation sharing);”.
- (4) In paragraph 2(2)(h) of that Schedule, for “(g)” substitute “(gd)”.

## PART 4

### ADDITIONAL PENSIONS

#### **Additional pension: upper accrual point to replace upper earnings limit from 2009–10**

**102.**—(1) The Contributions and Benefits Act is amended in accordance with subsections (2) to (4).

(2) In section 22(2B) (earnings factors), for “the flat rate introduction year” (in both places) substitute “2009–10”.

(3) In section 44(7)(c) (Category A retirement pension), for “the flat rate introduction year” (in both places) substitute “2009–10”.

(4) In section 121 (interpretation)—

(a) in subsection (1), for the definition of “the upper accrual point” substitute—

““the upper accrual point” is £770;”,

(b) after subsection (6) insert—

“(6A) Whenever regulations are made under section 122(6A) of the Great Britain Contributions and Benefits Act, regulations may make corresponding provision for Northern Ireland (and references in this or any other statutory provision to “the prescribed equivalent”, in the context of the upper accrual point, are to the equivalent prescribed under this subsection in relation to earners paid otherwise than weekly).”, and

(c) omit subsections (7) and (8).

(5) Section 149(2) of the Social Security Administration (Northern Ireland) Act 1992 (c. 8) (referral of regulations to Social Security Advisory Committee) does not apply to regulations under section 121(6A) of the Contributions and Benefits Act.



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(6) Schedule 7 contains consequential amendments.

## PART 5

### MISCELLANEOUS

#### *Miscellaneous provisions relating to pensions*

#### **Amendments of provisions of the 2005 Order relating to contribution notices or financial support directions**

**103** Schedule 8 (which amends the 2005 Order in relation to contribution notices and financial support directions) has effect.

##### **Commencement Information**

**I124** S. 103 wholly in operation at 29.6.2009; s. 103 in operation for certain purposes at Royal Assent see s. 118(2)(3); s. 103 in operation at 29.6.2009 in so far as not already in operation by [S.R. 2009/249](#), [art. 2\(a\)](#)

#### **Interest on late payment of levies**

**104** Schedule 9 (which makes provision about payment of interest on late payment of levies) has effect.

##### **Commencement Information**

**I125** S. 104 partly in operation; s. 104 not in operation at Royal Assent see s. 118(1); s. 104 in operation for certain purposes at 26.2.2010 by [S.R. 2010/50](#), [art. 2\(1\)\(b\)](#)

#### **Payments to employers**

**105** In Article 37 of the 1995 Order (payment of surplus to employer) after paragraph (1) insert—

“(1A) But this Article does not apply in the case of any of the payments listed in paragraphs (c) to (f) of section 175 of the Finance Act 2004 (authorised employer payments other than public service scheme payments or authorised surplus payments).”.

#### **Appointment of trustees**

**106.—(1)** In Article 7 of the 1995 Order (appointment of trustees), in paragraph (3)—

(a) for “necessary”, in the first place where it occurs, substitute “reasonable”;

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- (b) omit “or” at the end of sub-paragraph (b);
- (c) at the end add “, or
- (d) otherwise to protect the interests of the generality of the members of the scheme.”.

(2) In paragraph 9(b) of Schedule 2 to the 2005 Order (reserved regulatory functions), for “or (c)” substitute “, (c) or (d)”.

### **Intervention by the Regulator where scheme's technical provisions improperly determined**

**107** In Article 210 of the 2005 Order (powers of the Regulator), before sub-paragraph (a) of paragraph (1) insert—

- “(za) that the trustees or managers, when determining the methods and assumptions to be used in calculating the scheme's technical provisions, have failed to comply with a requirement imposed under Article 201(4)(c);”.

### **Delegation of powers by the Regulator**

**108.**—(1) In paragraph 2 of Schedule 1 to the 2005 Order (regulations relating to delegation of the Pensions Regulator's functions) the existing provision becomes sub-paragraph (1).

(2) For paragraph (d) of that sub-paragraph substitute—

- “(d) permitting the Regulator to authorise such persons, in such circumstances and under such arrangements, as the Regulator may determine, to exercise on behalf of the Regulator—
  - (i) the power to determine whether to exercise any of the functions listed in sub-paragraph (2) ;
  - (ii) the power to exercise any of the functions listed in sub-paragraph (2) or such other functions as may be prescribed.”.

(3) After that sub-paragraph insert—

- “(2) The functions mentioned in sub-paragraph (1)(d) are—
  - (a) the power to issue an improvement notice under Article 9;
  - (b) the power to issue a third party notice under Article 10;
  - (c) the power to recover unpaid contributions under Article 13;
  - (d) the power to require information under Article 67;
  - (e) the power to vary or revoke a determination, order, notice or direction under Article 96;
  - (f) the power to require payment of a penalty under Article 10 of the 1995 Order;

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- (g) the power to issue a compliance notice under section 35 of the Pensions (No. 2) Act (Northern Ireland) 2008;
  - (h) the power to issue a third party compliance notice under section 36 of that Act;
  - (i) the power to issue an unpaid contributions notice under section 37 of that Act;
  - (j) the power to issue a fixed penalty notice under section 40 of that Act;
  - (k) the power to issue an escalating penalty notice under section 41 of that Act;
  - (l) the power to recover penalties under section 42 of that Act;
  - (m) the power to review a notice under section 43 of that Act;
  - (n) the power to issue a compliance notice in respect of prohibited recruitment conduct under section 51 of that Act;
  - (o) the power to issue a penalty notice in respect of prohibited recruitment conduct under section 52 of that Act.”.
- (4) Subsections (1) to (3)—
- (a) do not affect any regulations made under paragraph 2(d) of Schedule 1 to the 2005 Order before the coming into operation of this section, and
  - (b) do not affect the powers conferred by that paragraph, so far as exercisable for the purpose of making, by way of consolidation, provision having the same effect as any provision of those regulations.

#### **Exclusion of transfers out in certain cases**

**109.**—(1) The Pension Schemes Act is amended as follows.

(2) In section 89(1B) (regulations as to the application of provisions relating to transfers for early leavers) after paragraph (a) insert—

“(aa) provide for this Chapter not to apply in prescribed circumstances in relation to a member of a prescribed scheme or schemes of a prescribed description;”.

(3) In section 97F (transfer notice in respect of pension credit benefit) after subsection (6) insert—

“(6A) Regulations may provide for this Chapter not to apply in prescribed circumstances in relation to a member of a prescribed scheme or schemes of a prescribed description.”.

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VALID FROM 13/03/2014

### *Official pensions*

#### **Official pensions: adjustment of increases in survivors' pensions**

**110.**—(1) Article 69 of the Social Security Pensions (Northern Ireland) Order 1975 (NI 15) (increase of official pensions) is amended as follows.

(2) Paragraph (5ZA) is amended as follows.

(3) In the words before sub-paragraph (a)—

(a) for “or widower's” substitute “, widower's or surviving civil partner's”;

(b) after “spouse” insert “ or civil partner ”.

(4) In sub-paragraph (a), after “spouse” insert “ or civil partner ”.

(5) In sub-paragraph (b)—

(a) after “period” insert “ (“the relevant time”) ”;

(b) for the words from “one half” to the end substitute “ the rate provided for in paragraph (5ZB); ”.

(6) In sub-paragraph (c), for “or widower's” substitute “, widower's or surviving civil partner's ”.

(7) Omit the words from “but this paragraph” to the end.

(8) After paragraph (5ZA) insert—

“(5ZB) The rate referred to in paragraph (5ZA)(b) is—

(a) in the case of a widow's pension, one half of the rate of the deceased husband's guaranteed minimum pension at the relevant time;

(b) in the case of a widower's pension, one half of so much of the rate of the deceased wife's guaranteed minimum pension at the relevant time as is attributable to earnings factors for the tax year 1988–89 and subsequent tax years;

(c) in the case of a surviving civil partner's pension, one half of so much of the rate of the deceased civil partner's guaranteed minimum pension at the relevant time as is attributable to earnings factors for the tax year 1988–89 and subsequent tax years.

(5ZC) Paragraph (5ZA)—

(a) does not apply to a widow's or widower's pension in respect of any service of the deceased spouse if the deceased spouse's

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pension in respect of that service became payable before 24th September 1990;

- (b) applies to a surviving civil partner's pension only in respect of amounts payable after the coming into operation of this paragraph.”

### *Information relating to state pension credit recipients*

#### **Disclosure of information relating to state pension credit recipients**

**111.**—(1) The Department may by regulations make provision authorising the Department, or a person providing services to the Department, to supply relevant persons with social security information about persons in receipt of state pension credit.

(2) In this section “relevant person” means—

- (a) a person who holds a licence under Article 10(1)(c) or (2) of the Electricity (Northern Ireland) Order 1992 (NI 1) or Article 8(1)(c) of the Gas (Northern Ireland) Order 1996 (NI 2) (supply of electricity or gas to premises), or
- (b) a person providing services to the Department or to a person within paragraph (a).

(3) Regulations under this section must specify the purposes for which information may be supplied by virtue of subsection (1), which must be purposes in connection with enabling the provision of assistance to persons in receipt of state pension credit.

(4) Regulations under this section may authorise the supply of information by a relevant person to the Department or another relevant person—

- (a) for the purpose of determining what information is to be supplied by virtue of subsection (1), or
- (b) to enable information supplied to a relevant person by virtue of subsection (1) to be used by that or another relevant person for purposes within subsection (3).

(5) Regulations under this section may—

- (a) make provision as to the use or disclosure of information supplied under the regulations (including provision creating criminal offences);
- (b) provide for the recovery by the Department of costs incurred in connection with the supply or use of information under the regulations.

(6) In this section—

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“social security information” means information held by or on behalf of the Department and obtained as a result of, or for the purpose of, the exercise of the Department's functions in relation to social security;

“state pension credit” has the meaning given by section 1(1) of the State Pension Credit Act (Northern Ireland) 2002 (c. 14).

## PART 6

### GENERAL

#### Orders and regulations

**112.**—(1) Subject to the following provisions of this section, any orders or regulations made by the Department under this Act are subject to negative resolution.

(2) Subsection (1) does not apply to an order under section 118.

(3) Orders or regulations to which this subsection applies—

- (a) must be laid before the Assembly after being made; and
- (b) take effect on such date as may be specified in the order or regulations, but (without prejudice to the validity of anything done thereunder or to the making of a new order or regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the order or regulations are approved by a resolution of the Assembly.

(4) Subsection (3) applies to—

- (a) regulations under section 16(3)(c), 17(1)(c), 28, 77 or 111;
- (b) the first regulations under section 3(2) or (6), 5(2) or (7), 7(4)(b) or (6) or 9(3)(b);
- (c) an order under section 28(9);
- (d) an order under section 114 amending or repealing any relevant statutory provision;
- (e) an order under paragraph 9(7) of Schedule 4.

(5) This subsection applies to any regulations or orders made by the Department under this Act which—

- (a) but for subsection (6), would be subject to negative resolution, and
- (b) are contained in a statutory rule which includes any regulations or order subject to the confirmatory procedure.

(6) Any regulations or orders to which subsection (5) applies shall not be subject to negative resolution, but shall be subject to the confirmatory procedure.

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(7) In this section—

“the confirmatory procedure” means the procedure described in subsection (3);

“relevant statutory provision” means a statutory provision contained in—

- (a) an Act of the Parliament of Northern Ireland;
- (b) an Order in Council under Schedule 1 to the Northern Ireland Act 1974 (c. 28) or the Schedule to the Northern Ireland Act 2000 (c. 1);
- (c) an Act of the Assembly; or
- (d) an Act of the Parliament of the United Kingdom.

### Orders and regulations: supplementary

**113.**—(1) This section applies to an order or regulations made by the Department under this Act.

(2) An order or regulations may include—

- (a) such incidental, supplemental, consequential or transitional provision as appears to the Department to be expedient;
- (b) provision conferring a discretion on any person.

### [<sup>F84</sup>Service of documents and electronic working

**113A** In Articles 2(7)(a), 277 and 278 of the 2005 Order (service of documents and electronic working) references to that Order are to be treated as including references to the following provisions of this Act—

- Chapters 2 and 3 of Part 1;
- section 59(1)(c);
- Chapter 1 of Part 3.]

#### Textual Amendments

**F84** S. 113A inserted (30.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), ss. **33(1)**, 34(3); S.R. 2012/265, art. 2(1)(f)

### Further provision etc.

**114.**—(1) The Department may by order make—

- (a) such supplemental, incidental or consequential provision, or
- (b) such transitory, transitional or saving provision,

as the Department thinks appropriate for the general purposes, or any particular purpose, of this Act or in consequence of any provision made by or under this Act or for giving full effect to this Act or any such provision.

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(2) An order under this section may, for purposes of or in consequence of or for giving full effect to any provision of or made under section 85, make provision for applying (with or without modifications) or amending, repealing or revoking any statutory provision.

(3) Amendments made under this section are in addition, and without prejudice, to those made by or under any other provision of this Act.

(4) No other provision of this Act restricts the powers conferred by this section.

(5) In Article 17 of the Deregulation and Contracting Out (Northern Ireland) Order 1996 (NI 11) (social security: amendments following certain orders), at the end of paragraph (2) add “ the Pensions Act 2008 ”.

### Pre-consolidation amendments

**115.**—(1) The Department may by order make such modification of statutory provisions within subsection (2) as in the Department's opinion facilitate, or are otherwise desirable in connection with, the consolidation of any of those statutory provisions.

(2) The statutory provisions are—

- (a) the Pension Schemes Act;
- (b) the 1995 Order;
- (c) Parts 2 to 5 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (NI 11);
- (d) Chapter 2 of Part 2 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4);
- (e) the 2005 Order;
- (f) the Pensions Act (Northern Ireland) 2008 (c. 1);
- (g) this Act;
- (h) statutory provisions referring to any provision within paragraphs (a) to (g).

### Repeals

**116** Schedule 10 (repeals) has effect.

#### Commencement Information

- I126** S. 116 partly in operation; s. 116 in operation for certain purposes at Royal Assent, see s. 118(2)(3); s. 116 in operation for certain purposes at 6.4.2009 by [S.R. 2009/22](#), [art. 2\(2\)\(d\)](#);  
s. 116 in operation for certain purposes at 6.4.2011 by [S.R. 2011/108](#), [art. 2\(2\)](#), Sch.
- I127** S. 116 in operation at 6.4.2012 for specified purposes by [S.R. 2012/119](#), [art. 2\(b\)](#)
- I128** [S. 116](#) in operation at 1.10.2012 for specified purposes by [S.R. 2012/372](#), [art. 2\(b\)](#)



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## Interpretation

**117.**—(1) In this Act—

“the 1995 Order” means the Pensions (Northern Ireland) Order 1995 (NI 22);

“the 2005 Order” means the Pensions (Northern Ireland) Order 2005 (NI 1);

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7);

“the Department” means the Department for Social Development;

“the Employment Rights Order” means the Employment Rights (Northern Ireland) Order 1996 (NI 16);

[<sup>F85</sup>“First-tier Tribunal” and “Upper Tribunal” mean those tribunals established under section 3 of the Tribunals, Courts and Enforcement Act 2007;]

“the Pension Schemes Act” means the Pension Schemes (Northern Ireland) Act 1993 (c. 49);

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Department;

“the Regulator” means the Pensions Regulator;

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

[<sup>F86</sup>“Tribunal Procedure Rules” has the same meaning as in the Tribunals, Courts and Enforcement Act 2007.]

(2) In the application, for the purposes of this Act, of section 39(2) of the Interpretation Act (Northern Ireland) 1954 (time beginning on a particular day), omit the word “not”.

### Textual Amendments

**F85** S. 117(1): definition of “First-tier Tribunal” and “Upper Tribunal” inserted (6.4.2010) by [Pensions Regulator Tribunal \(Transfer of Functions\) Act \(Northern Ireland\) 2010 \(c. 4\), ss. 3\(1\), 5\(2\), Sch. 1 para. 33\(a\)](#) (with Sch. 2); S.R. 2010/101, [art. 2](#)

**F86** S. 117(1): definition of “Tribunal Procedure Rules” added (6.4.2010) by [Pensions Regulator Tribunal \(Transfer of Functions\) Act \(Northern Ireland\) 2010 \(c. 4\), ss. 3\(1\), 5\(2\), Sch. 1 para. 33\(b\)](#) (with Sch. 2); S.R. 2010/101, [art. 2](#)

## Commencement

**118.**—(1) Subject to the following provisions, this Act comes into operation in accordance with provision made by order by the Department.

(2) Subsection (1) does not apply to—

(a) sections 65 to 68;

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- (b) section 84;
  - (c) section 102 (and Schedule 7 and Part 6 of Schedule 10 and section 116 so far as relating thereto);
  - (d) section 108;
  - (e) section 109;
  - (f) section 111;
  - (g) this Part, except Parts 1 to 5 of Schedule 10 and section 116 so far as relating thereto;
  - (h) the provisions mentioned in subsection (3);
  - (i) the provisions mentioned in subsection (5);
  - (j) any other provision of this Act so far as it confers any power to make regulations, rules or an order under this Act.
- (3) The provisions mentioned in this subsection are—
- (a) in Schedule 8—
    - (i) paragraph 1 so far as relating to any of the following paragraphs;
    - (ii) paragraph 3 (and paragraph 2 so far as necessary for the purposes of that paragraph);
    - (iii) paragraphs 5 to 7;
    - (iv) paragraph 8 for purposes other than those of the material detriment test;
    - (v) paragraphs 9 to 14;
    - (vi) in paragraph 15, sub-paragraph (1) so far as relating to paragraphs 6 and 7, sub-paragraph (2) for purposes other than those of the material detriment test, and sub-paragraphs (3) and (4);
    - (vii) paragraph 16;
  - (b) section 103 so far as relating to any of the paragraphs of that Schedule mentioned in paragraph (a) of this subsection;
  - (c) the repeal in Schedule 10 relating to Article 34(5)(a)(ii) of the 2005 Order, the note in that Schedule relating to that repeal and section 116 so far as relating to that repeal and that note.
- (4) Section 84 comes into operation on 6th April 2009.
- (5) Sub-paragraph (3) of paragraph 6 of Schedule 7, and Part 6 of Schedule 10 so far as relating to the repeals mentioned in that sub-paragraph, come into operation on the day appointed by an order under section 21(1) of the Pensions Act (Northern Ireland) 2008 (c. 1) for the coming into operation of paragraph 44(2) of Schedule 4 to that Act.

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#### Subordinate Legislation Made

- P1** S. 118(1) power partly exercised: 26.1.2009 and 6.4.2009 appointed for specified provisions by [S.R. 2009/22, art. 2](#)
- S. 118(1) power partly exercised: 1.4.2009 and 6.4.2009 appointed for specified provisions by [S.R. 2009/147, arts. 2, 3](#)
- S. 118(1) power partly exercised: 29.6.2009 appointed for specified provisions by [S.R. 2009/249, art. 2](#)
- S. 118(1) power partly exercised: 26.2.2010 and 5.7.2010 appointed for specified provisions by [S.R. 2010/50, art. 2](#)
- S. 118(1) power partly exercised: 16.3.2011 and 6.4.2011 appointed for specified provisions by [S.R. 2011/108, art. 2, Sch.](#)
- S. 118(1) power partly exercised: 3.1.2012 appointed for specified provisions by [S.R. 2011/441, art. 2](#)

#### Short title

**119** This Act may be cited as the Pensions (No. 2) Act (Northern Ireland) 2008.

**Status:**

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**Changes to legislation:**

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