

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

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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **PART 1 – Pension Scheme Membership for Jobholders**

##### *CHAPTER 7 – Application and interpretation*

##### *Section 70: “Employer”, “worker” and related expressions*

This section defines the terms “employer”, “worker” and other related expressions for Part 1 of the Act.

##### *Section 71: Agency workers*

This section provides that agency workers, who would not otherwise fall within the definition of “worker”, are considered as workers for the purposes of the employer duty (automatic enrolment, automatic re-enrolment and opting in). The agency will be the relevant “employer” for agency workers for the purposes of the employer duty, or as a fall-back, either the agent or principal responsible for paying the worker, or if that cannot be determined, whichever one actually pays the worker.

##### *Section 72: Directors*

This section specifies the circumstances in which a company director is a worker for the purposes of this Part.

##### *Section 73: Crown employment*

##### *Section 74: Armed Forces*

##### *Section 75: Police*

These sections clarify how the provisions in Part 1 of the Act impact on some specific types of worker or employer.

*Sections 73 and 75* set out specific classes of people who fall to be treated as workers for the purposes of these provisions. As such, the employer duty will apply to these specific groups in the same way as it applies in relation to other employment and other workers. The only exception is for employment by

or under the Crown, where there is no criminal liability placed on the Crown. However, the Pensions Regulator is enabled to apply to the High Court for a declaration that there has been a failure by the Crown to comply with duties in *section 45(1)* which, although not giving rise to criminal liability, is unlawful.

*Section 74* sets out the specific exclusion of the armed forces from these provisions.

***Section 76: Persons working on vessels***

*Section 76* initially excludes all persons employed in any capacity on board a ship from the provisions of the Act. This is subject to the power of the Secretary of State to make affirmative regulations under section 96 of the Pensions Act 2008 setting out those persons employed on a ship who will be included under this Part or the Pensions Act 2008.

***Section 77: Extension of definition of worker***

This section provides that the definition of “worker” may be extended to include individuals who are not currently caught. Such individuals would be deemed to be subject to a worker’s contract of a prescribed kind and working for a person of a prescribed description, who would be deemed to be the employer for the purposes of automatic enrolment.

***Section 78: Interpretation of Part***

This section sets out the meaning of particular words and phrases used throughout this Part.