

*Status: Point in time view as at 15/12/2008.*

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## 2008 CHAPTER 13

### **PART 1**

#### PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

##### CHAPTER 1

##### EMPLOYERS' DUTIES

###### *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.

(3) Subsection (1) is not contravened if the jobholder becomes an active member of another qualifying scheme within the prescribed period.

(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).

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#### Commencement Information

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

### Automatic enrolment

**3.—**(1) This section applies to a jobholder who—

- (a) is aged at least 22, and
- (b) has not reached pensionable age.

(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.

(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.

(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).

#### Commencement Information

**II** S. 3 partly in force; s. 3 in force for certain purposes at Royal Assent see [s. 118\(2\)](#)

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### **Postponement of automatic enrolment**

4.—(1) The Department may by regulations provide that, in prescribed cases, the automatic enrolment date is a date, determined in accordance with regulations under this section, which is later than the date specified in section 3(7).

(2) Where a person becomes an active member of a scheme in accordance with regulations under this section, the employer must not take any action, or make any omission, by which within the minimum period—

- (a) the person ceases to be an active member of the scheme, or
- (b) the scheme ceases to be a scheme of the relevant kind.

(3) The minimum period is so much of a prescribed period as the person remains a jobholder of the employer.

(4) A scheme ceases to be a scheme of the relevant kind, in the case of any person, if it ceases to have a feature by reference to which regulations under this section operated so as to postpone the automatic enrolment date in that person's case.

(5) Subsection (2) does not apply to any action or omission at the member's request.

#### **Commencement Information**

**I3** S. 4 partly in force; s. 4 in force for certain purposes at Royal Assent see s. 118(2)

### **Automatic re-enrolment**

5.—(1) This section applies to a jobholder who—

- (a) is aged at least 22, and
- (b) has not reached pensionable age.

(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.

(4) Subsection (2) does not apply if, within the prescribed period before the automatic re-enrolment date, the jobholder—

- (a) ceased to be an active member of a qualifying scheme because of any action or omission by the jobholder, or
- (b) gave notice under section 8.

(5) Subsection (2) is subject to section 6(6).

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(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.

(8) Automatic re-enrolment dates are dates, after the automatic enrolment date, that are to be determined in accordance with regulations.

#### Commencement Information

**I4** S. 5 partly in force; s. 5 in force for certain purposes at Royal Assent see [s. 118\(2\)](#)

### 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 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 three years.

(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.

(3) The first case is where the jobholder became an active member of a scheme in accordance with regulations under section 4 and—

- (a) at any time before the end of the minimum period under that section, the jobholder ceases to be an active member of the scheme or the scheme ceases to be a scheme of the relevant kind for the purposes of that section,
- (b) that event is not the effect of any action or omission by the jobholder or the employer, and
- (c) the relevant date is the jobholder's first automatic re-enrolment date after that time.

(4) The second case is where—

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- (a) at any time after the jobholder's automatic enrolment date, the jobholder ceases to be an active member of a qualifying scheme or a qualifying scheme of which the jobholder is an active member ceases to be such a scheme,
  - (b) that event is not the effect of any action or omission by the jobholder or the employer, and
  - (c) the relevant date is the jobholder's first automatic re-enrolment date after that time.
- (5) The third 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.
- (6) Where subsection (3) applies—
- (a) section 5(2) has effect as if the reference to an automatic enrolment scheme were, in relation to the relevant date, a reference to a scheme (“the new scheme”) of the kind referred to in subsection (3)(a), and
  - (b) section 4(2) to (5) applies in relation to the new scheme as it applied in relation to the scheme referred to in subsection (3).

#### **Commencement Information**

**I5** S. 6 partly in force; s. 6 in force for certain purposes at Royal Assent see s. 118(2)

#### **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, or
- (b) the jobholder's automatic enrolment date is postponed under section 4.

(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;

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- (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 (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.

#### **Commencement Information**

**I6** S. 7 partly in force; s. 7 in force for certain purposes at Royal Assent see s. 118(2)

#### **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**

**I7** S. 8 partly in force; s. 8 in force for certain purposes at Royal Assent see s. 118(2)

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