

Status: Point in time view as at 30/06/2012.

Changes to legislation: Pensions (No. 2) Act (Northern Ireland) 2008, Cross Heading: Employers' duties is up to date with all changes known to be in force on or before 27 February 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)



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.

[^{F1}(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.

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(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)

C1 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

I1 S. 2 partly in force; s. 2 in force for certain purposes at Royal Assent see s. 118(2)

I2 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

3.—^{F2}(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 [^{F3}£8,105] 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.

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(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.

[^{F4}(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.[^{F5}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).

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 (15.6.2012) by [The Automatic Enrolment \(Earnings Trigger and Qualifying Earnings Band\) Order \(Northern Ireland\) 2012 \(S.R. 2012/240\), art. 2\(1\)](#) (but this effect could not be applied until 30.6.2012 following the substitution of s. 3(1) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 6\(1\)](#))
- 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)

- C2** 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

- I3** S. 3 partly in force; s. 3 in force for certain purposes at Royal Assent see [s. 118\(2\)](#)
- I4** 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

[^{F6}4.—(1) Where—

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(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—

(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);

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- (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

I5 S. 4 partly in force; s. 4 in force for certain purposes at Royal Assent see s. 118(2)

Automatic re-enrolment

5.—^{F7}(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 ^{F8}£8,105] are payable by the employer in the relevant pay reference period (see section 15).]

^{F9}(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.

^{F10}(4) Regulations may provide for subsection (2) not to apply in relation to a jobholder who in prescribed circumstances—

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- (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.]

^{F11}(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.

^{F12}(7A) In this section “earnings” has the meaning given in section 13(3).

(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^{F13}... 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 (15.6.2012) by [The Automatic Enrolment \(Earnings Trigger and Qualifying Earnings Band\) Order \(Northern Ireland\) 2012 \(S.R. 2012/240\), art. 2\(1\)](#) (but this effect could not be applied until 30.6.2012 following the substitution of s. 5(1) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 6\(3\)](#))
- 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)

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<p>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)</p> <p>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)</p> <hr/> <p>Modifications etc. (not altering text)</p> <p>C3 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))</p> <hr/> <p>Commencement Information</p> <p>I6 S. 5 partly in force; s. 5 in force for certain purposes at Royal Assent see s. 118(2)</p> <p>I7 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</p>
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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 [^{F14}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.

^{F15}(3)

(4) The [^{F16}first case] is where—

- (a) ^{F17}... the jobholder ceases to be an active member of a qualifying scheme ^{F18} ...,
- (b) that event is not the effect of any action or omission by the jobholder ^{F19} ..., and
- (c) the relevant date is the jobholder's first automatic re-enrolment date after that [^{F20}event] .

(5) The [^{F21}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.

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F22(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\(1\)\(a\)](#)
- 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

- I8** S. 6 partly in force; s. 6 in force for certain purposes at Royal Assent see s. 118(2)
- I9** 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, ^{F23} ...

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^{F23}(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 (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)

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Modifications etc. (not altering text)

- C4** 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

- I10** S. 7 partly in force; s. 7 in force for certain purposes at Royal Assent see s. 118(2)
- I11** 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 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

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(b) to be signed or otherwise authorised by the jobholder.

.....

Commencement Information

I12 S. 8 partly in force; s. 8 in force for certain purposes at Royal Assent see s. 118(2)

I13 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](#)

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Changes to legislation:

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