

Status: Point in time view as at 31/12/2020.

Changes to legislation: Pensions (No. 2) Act (Northern Ireland) 2008, CHAPTER 7 is up to date with all changes known to be in force on or before 11 April 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 7

APPLICATION AND INTERPRETATION

F1 Exceptions

Textual Amendments

- F1 S. 69A and preceding cross-heading inserted (16.7.2015) by [Pensions Act \(Northern Ireland\) 2015 \(c. 5\)](#), ss. 37(2), 53(1); S.R. 2015/307, art. 2(1)(c)

Power to create exceptions from the employer duties etc.

69A.—(1) The Department may by regulations provide for exceptions to the employer duties; and an exception may in particular—

- (a) turn an employer duty into a power;
- (b) be framed by reference to a description of worker, particular circumstances or in some other way.

(2) But the regulations may not provide for an exception for employers of a particular size.

(3) Regulations which make provision under subsection (1)(a) may make provision modifying this Part or regulations made under it in connection with that provision.

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(4) The regulations may make provision in connection with the coming to an end of the state of affairs that caused an exception to apply, including provision—

- (a) modifying this Part or regulations made under it in relation to a person;
- (b) for the purpose of putting a person, wholly or partly, in the position he or she would have been in if the exception had never applied.

(5) In this section “employer duties” means any duty of an employer under any provision of sections 2 to 11 and 54 or of regulations made under those sections.]

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

II S. 70 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

Agency workers

71.—(1) This section applies to an individual (“the agency worker”)—

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- (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.

Modifications etc. (not altering text)

- C1** S. 71 applied by 1993 c. 49, s. 119(2A) (as inserted (16.7.2015) by [Pensions Act \(Northern Ireland\) 2015 \(c. 5\)](#), **ss. 41(2)(c)**, 53(1); S.R. 2015/307, art. 2(1)(f))

Commencement Information

- I2** 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.

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Commencement Information

I3 S. 72 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

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

I4 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

I5 S. 74 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

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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 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

- I6** S. 75 partly in force; s. 75 in force for certain purposes at Royal Assent see s. 118(2)
- I7** 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

- I8** 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.

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Commencement Information

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

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;

^{F2}
...

“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 [^{F3}which fall within section 78A];

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“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;

“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

- F2** Words in s. 78 omitted (31.12.2020) by virtue of [The Occupational and Personal Pension Schemes \(Amendment etc.\) \(Northern Ireland\) \(EU Exit\) Regulations 2019 \(S.I. 2019/193\)](#), regs. 1, **6(3)**; 2020 c. 1, Sch. 5 para. 1(1)
- F3** 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

- I10** 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\(2\)](#)

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[^{F4}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—

- (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

- F4** S. 78A inserted (retrospectively) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), ss. 27\(3\) \(6\), 34\(3\); S.R. 2014/203, art. 2](#)

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