

*These notes refer to the Pensions Act (Northern Ireland)
2012 (c.3) which received Royal Assent on 1 June 2012*

Pensions Act (Northern Ireland) 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Automatic Enrolment

Section 7: Postponement or disapplication of automatic enrolment

Section 7 introduces an optional waiting period into the automatic enrolment process. This allows employers to defer the automatic enrolment date of a worker for up to three months by providing him or her with a notice. The notice must state that the employer intends to use a waiting period, together with details of the worker's new enrolment date.

The employer may apply the waiting period from one of three dates (according to their relevant situation):

- the employer's staging date (the date from which an employer is required to comply with the automatic enrolment duty);
- the worker's first day of employment with that employer (where that falls after the employer's staging date); or
- the first day on which a worker is eligible for automatic enrolment whilst employed by that employer. This could be, for example, the day on which the worker turns 22 or their earnings change, so that they become a jobholder who is eligible for automatic enrolment.

In the first two cases, the employer does not have to check the worker's eligibility to be automatically enrolled in a pension scheme before applying the waiting period. In all cases the employer must confirm the worker's eligibility at the end of the waiting period before automatically enrolling them.

The section amends section 7 of the Pensions (No. 2) Act so that the worker may opt into pension saving at any point during the waiting period. Regulations under the substituted section 4 (see below) may provide that the worker will be advised of this right in the notice provided by the employer.

Subsection (2) substitutes a new section 4 into the Pensions (No. 2) Act. In the case of all three dates on which the employer may apply the waiting period, in meeting the conditions for using the waiting period, the employer must have

made an active choice to use the waiting period. The employer indicates this choice by giving the worker a notice.

The provision for deferral at the staging date includes the following:

- under section 4(1) a deferral notice may be given in the case of a worker who is employed on the employer's staging date. An employer may defer such a worker's automatic enrolment date to a date specified in the notice the employer gives to the worker – "the deferral date"- if, on that date, the worker satisfies certain eligibility criteria. The eligibility criteria in sections 1 and 3 of the Pensions (No. 2) Act determine whether the worker is eligible to be automatically enrolled. The employer must automatically enrol the worker, with effect from the deferral date, if the worker is eligible to be automatically enrolled on the deferral date. If the worker is not eligible to be automatically enrolled, the employer is under no duty to automatically enrol that worker into a pension scheme (and see section 4(4)).
- section 4(1)(a) provides that an employer must give a notice to all the workers whose automatic enrolment date he intends to defer. This notice should state the employer's intention to defer the automatic enrolment date of that worker until the date specified in the notice.
- section 4(1)(b) provides a power to prescribe further requirements in relation to the notice, such as its form and content.

Under section 4(2) a deferral notice may be given to a new worker who commences employment after the employer's staging date. An employer may defer the automatic enrolment date of such a worker to a date specified in the notice the employer gives to the employee – "the deferral date"- if, on that date, the worker satisfies the eligibility criteria. The eligibility criteria in sections 1 and 3 of the Pensions (No. 2) Act determine whether the worker is eligible to be automatically enrolled. The employer must automatically enrol the worker, with effect from the deferral date, if the worker is eligible to be automatically enrolled on the deferral date. If the worker is not eligible to be automatically enrolled, the employer is under no duty to automatically enrol that worker into a pension scheme (and see section 4(4)).

Under section 4(3) a deferral notice may be given to a worker who satisfies the eligibility criteria for automatic enrolment after the employer's staging date. The employer may defer that worker's automatic enrolment date to a date specified in the notice the employer gives the employee – "the deferral date". If the worker is not eligible to be automatically enrolled, the employer is under no duty to automatically enrol that worker into a pension scheme (and see section 4(4)).

Section 4(4) applies when the worker does not satisfy certain eligibility criteria on the deferral date specified in a notice under this section. In that case the duty under section 3(2) of the Pensions (No. 2) Act on employers, to automatically enrol certain workers into pension schemes, does not apply to the employer in relation to that worker. Section 4(4) provides that where the worker fails to satisfy the eligibility requirements in sections 1 and 3 of the Pensions (No. 2)

Act on the deferral date, but did satisfy those criteria before the deferral date, the employer is not required to automatically enrol the worker with effect from the date when he did satisfy the criteria.

Section 4(5) provides that the employer may give a worker a notice on or before the starting day, as defined in section 4(8), or within a prescribed period after that day. The employer, if he wishes to defer the worker's automatic enrolment date, must give the notice to the worker within this timeframe.

Section 4(6) provides that the employer can defer the automatic enrolment date of a worker under this section for a maximum of three months from the starting day.

Section 4(7) has the effect that an employer cannot defer the automatic enrolment date of a worker for more than three months. The subsection provides that an employer cannot give a worker more than one notice, which could extend the deferral of that worker's automatic enrolment date beyond three months.

Section 4(8) defines "staging date" and "starting day" for the purposes of section 4.

Subsection (3) omits subsection (5) of section 5 of the Pensions (No. 2) Act as a consequence of replacing section 4 with a new provision.

Subsection (4)(a) omits subsections (3) and (6) of section 6 of the Pensions (No. 2) Act as a consequence of replacing section 4 with a new provision.

Subsection (5) omits section 7(2)(b) of the Pensions (No. 2) Act (as a consequence of the substitution of section 4) allowing a jobholder to opt in during the waiting period.

Subsection (6) amends section 30(7) of the Pensions (No. 2) Act to allow an employer who uses a transitional period under section 30 to use section 4 to defer the automatic enrolment date of a worker by up to three months from the end of that transitional period.