

*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 5: Automatic re-enrolment where scheme membership interrupted

Section 5 amends section 2 of the Pensions (No. 2) Act. Under this section, where the jobholder is an active member of a qualifying scheme, the employer must not take any action or make any omission by which the jobholder ceases to be a member of the qualifying scheme or the scheme ceases to be a qualifying scheme unless a specified exception applies. One of those exceptions is where the employer arranges for the jobholder to become an active member of another qualifying scheme, within a prescribed period. (The definition of “jobholder” is set out in section 1 of the Pensions (No. 2) Act.)

As section 2 stands, there is no duty on the employer to automatically re-enrol the jobholder into another qualifying scheme where the employer takes an action or makes an omission referred to in the preceding paragraph. The employer can put the jobholder into another qualifying scheme but only with the jobholder’s consent. In the event that this consent is not forthcoming the employer could potentially be in breach of section 2 of the Pensions (No. 2) Act until the next automatic re-enrolment date arises.

Subsection (1) amends section 2 of the Pensions (No. 2) Act so that section 2 is not contravened if, in compliance with the duty to re-enrol under section 5, the jobholder becomes an active member of an automatic enrolment scheme from the day after the jobholder ceases to be an active member of a qualifying scheme or the scheme ceases to be such a scheme or within a prescribed period of time. This subsection should be read with *Section 6(3)* which substitutes new subsection (1), and *subsection (2)* which inserts subsections (1A) and (1B) into section 5 of the Pensions (No. 2) Act. Section 5, as amended, imposes a duty to re-enrol a jobholder specified in new subsections (1), (1A) or (1B) with effect from a date specified in regulations.

Subsection (1) of section 5 of the Pensions (No. 2) Act (as amended) applies to a jobholder aged between 22 and State Pension age who earns more than £7,475. Subsections (1A) and (1B) apply to a jobholder who earns £7,475 or below, where the jobholder has ceased to be an active member of a qualifying scheme,

or where the qualifying scheme of which the jobholder was an active member has ceased to be such a scheme.

Regulations under section 5 of the Pensions (No. 2) Act, as amended by the Act, will therefore be able to provide for a duty to re-enrol to occur whenever the employer takes an action or makes an omission by which the jobholder ceases to be a member of the qualifying scheme, or the scheme ceases to be a qualifying scheme, subject to any exceptions that may be provided for.

Subsection (3) amends section 5(4) of the Pensions (No. 2) Act (circumstances in which the duty to re-enrol does not apply) to allow for regulations to prescribe the circumstances where there is no duty to re-enrol in a case where:

- the jobholder, or the employer at the jobholder's request, takes an action or makes an omission such that the jobholder is no longer a member of a qualifying scheme; or
- the jobholder opts out of membership of a qualifying scheme, under section 8 of the Pensions (No. 2) Act.

Subsection (4) amends section 5(8) of the Pensions (No. 2) Act to remove a reference to re-enrolment having to occur after the automatic enrolment date.

Subsection (5) amends section 6(4) of the Pensions (No. 2) Act (timing of automatic re-enrolment) to ensure that regulations may provide for a re-enrolment date to occur earlier than the time referred to in section 6(1)(b) of the Pensions (No. 2) Act where the jobholder ceases to be in a qualifying scheme or the scheme ceases to be a qualifying scheme by reason of an action or omission of the employer. It also removes an unnecessary reference.

Subsection (6) amends section 54(1)(a) and (b) of the Pensions (No. 2) Act (inducements) to prevent an employer from inducing a worker to give up membership of a relevant scheme without becoming an active member of another relevant scheme and without leaving a period where the worker is not a member of a scheme.

Section 6: Earnings trigger for automatic enrolment and re-enrolment

Section 6 amends sections 3 and 5 of the Pensions (No. 2) Act. Section 3 provides that an employer is under a duty to enrol a jobholder into an automatic enrolment scheme, with effect from the automatic enrolment date, where the jobholder is aged at least 22 and under pensionable age, and certain other conditions are met. Section 5 provides that an employer is under a duty to re-enrol a jobholder into an automatic enrolment scheme, on a date as set out in regulations, where the jobholder is aged at least 22 and under pensionable age, and certain other conditions are met.

Subsections (1) and (3) provide that a jobholder will not be eligible for automatic enrolment under section 3 or re-enrolment under section 5 respectively unless, in addition to complying with the above conditions, the jobholder earns in excess of £7,475 per annum (the "earnings trigger").

The earnings trigger is distinct from the band of “qualifying earnings” in section 13 of the Pensions (No. 2) Act (which concerns the earnings on which contributions are payable in the case of a “qualifying scheme” which is a money purchase or personal pension scheme). Therefore, where the jobholder has been automatically enrolled or re-enrolled, employers and jobholders must still pay contributions if the jobholder’s earnings fall below the earnings trigger, but are above the lower limit of the qualifying earnings band (see section 13(1)(a) of the Pensions (No. 2) Act).

Subsections (2) and (4) define the term “earnings” for the purposes of sections 3 and 5 of the Pensions (No. 2) Act and permit an employer to use a proportionate amount of the earnings trigger where a pay reference period is shorter or longer than one year. For example, employers may wish to convert the amount of the earnings trigger to a monthly or weekly figure.

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.

Section 8: Timing of automatic re-enrolment

Section 8 amends section 6(1)(b) of the Pensions (No. 2) Act to stipulate that automatic re-enrolment will not happen more frequently than once in every period of two years and nine months. The two years and nine months interval applies to the employer rather than the jobholder. This section is relevant only where the Department makes provision under section 6(1)(b) rather than section 6(1)(a).

Section 9: Review of earnings trigger and qualifying earnings band

Section 9 amends section 14 of the Pensions (No. 2) Act. Whenever the Secretary of State makes an order under section 14 of the Pensions Act 2008 reviewing the qualifying earnings band for automatic enrolment and re-enrolment, section 14 enables the Department to make a corresponding order for Northern Ireland.

The amendment to section 14 takes account of the introduction of the earnings trigger for automatic enrolment and re-enrolment introduced by [section 6](#).

Section 10: Rounded figures for earnings trigger and qualifying earnings band

[Section 10](#) inserts a new section 15A into the Pensions (No. 2) Act. The amounts for the earnings trigger and the upper and lower limits of the qualifying earnings band relate to a jobholder's gross earnings in a nominal pay reference period of 12 months. Sections 3(6B), 5(7B) and 13(2) of the Pensions (No. 2) Act provide that, where an employer's pay reference period is less or more than 12 months, those amounts will be proportionately less or more. Whenever the Secretary of State makes an order under section 15A of the Pensions Act 2008 specifying rounded figures to be used for the purposes of the corresponding provisions of that Act, section 15A enables the Department to make a corresponding Order for Northern Ireland.

Section 11: Qualifying Schemes: administration charges

[Section 11](#) amends section 16 of the Pensions (No. 2) Act to correct an anomaly in the existing legislation, where the Department has the power to cap administration charges charged by qualifying schemes in respect of active members but not deferred members of the scheme. Section 16 as amended will enable a cap on administration charges of qualifying schemes to apply to charges made to deferred members as well as charges made to active members.

Section 12: Test scheme standard for schemes that produce sum of money for provision of benefit

Sections 21, 22 and 23 of the Pensions (No. 2) Act set out the quality requirements for defined benefits schemes used by employers to discharge their automatic enrolment duties. Quality requirements are based on a test of overall scheme quality which requires employers to compare their scheme against a benchmark or model scheme.

At present the quality requirements have been designed for defined benefits schemes in which the member accrues a pension rather than a sum of money. [Section 12](#) amends sections 22 and 23 to accommodate defined benefits schemes which provide a sum of money to be used for purchasing an annuity from a provider or securing a pension within the scheme and introduces a regulation making power to enable the Department to provide for the detailed requirements for a test scheme for such schemes.

Section 13: Certification that alternative to quality requirement is satisfied

[Section 13](#) amends section 28 of the Pensions (No. 2) Act and introduces alternative self-certification arrangements for employers. Employers using money purchase occupational pension schemes, personal pension schemes or certain types of hybrid schemes to discharge their enrolment duties will be

able to use section 28 to certify that their scheme satisfies the relevant quality requirements, providing the scheme satisfies certain alternative requirements, to be prescribed in regulations.

Subsections (2) and (3) make minor consequential amendments as a result of the substantive changes to section 28.

Subsection (4) inserts a new subsection (1A) into section 28 defining “relevant jobholder” as a jobholder to whom a certificate applies and providing that a reference to a “scheme” in that section includes a reference to part of a scheme.

Subsection (5) amends subsection (2) to include a new paragraph (b). The amended section 28(2) provides that the certificate must state that, in the opinion of the person giving it, the scheme being certified either satisfies the relevant quality requirements, or an alternative prescribed requirement, throughout the certification period.

Subsection (6) makes minor consequential amendments to section 28(6).

Subsection (7) amends section 32(1)(b) of the Pensions (No. 2) Act to enable scheme trustees to modify an occupational pension scheme by resolution to satisfy the quality requirements contained in section 20(1) or those requirements as modified under section 24(1)(a), or section 28(2)(b).

Section 14: Certification for non-UK schemes

Section 14 amends section 28 of the Pensions (No. 2) Act to give employers using money purchase, or personal pension schemes or the money purchase elements of hybrid schemes the option of self-certifying that their scheme meets the relevant quality requirement where the scheme has its main administration in a Member State of the EEA other than the UK.

Section 15: Transitional period for defined benefits and hybrid schemes to be optional

Section 15 amends section 30 of the Pensions (No. 2) Act which allows employers using defined benefits and hybrid schemes to adjust gradually to the additional costs of the automatic enrolment reforms. Currently, section 30 provides that for certain jobholders, where the conditions in section 30(2) are met, the automatic enrolment date under section 3 of the Pensions (No. 2) Act is automatically deferred until the end of a transitional period as set out in regulations. This section amends section 30, so that employers can choose whether or not to defer automatic enrolment until the end of that transitional period.

Subsection (2) amends subsection (3) of section 30 to provide that deferral of the automatic enrolment date will only apply where an employer serves a notice on the jobholder, within a period set out in regulations, stating that the employer intends to defer.

Subsection (3) amends subsection (4) of section 30 (provision where certain conditions in section 30(2) cease to be satisfied during the transitional period) to take account of the fact that the employer has to give a notice in order to defer the automatic enrolment date.

Subsection (4) inserts a new subsection (7A) into section 30, allowing the Department to make regulations regarding the form and content of that notice.

Section 16: Arrangements where transitional conditions cease to be satisfied

Section 16 amends section 30 of the Pensions (No. 2) Act. Under section 30(5), if certain conditions of deferral cease to apply, the employer must enrol the jobholder into an alternative scheme. Currently section 30(5) provides that the alternative scheme must either be another defined benefit or hybrid scheme, or a money purchase scheme. This amendment gives employers a further option of enrolling jobholders into a personal pension scheme. It also has the effect of requiring the Department to make regulations about the arrangements that must be made by an employer in order for the jobholder to become a member of a personal pension scheme.

Subsection (3) amends subsection (6)(b) to ensure that where an employer makes arrangements to enrol a jobholder into a personal pension scheme the jobholder is not required to make a back payment of contributions.

Section 17: Power of managers to modify by resolution

Section 17 extends section 32 of the Pensions (No. 2) Act. Section 32 provides that the trustees of an occupational pension scheme may by resolution modify the scheme so that it complies with the requirements for an automatic enrolment scheme in section 17 of the Pensions (No. 2) Act or the requirements as to payment of contributions in sections 20 and 24 of the Pensions (No. 2) Act. Section 32 is extended so that managers, as well as trustees, of occupational pension schemes are able to use this power to modify a scheme.

Section 18: No indemnification for civil penalties

Section 18 extends the prohibition in Article 233 of the Pensions (Northern Ireland) Order 2005 (“the 2005 Order”) on a pension scheme trustee or manager being reimbursed out of scheme funds for fines or penalties payable by the trustee or manager. The extension covers penalties payable by a trustee or manager under section 40 or 41 of the Pensions (No. 2) Act. A trustee or manager in receipt of a fixed or escalating penalty under that Act will not be able to take monies from scheme funds in order to pay those penalties.

Section 19: Power to exempt certain cross-border employment from enrolment duty

Section 19 inserts a new Article 268A into Part 7 of the 2005 Order (cross-border activities within European Union) to provide a regulation making power allowing the Department to provide that the employer’s automatic enrolment

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duties under the Pensions (No. 2) Act do not apply in the case of employment of an individual in relation to whom the employer is a European employer as defined in the Occupational Pension Schemes (Cross-border Activities) Regulations (Northern Ireland) 2005.