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STATUTORY RULES OF NORTHERN IRELAND

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**2010 No. 186**

**PENSIONS**

**The Employers' Duties (Registration and Compliance) Regulations (Northern Ireland) 2010**

*Made* - - - - *19th May 2010*  
*Coming into operation* *1st October 2012*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 11, 38(2) to (4), 40(4), 41(5), 43(3), 52(3), 54(3), 59 and 113(2) of the Pensions (No. 2) Act (Northern Ireland) 2008(1).

**PART 1**

**General**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Employers' Duties (Registration and Compliance) Regulations (Northern Ireland) 2010 and shall come into operation on [<sup>F1</sup>1st July 2012 immediately after the coming into operation of regulation 4(2)(a) of the Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012].

(2) In these Regulations—

“automatic re-enrolment date” has the same meaning as in section 5(8);

“contributions payable by an employer” means contributions payable by the employer—

(a) on the employer's own account (but in respect of the worker), or

(b) on behalf of the worker out of deductions from the worker's earnings;

“the employers' duties” means sections 2 to 9;

“employer duty provisions” has the same meaning as in section 34(3);

“employer pension scheme reference” means—

(a) [<sup>F2</sup>in relation to an occupational pension scheme (except a scheme established under section 67 of the Pensions Act 2008 )—

- (i) a reference given by the Regulator (R) to the trustees or managers of the scheme (T) following the provision of registrable information to R by T, and
  - (ii) any reference provided to the employer by T evidencing the relationship between the employer and the scheme;]
- (b) in relation to a scheme established under section 67 of the Pensions Act 2008, a reference given by that scheme prior to registration to an employer using the same scheme to comply with the employer duty provisions, or
  - (c) in relation to a personal pension scheme, a reference given by that scheme prior to registration to an employer using the same scheme to comply with the employer duty provisions;

“HMRC” means Her Majesty’s Revenue and Customs;

“the Implementation Regulations” means the Employers’ Duties (Implementation) Regulations (Northern Ireland) 2010(2);

“joining notice” means a notice given under section 9(2);

“late payment report” means a notice given by a trustee or manager of a trust or occupational or personal pension scheme to the Regulator under—

- (a) section 107A(7A) of the Pension Schemes Act(3);
- (b) Article 49(9)(b) of the 1995 Order(4), or
- (c) Article 86(1) of the 1995 Order(5);

“opt in notice” means a notice given under section 7(3);

“opt out notice” means a notice given under section 8;

“PAYE income” has the same meaning as in section 683(1) of the Income Tax (Earnings and Pensions) Act 2003(6);

“PAYE scheme” means the HMRC record [<sup>F3</sup>applicable] to an employer who—

- (a) employs, or
- (b) intends to employ,

a worker to whom PAYE income is payable;

“registrable information” has the same meaning as in Article 55 of the 2005 Order;

“registration” means the process by which employers are required to provide the Regulator with information about action they have taken or intend to take for the purposes of—

- (a) any provision of sections 2 to 9, and
  - (b) any regulations made under those sections,
- as set out in regulations 2 to 4 of these Regulations;

“retail prices index” means—

- (a) the general index of retail prices (for all items) published by the Statistics Board(7), or

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(2) [S.R. 2010 No. 123](#)

(3) Section 107A was inserted by Article 10 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 ([S.I. 1999/3147 \(N.I. 11\)](#)) and subsection (7A) was substituted by Article 245(2) of the Pensions (Northern Ireland) Order 2005 ([S.I. 2005/255 \(N.I. 1\)](#))

(4) Article 49(8) was substituted with Article 49(8) to (13) by Article 11(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 and paragraph (9)(b) was substituted by Article 246(1) of the Pensions (Northern Ireland) Order 2005

(5) Article 86(1) was substituted by Article 246(2) of the Pensions (Northern Ireland) Order 2005

(6) [2003 c. 1](#)

(7) The Statistics Board is established by section 1 of the Statistics and Registration Service Act [2007 \(c. 18\)](#)

(b) where that index is not published for a month, any substituted index or figures published by the Board;

“staging date” has the same meaning as in regulation 1(2) of the Implementation [F4]Regulations.]

F5 ...

(3) Without prejudice to any other method of service of documents, any document under these Regulations may be sent by ordinary post.

(4) In these Regulations any reference to a numbered section is a reference to the section of the Pensions (No. 2) Act (Northern Ireland) 2008 bearing that number.

- F1 Words in [reg. 1\(1\)](#) substituted (1.7.2012) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2012](#) (S.R. 2012/232), [regs. 1\(1\)\(d\)](#), [4\(2\)\(a\)](#)
- F2 Words in [reg. 1\(2\)](#) substituted (1.7.2012) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2012](#) (S.R. 2012/232), [regs. 1\(1\)\(c\)](#), [4\(2\)\(b\)\(i\)](#)
- F3 Words in [reg. 1\(2\)](#) substituted (1.7.2012) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2012](#) (S.R. 2012/232), [regs. 1\(1\)\(c\)](#), [4\(2\)\(b\)\(ii\)](#)
- F4 Word in [reg. 1\(2\)](#) substituted (1.10.2017) by [The Employers' Duties \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2017](#) (S.R. 2017/181), [regs. 1](#), [3\(2\)\(a\)](#)
- F5 Words in [reg. 1\(2\)](#) omitted (1.10.2017) by virtue of [The Employers' Duties \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2017](#) (S.R. 2017/181), [regs. 1](#), [3\(2\)\(b\)](#)

**Commencement Information**

- II [Reg. 1](#) in operation at 1.10.2012, see [reg. 1\(1\)](#)

## PART 2

### Registration

#### Registration: general

2.—(1) An employer must provide information to the Regulator in the following cases—

(a) [F6]on or ] after the staging date for that employer;

F7(b) .....

[F8(c) on or after an automatic re-enrolment date for that [F9]employer;]]

[F10(d) in a case where regulation 2(8) of the Implementation Regulations (application of the employers' duties to employers) applies, from the day on which the employer's first worker begins to be employed by the employer;

(e) in a case where—

(i) regulation 2(9) and (10) of the Implementation Regulations applies, and

(ii) the employer's first worker began to be employed by the employer in the period beginning with 2nd April 2017 and ending with 30th September 2017,

from the day on which PAYE income is payable in respect of any worker, and

(f) in a case where—

(i) regulation 2(9) and (10) of the Implementation Regulations applies, and

(ii) the employer's first worker begins to be employed by the employer on or after 1st October 2017,

from the day on which the employer's first worker begins to be employed by the employer.]

(2) Where an employer must provide the Regulator with information under [F11]regulation 3 or 4] but the final day of the period in regulation 3(1) or 4(1) which applies to that employer is not a working day, an employer may provide the Regulator with information on or before the next working day (and for the purposes of this paragraph "working day" means a day which is not a Saturday, Sunday or public holiday).

(3) In this regulation "information" means the information specified in regulations 3 and 4 required to be provided to the Regulator about action employers have taken or intend to take for the purposes of—

- (a) any provision of sections 2 to 9, or
- (b) any regulations made under those sections.

[F12(4) In this Part, "automatic re-enrolment date" means an automatic re-enrolment date occurring by virtue of section 6(1)(b) (timing of automatic enrolment).]

- F6** Words in reg. 2(1)(a) inserted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 (S.R. 2016/142), regs. 1, **4(2)(a)(i)**
- F7** Reg. 2(1)(b) omitted (1.10.2017) by virtue of The Employers' Duties (Miscellaneous Amendments) Regulations (Northern Ireland) 2017 (S.R. 2017/181), regs. 1, **3(3)(a)**
- F8** Reg. 2(1)(c) substituted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 (S.R. 2016/142), regs. 1, **4(2)(a)(iii)**
- F9** Word in reg. 2(1)(c) substituted (1.10.2017) by The Employers' Duties (Miscellaneous Amendments) Regulations (Northern Ireland) 2017 (S.R. 2017/181), regs. 1, **3(3)(b)**
- F10** Reg. 2(1)(d)-(f) added (1.10.2017) by The Employers' Duties (Miscellaneous Amendments) Regulations (Northern Ireland) 2017 (S.R. 2017/181), regs. 1, **3(3)(c)**
- F11** Words in reg. 2(2) substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/232), regs. 1(1)(c), **4(3)**
- F12** Reg. 2(4) added (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 (S.R. 2016/142), regs. 1, **4(2)(b)**

#### Commencement Information

- I2** Reg. 2 in operation at 1.10.2012, see **reg. 1(1)**

### Registration: after staging date and new PAYE schemes

3.—(1) Where—

- (a) regulation 2(1)(a) applies, an employer must provide the information specified in paragraphs (2) and (3) of this regulation within the period of [F135 months][F14]beginning with] the staging [F15]date;]
- (b) [F16]regulation 2(1)(d) or (f)] applies, an employer must provide the information specified in paragraphs (2) and (3) of this regulation within the period of [F175 months][F18]beginning with the day on which the employer's first worker begins to be employed by the employer, or]

[<sup>F19</sup>(c) regulation 2(1)(e) applies, an employer must provide the information specified in paragraphs (2) and (3) of this regulation within the period of 5 months beginning with the day on which PAYE income is payable in respect of any worker,]

in relation to each of its PAYE schemes.

(2) The specified information is—

(a) the employer's—

(i) [<sup>F20</sup>name,] address and postcode, and

[<sup>F21</sup>(ii) registered companies house number where one exists or, where such a number does not exist—

(aa) the employer's industrial and provident society number;

(bb) but if the number mentioned in sub-head (aa) does not exist, the employer's registered charity number;

(cc) but if the number mentioned in sub-head (bb) does not exist, the employer's VAT registration number, if one exists;]

(b) (i) the name, telephone number, ordinary working address, and

(ii) the e-mail address, where one exists,

of any person providing that specified information on behalf of the employer;

(c) the capacity in which the person providing the information in sub-paragraph (a) works for (or has a relationship to) that employer;

[<sup>F22</sup>(d) where the employer must arrange active membership of an automatic enrolment scheme under section 3(2)—

(i) subject to head (iii), the number of jobholders automatically enrolled with effect from—

(aa) the employer's staging date;

(bb) where sub-head (aa) does not apply and the employer has not used a deferral date, the date the employers' duties first apply to the employer;

(ii) if the employer uses more than one pension scheme under those arrangements, the number of jobholders who became active members of each pension scheme, and

(iii) on the deferral date—

(aa) the deferral date or the last such date where the employer uses more than one, and

(bb) the number of jobholders automatically enrolled with effect from that date;

(e) where an employer is subject to transitional arrangements under section 30 (transitional period for defined benefits and hybrid schemes), the number of jobholders to whom that section applies;

(f) the number of workers in an employer's PAYE scheme who, immediately before whichever is applicable of—

(i) the staging date, or

(ii) the day on which the employers' duties first apply to the employer,

were active members of a qualifying scheme or, if the employer uses more than one qualifying scheme to comply with the employers' duties, each of those schemes, and]

(g) the number of workers in an employer's PAYE scheme in respect of whom sub-paragraph (d), (e) or (f) does not apply.

(3) Where an employer must arrange for a jobholder to become an active member of an automatic enrolment scheme under section 3(2), that employer must also provide the following information to the Regulator about any pension scheme used to comply with those duties—

- (a) where that scheme—
  - (i) is an occupational pension scheme, its name and, unless registrable information has already been provided to the Regulator by the trustees or managers of that scheme, its address, or
  - (ii) is a personal pension scheme, the name and address of the provider of that scheme, and
- (b) the employer pension scheme reference.

(4) All information provided to the Regulator by (or on behalf of) an employer under this regulation must be accompanied by a declaration that the information is, to the best of the employer's knowledge and belief, correct and complete.

<b>F13</b>	Words in <a href="#">reg. 3(1)(a)</a> substituted (1.4.2014 for specified purposes) by <a href="#">The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2013 (S.R. 2013/243)</a> , <a href="#">regs. 1(1)(b)</a> , <a href="#">5(2)</a>
<b>F14</b>	Words in <a href="#">reg. 3(1)(a)</a> substituted (1.10.2017) by <a href="#">The Employers' Duties (Miscellaneous Amendments) Regulations (Northern Ireland) 2017 (S.R. 2017/181)</a> , <a href="#">regs. 1</a> , <a href="#">3(4)(a)(i)</a>
<b>F15</b>	Words in <a href="#">reg. 3(1)(a)</a> substituted (1.10.2017) by <a href="#">The Employers' Duties (Miscellaneous Amendments) Regulations (Northern Ireland) 2017 (S.R. 2017/181)</a> , <a href="#">regs. 1</a> , <a href="#">3(4)(a)(ii)</a>
<b>F16</b>	Words in <a href="#">reg. 3(1)(b)</a> substituted (1.10.2017) by <a href="#">The Employers' Duties (Miscellaneous Amendments) Regulations (Northern Ireland) 2017 (S.R. 2017/181)</a> , <a href="#">regs. 1</a> , <a href="#">3(4)(b)(i)</a>
<b>F17</b>	Words in <a href="#">reg. 3(1)(b)</a> substituted (1.4.2014 for specified purposes) by <a href="#">The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2013 (S.R. 2013/243)</a> , <a href="#">regs. 1(1)(b)</a> , <a href="#">5(2)</a>
<b>F18</b>	Words in <a href="#">reg. 3(1)(b)</a> substituted (1.10.2017) by <a href="#">The Employers' Duties (Miscellaneous Amendments) Regulations (Northern Ireland) 2017 (S.R. 2017/181)</a> , <a href="#">regs. 1</a> , <a href="#">3(4)(b)(ii)</a>
<b>F19</b>	<a href="#">Reg. 3(1)(c)</a> inserted (1.10.2017) by <a href="#">The Employers' Duties (Miscellaneous Amendments) Regulations (Northern Ireland) 2017 (S.R. 2017/181)</a> , <a href="#">regs. 1</a> , <a href="#">3(4)(c)</a>
<b>F20</b>	Words in <a href="#">reg. 3(2)(a)(i)</a> inserted (1.7.2012) by <a href="#">The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/232)</a> , <a href="#">regs. 1(1)(c)</a> , <a href="#">4(4)(aa)(b)(i)</a>
<b>F21</b>	<a href="#">Reg. 3(2)(a)(ii)</a> substituted (1.7.2012) by <a href="#">The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/232)</a> , <a href="#">regs. 1(1)(c)</a> , <a href="#">4(4)(b)(i)(bb)</a>
<b>F22</b>	<a href="#">Reg. 3(2)(d)(e)(f)</a> substituted (1.7.2012) by <a href="#">The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/232)</a> , <a href="#">regs. 1(1)(c)</a> , <a href="#">4(4)(b)(ii)</a>
<b>Commencement Information</b>	
<b>I3</b>	<a href="#">Reg. 3</a> in operation at 1.10.2012, see <a href="#">reg. 1(1)</a>

**Registration: re-registration**

4.—<sup>F23</sup>(1) Where regulation 2(1)(c) applies, an employer must provide the information specified in paragraph (3) of this regulation in relation to each of its PAYE schemes—

- (a) where it is the employer's first automatic re-enrolment date, within the period of 5 months beginning with the third anniversary of the employer's staging date, and
- (b) in any other case, within the period of 5 months beginning with the third anniversary of the employer's previous automatic re-enrolment date,

and the time at which an employer provides that information is referred to in this regulation as the “point of re-registration”.]

<sup>F24</sup>(2) .....

- (3) The specified information is—
- (a) that specified in regulation 3(2)(a) to (c);
  - (b) that specified in regulation 3(3)(a) and (b);
  - [<sup>F25</sup>(c) where the employer must arrange active membership of an automatic enrolment scheme for any worker who is a jobholder under section 5(2)—
    - (i) the number of jobholders automatically re-enrolled, as at the point of re-registration;
    - (ii) if the employer uses more than one pension scheme under those arrangements, the number of jobholders automatically re-enrolled into each pension scheme, as at the point of re-registration, and
    - [<sup>F26</sup>(iii) . . . . .
  - [<sup>F27</sup>(ca) the automatic re-enrolment date;]
  - (d) where an employer is subject to transitional arrangements under section 30 (transitional period for defined benefits and hybrid schemes) the number of jobholders to whom that section applies;
  - (e) [<sup>F28</sup>the number of workers in the employer's PAYE scheme who, immediately before the point of re-registration, were active members of a qualifying scheme or, if the employer uses more than one qualifying scheme to comply with the employers' duties, the number of workers in each of those schemes;]
  - (f) the number of workers in an employer's PAYE scheme in respect of whom subparagraph (c), (d) or (e) does not apply.
- (4) All information provided to the Regulator by (or on behalf of) an employer under this regulation must be accompanied by a declaration that the information is, to the best of the employer's knowledge and belief, correct and complete.]

<p><b>F23</b> Reg. 4(1) substituted (6.4.2016) by <a href="#">The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 (S.R. 2016/142)</a>, regs. 1, <b>4(3)(a)</b></p> <p><b>F24</b> Reg. 4(2) omitted (6.4.2016) by virtue of <a href="#">The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 (S.R. 2016/142)</a>, regs. 1, <b>4(3)(b)</b></p> <p><b>F25</b> Reg. 4(3)(c)-(e) substituted (1.7.2012) by <a href="#">The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/232)</a>, regs. 1(1)(c), <b>4(5)(b)</b></p> <p><b>F26</b> Reg. 4(3)(c)(iii) and preceding worded omitted (6.4.2016) by virtue of <a href="#">The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 (S.R. 2016/142)</a>, regs. 1, <b>4(3)(c)(i)</b></p> <p><b>F27</b> Reg. 4(3)(ca) inserted (6.4.2016) by <a href="#">The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 (S.R. 2016/142)</a>, regs. 1, <b>4(3)(c)(ii)</b></p> <p><b>F28</b> Reg. 4(3)(e) substituted (6.4.2016) by <a href="#">The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 (S.R. 2016/142)</a>, regs. 1, <b>4(3)(c)(iii)</b></p>
<p><b>Commencement Information</b></p> <p><b>I4</b> Reg. 4 in operation at 1.10.2012, see <a href="#">reg. 1(1)</a></p>

## PART 3

### Compliance

#### Records and information

##### Requirement to keep records

5.—(1) The persons in paragraph (2) must—

- (a) keep the records listed within the regulation applicable to them;
- (b) preserve the records for a period in accordance with regulation 8, and
- (c) provide those records, on request, to the Regulator.

(2) The persons are, subject to paragraphs (5) and (6), any person who is—

- (a) an employer;
- (b) a trustee or manager of an occupational pension scheme, or
- (c) a provider of a personal pension scheme.

(3) Regulation 6 applies in respect of a person falling within paragraph (2)(a).

(4) Regulation 7 applies in respect of a person falling within paragraph (2)(b) or (c).

(5) Where a person does not fall within paragraph (2), that person may keep, preserve or provide the records listed in regulations 6 and 7 on behalf of a person falling within paragraph (2) but only where a person falling within paragraph (2) authorises the other person to do so.

(6) A person who has ceased to act as a person falling within paragraph (2) shall not be required to keep records, where that person has transferred all the records to another person who has succeeded that person in that capacity.

(7) All records must be kept in such form and manner so that they are—

- (a) capable of being arranged according to the corresponding employer pension scheme reference, and
- (b) legible or can be provided to the Regulator in a legible form.

##### Commencement Information

**I5** [Reg. 5](#) in operation at 1.10.2012, see [reg. 1\(1\)](#)

##### Records: employers

6.—(1) A person falling within regulation 5(2)(a) must keep the following records in relation to an occupational or personal pension scheme used by that person to comply with the employers' duties—

- (a) where that scheme—
  - (i) is an occupational pension scheme, its name and address;
  - (ii) is a personal pension scheme, the name and address of the provider of that scheme, or
  - (iii) does not have its main administration in the United Kingdom, the address of that scheme and the name of any authority which exercises functions corresponding to the functions of the Regulator in the country or territory outside the United Kingdom where that scheme is situated;
- (b) the employer pension scheme reference;



<sup>F29</sup>(c) .....

- (d) where section 22 (test scheme standard) applies, any evidence which shows that a scheme satisfies the test scheme standard within the meaning of that section, given in accordance with any regulations made under subsection (4) of that section;
- (e) the name, national insurance number (where one exists) and date of birth of—
  - (i) every jobholder of an employer who became an active member of an automatic enrolment scheme pursuant to arrangements made under section 3;
  - (ii) every jobholder of an employer who was not an active member of a qualifying scheme but who by notice required the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme pursuant to arrangements made under section 7 (jobholder's right to opt in), and
  - (iii) every worker who by notice required an employer to arrange for the worker to become an active member of a pension scheme pursuant to arrangements made under section 9 (workers without qualifying earnings);
- (f) every jobholder's automatic enrolment date, and the date with effect from which every worker became an active member of a pension scheme that satisfies the requirements of section 9, pursuant to arrangements made under that section;
- (g) an opt in notice in respect of every jobholder who gave notice under section 7(3);
- (h) a joining notice in respect of every worker who gave notice under section 9(2), and
- (i) an opt out notice in respect of every jobholder who gives notice under section 8.

(2) A person falling within regulation 5(2)(a) must also keep the following records in respect of every jobholder or worker falling within paragraph (1)(e) where contributions fall to be deducted by an employer under section 33 and regulations made under that section—

- (a) their gross earnings in any relevant pay reference period;
- (b) evidence of the contributions that the jobholder's employer must pay in respect of the jobholder, in order to satisfy the quality requirement for the pension scheme used by the employer to comply with the employers' duties;
- (c) the contributions payable by an employer during each relevant pay reference period and, if different, the contributions paid, and
- (d) the date on which the contributions payable by an employer were paid to the pension scheme used by the employer to comply with the employers' duties.

[<sup>F30</sup>(2A) Where an employer (E) gives to a person (P) employed by E a notice under section 4 (postponement or disapplication of automatic enrolment) that meets the requirements prescribed in Part 6 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010, E must keep a record of—

- (a) P's full name;
- (b) P's national insurance number (where available), and
- (c) the date E gave the notice to P.]

(3) In this regulation—

“earnings” has the meaning given by section 13(3) (qualifying earnings);

“relevant pay reference period” means—

- (a) a period of one week, or
- (b) in the case of a person who is paid a regular wage or salary by reference to a period longer than a week, that period.

- F29** Reg. 6(1)(c) omitted (6.4.2016) by virtue of *The Pensions (2015 Act) (Abolition of Contracting-out for Salary Related Pension Schemes) (Consequential Amendments and Savings) Order (Northern Ireland) 2016* (S.R. 2016/158), arts. 1(a), **26(2)**
- F30** Reg. 6(2A) inserted (1.7.2012) by *The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012* (S.R. 2012/232), regs. 1(1)(c), **4(6)**

#### Commencement Information

- I6** Reg. 6 in operation at 1.10.2012, see **reg. 1(1)**

### Records: trustees, managers and providers

- 7.—(1) A person falling within regulation 5(2)(b) or (c) must keep the following records—
- (a) the employer pension scheme reference;
  - (b)
    - (i) the date on which every jobholder became an active member of a pension scheme, by virtue of arrangements made under section 3 (automatic enrolment) [<sup>F31</sup>or 7 (jobholder's right to opt in)], and
    - (ii) the date with effect from which every worker became an active member of a pension scheme that satisfies the requirements of section 9 (workers without qualifying earnings), by virtue of arrangements made under that section;
  - (c) where—
    - (i) a jobholder gives an opt out notice to an employer, and
    - (ii) any regulations under section 8(5)(e) (jobholder's right to opt out) require that employer to inform a pension scheme that such a notice has been received by it, the name of the jobholder mentioned in the opt out notice and the date on which that scheme was informed by virtue of that requirement, and
  - (d) where a jobholder had been an active member of a qualifying scheme, the date on which the jobholder ceased active membership of that scheme.
- (2) A person falling within regulation 5(2)(b) or (c) must also keep the following records in relation to all persons who are members of a qualifying scheme—
- (a) their full name, date of birth, gender and national insurance number (as received by the trustee or manager of an occupational pension scheme or provider of a personal pension scheme);
  - (b)
    - (i) their postal residential address, and
    - (ii) where that address is in the United Kingdom, the postcode, last known by or notified to that scheme or employer, and
  - (c) whether—
    - (i) a member is an active member of a scheme, or
    - (ii) a member is no longer an active member of a scheme.

- F31** Words in **reg. 7(1)(b)(i)** inserted (1.7.2012) by *The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012* (S.R. 2012/232), regs. 1(1)(c), **4(7)**

#### Commencement Information

- I7** Reg. 7 in operation at 1.10.2012, see **reg. 1(1)**

### Period of preservation of records

8.—(1) Except where paragraph (2) applies, a record listed in regulations 6 and 7 must be preserved for a period of 6 years, starting on the day on which the record must first be kept.

(2) Paragraph (1) does not apply to any record which is kept under regulation 6(1)(i) or 7(1)(c), in which case the record must be preserved for 4 years, starting on the day on which the record must first be kept.

[<sup>F32</sup>(3) Where a certificate issued in respect of a jobholder under section 3(1) of the Pension Schemes Act was required to be kept under regulation 6(1)(c) (as it had effect before 6th April 2016), that certificate must be preserved until 5th April 2022.]

**F32** Reg. 8(3) added (6.4.2016) by The Pensions (2015 Act) (Abolition of Contracting-out for Salary Related Pension Schemes) (Consequential Amendments and Savings) Order (Northern Ireland) 2016 (S.R. 2016/158), arts. 1(a), **26(3)**

#### Commencement Information

**18** Reg. 8 in operation at 1.10.2012, see **reg. 1(1)**

### Payment failures

### Unpaid relevant contributions

9. For the purposes of section 38(2) (calculation and payment of contributions), the prescribed period after the appropriate date is 3 months.

#### Commencement Information

**19** Reg. 9 in operation at 1.10.2012, see **reg. 1(1)**

### Contributions: requirement to pay interest

10.—(1) For the purposes of section 38(2)(e) (calculation and payment of contributions), the rate at which interest must be paid on an amount required by a notice to be paid (“the rate”) is determined by the Regulator in accordance with paragraph (2).

(2) The rate comprises a fixed component and a flexible component where—

- (a) the fixed component is 4.2%, and
- (b) the flexible component is—
  - (i) the percentage change in the retail prices index applicable for the month during which the Regulator issues a notice, or
  - (ii) where the retail prices index applicable for the month during which the Regulator issues a notice is not published, the percentage change in that index for the preceding month.

(3) For the purposes of section 38(2)(e), the period in respect of which interest must be paid on an amount required by a notice—

- (a) begins with the appropriate date, and
- (b) ends when an employer complies with a notice by—
  - (i) taking, or refraining from taking, the steps specified in a compliance notice, or

(ii) paying into a pension scheme an amount in respect of relevant contributions that had not been paid, as specified in an unpaid contributions notice.

(4) In this regulation “interest” means simple interest calculated from day to day.

#### Commencement Information

**I10** Reg. 10 in operation at 1.10.2012, see reg. 1(1)

#### Contributions: estimating contributions

**11.**—(1) The Regulator may estimate the amount of contributions that an employer has failed to pay on behalf or in respect of a worker by applying the formula—

$$\frac{E}{12} \times N \times M$$

where—

E is the maximum qualifying earnings in a pay reference period of 12 months, as defined by section 13(1)(b);

N is either—

- (a) the number of jobholders in respect of whom the Regulator is of the opinion that the employer has—
  - (i) contravened one or more of the employer duty provisions, or
  - (ii) not paid relevant contributions on or before the due date (within the meaning of section 37(3)), or
- (b) where in the Regulator’s opinion the number in paragraph (a) is not known, the number of persons in the employer’s PAYE scheme,

at the time that the Regulator makes the estimate, and

M is the number of months from—

- (a) the contravention of one or more of the employer duty provisions, or
- (b) the failure to pay contributions on behalf or in respect of the worker, until the Regulator makes the estimate.

(2) Other than information provided by the employer, when estimating the amount of contributions under this regulation, the Regulator may use the sources of information set out in paragraph (3).

(3) The sources of information are—

- (a) a late payment report;
- (b) anything reported or sent to the Regulator by any person, including—
  - (i) a trustee or manager of an occupational pension scheme;
  - (ii) a provider of a personal pension scheme, and
  - (iii) a member of either an occupational or a personal pension scheme, or
- (c) any information disclosed to the Regulator under Article 83(8) of the 2005 Order (tax information etc.).

**Commencement Information**

**I11** [Reg. 11](#) in operation at 1.10.2012, see [reg. 1\(1\)](#)

Penalties

**Fixed penalty notices**

**12.** Where the Regulator issues a fixed penalty notice to a person under section 40(1) or (2), the penalty is £400.

**Commencement Information**

**I12** [Reg. 12](#) in operation at 1.10.2012, see [reg. 1\(1\)](#)

**Escalating penalty notices**

**13.—**(1) Where an escalating penalty notice is issued to a person—

- (a) in respect of a failure to comply with a third party compliance notice under section 36, or
- (b) (i) in respect of a failure to comply with a notice specified in paragraph (2)(a) or (b), and  
(ii) that failure was by a person other than an employer,

the prescribed daily rate is £200.

(2) Paragraph (3) applies where an escalating penalty notice is issued to an employer in respect of a failure to comply with—

- (a) a compliance notice under section 35;
- (b) a notice under Article 67(9) of the 2005 Order (provision of information), or
- (c) an unpaid contributions notice under section 37.

(3) Except where paragraph (1) applies, the prescribed daily rate is to be determined in accordance with Table 1 and paragraphs (4) to (7).

**Table 1**

<i>Number of persons</i>	<i>Prescribed daily rate</i>
1-4	£50
5-49	£500
50-249	£2,500
250-499	£5,000
500 or more	£10,000

(4) In the first column of Table 1 “Number of persons” is to be construed in accordance with paragraphs (5) [<sup>F33</sup>, (5A)] and (6).

(5) Where—

[<sup>F34</sup>(a) paragraph (2)(a) or (b) applies, it is the relevant number except that—

(9) Article 67 is amended by section 60(2) of the Pensions (No. 2) Act (Northern Ireland) 2008

- (i) in the circumstances set out in paragraph (5A), the number of persons is the number of persons in the employer's PAYE scheme or schemes who are employed by the employer, or
  - (ii) where the circumstances set out in paragraph (5A) do not apply and in the Regulator's opinion the relevant number is not known, paragraph (7) applies;]
  - (b) paragraph (2)(c) applies, it is—
    - (i) the number of workers in respect of whom the Regulator is of the opinion that the employer has not paid relevant contributions on or before the due date (within the meaning of section 37(3)), or
    - [<sup>F35</sup>(ii) where in the Regulator's opinion the number in head (i) is not known, the relevant number except that—
      - (aa) where paragraph (5A) applies, the number of persons is the number of persons in the employer's PAYE scheme or schemes who are employed by the employer, or
      - (bb) where paragraph (5A) does not apply and in the Regulator's opinion the relevant number is not known, paragraph (7) applies.]
- but where in the Regulator's opinion the number in head (ii) is not known, paragraph (7) applies.

[<sup>F36</sup>(5A) This paragraph applies where—

- (a) the Regulator is of the opinion that an employer's PAYE scheme includes (or where the Regulator is of the opinion that the employer has more than one PAYE scheme, the schemes include) persons who are not employed by the employer, and
  - (b) the number of persons in the employer's PAYE scheme (or where the Regulator is of the opinion that the employer has more than one PAYE scheme, the schemes) who are employed by the employer is known to the Regulator.]
- (6) For the purposes of this regulation, the Regulator must use the latest information reasonably available to it up to and including the day on which the Regulator issues an escalating penalty notice [<sup>F37</sup>, including] —
- (a) where paragraph (2)(a) and (b) applies [<sup>F38</sup>:information] , disclosed to it under Article 83 of the 2005 Order (tax information etc.), and
  - (b) where paragraph (2)(c) applies [<sup>F39</sup>, information] —
    - (i) contained in a late payment report;
    - (ii) contained in a report given to the Regulator under Article 65 of the 2005 Order (duty to report breaches of the law), or
    - (iii) disclosed to it under Article 83 of the 2005 Order.
- (7) Where this paragraph applies, the prescribed daily rate must be treated as being £50.
- [<sup>F40</sup>(8) In this regulation “relevant number” means the number of persons within an employer's PAYE scheme or, where the Regulator is of the opinion that the employer has more than one PAYE scheme, the total number of persons within those schemes.]

**F33** Words in reg. 13(4) inserted (1.7.2012) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/232\)](#), regs. 1(1)(c), **4(8)(a)**

**F34** Reg. 13(5)(a) substituted (1.7.2012) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/232\)](#), regs. 1(1)(c), **4(8)(b)(i)**

**F35** Words in reg. 13(5)(b) substituted (1.7.2012) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/232\)](#), regs. 1(1)(c), **4(8)(b)(ii)**

- F36** Reg. 13(5A) inserted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/232), regs. 1(1)(c), **4(8)(c)**
- F37** Words in reg. 13(6) inserted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/232), regs. 1(1)(c), **4(8)(d)(i)**
- F38** Words in reg. 13(6)(a) inserted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/232), regs. 1(1)(c), **4(8)(d)(ii)**
- F39** Words in reg. 13(6)(b) inserted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/232), regs. 1(1)(c), **4(8)(d)(iii)**
- F40** Reg. 13(8) added (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 (S.R. 2012/232), regs. 1(1)(c), **4(8)(e)**

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**Commencement Information**

- I13** Reg. 13 in operation at 1.10.2012, see **reg. 1(1)**

**Penalty notices: prohibited recruitment conduct**

14.—(1) This regulation applies where the Regulator issues a penalty notice to an employer if the Regulator is of the opinion that the employer—

- (a) has contravened section 50 (prohibited recruitment conduct), or
- (b) has failed to comply with a compliance notice under section 51.

(2) The penalty is to be determined in accordance with Table 2 and paragraphs (3) to (6).

**Table 2**

<i>Number of persons</i>	<i>Penalty</i>
1-4	£1,000
5-49	£1,500
50-249	£2,500
250 or more	£5,000

(3) In the first column of Table 2 “Number of persons” is to be construed in accordance with paragraphs (4) [<sup>F41</sup>, (4A)] and (5).

[<sup>F42</sup>(4) It is the relevant number except that—

- (a) where paragraph (4A) applies, the number of persons is the number of persons in the employer's PAYE scheme or schemes who are employed by the employer;
- (b) where paragraph (4A) does not apply and in the Regulator's opinion the relevant number is not known, paragraph (6) applies.

(4A) This paragraph applies where—

- (a) the Regulator is of the opinion that an employer's PAYE scheme includes (or where the Regulator is of the opinion that the employer has more than one PAYE scheme, the schemes include) persons who are not employed by the employer, and
- (b) the number of persons in the employer's PAYE scheme (or where the Regulator is of the opinion that the employer has more than one PAYE scheme, the schemes) who are employed by the employer is known to the Regulator.]

(5) For the purposes of this regulation, the Regulator must use the latest information—

- (a) reasonably available to it up to and including the day on which it issues a penalty notice, and

(b) disclosed [<sup>F43</sup>including information] to it under Article 83 of the 2005 Order (tax information etc.).

(6) Where this paragraph applies, the penalty must be treated as being £1,000.

[<sup>F44</sup>(7) In this regulation “relevant number” means the number of persons within an employer's PAYE scheme or, where the Regulator is of the opinion that the employer has more than one PAYE scheme, the total number of persons within those schemes.]

- F41** Word in reg. 14(3) inserted (1.7.2012) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/232\)](#), regs. 1(1)(c), **4(9)(a)**
- F42** Reg. 14(4)(4A) substituted for (1.7.2012) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/232\)](#), regs. 1(1)(c), **4(9)(b)**
- F43** Words in reg. 14(5)(b) inserted (1.7.2012) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/232\)](#), regs. 1(1)(c), **4(9)(c)**
- F44** Reg. 14(7) added (1.7.2012) by [The Automatic Enrolment \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/232\)](#), regs. 1(1)(c), **4(9)(d)**

#### Commencement Information

**I14** [Reg. 14](#) in operation at 1.10.2012, see [reg. 1\(1\)](#)

### Review and issue of notices

#### Review and issues of notices

**15.—(1)** The period within which an application to review a notice may be made under section 43(1)(a) (written application of a person) is 28 days, starting from the day a notice is issued to a person.

(2) The period within which a notice may be reviewed under section 43(1)(b) (review by the Regulator) is 18 months, starting from the day a notice is issued to a person.

(3) The presumptions in paragraph (4) apply where notices to which section 43 applies are issued (including compliance notices issued under section 51 and penalty notices issued under section 52).

(4) For the purposes of this regulation, it is presumed that—

- (a) where a notice is given a date by the Regulator, it was posted or otherwise sent on that day;
- (b) if a notice is posted or otherwise sent to a person's last known or notified address, it was issued on the day on which that notice was posted or otherwise sent, and
- (c) a notice was received by the person to whom it was addressed.

#### Commencement Information

**I15** [Reg. 15](#) in operation at 1.10.2012, see [reg. 1\(1\)](#)

### Inducements

#### Inducements

**16.** For the purposes of section 54(3) (inducements), the Regulator may not issue a compliance notice in respect of a contravention of that section unless the contravention occurred within—

- (a) 6 months before the time when a complaint was made to the Regulator about the contravention, or



- (b) 4 years before the time when the Regulator informed the employer of an investigation of the contravention, if no complaint was made before that time.

**Commencement Information**

**I16** Reg. 16 in operation at 1.10.2012, see reg. 1(1)

Sealed with the Official Seal of the Department for Social Development on 19th May 2010

(L.S.)

*Anne McCleary*  
A senior officer of the Department for Social  
Development

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision as to the powers which enable the Pensions Regulator (“the Regulator”) to maximise compliance with the duties and safeguards contained in Chapter 1 of Part 1, and sections 50 and 54, of the Pensions (No. 2) Act (Northern Ireland) 2008 (“the Act”).

Regulations 2 to 4 deal with the information which employers are required to provide to the Regulator about action they have taken or intend to take for the purposes of sections 2 to 9 of the Act or any regulations made under those sections. In particular, regulation 3 concerns the information which has to be sent after the employers’ duties first apply to an employer. Regulation 4 concerns when an employer will have to re-register information with the Regulator.

Regulations 5 to 8 make provision as to the records which certain persons have to keep, preserve and provide on request to the Regulator. Regulation 5 sets out general provisions. Regulation 6 sets out record-keeping requirements for employers. Regulation 7 sets out requirements for trustees, managers and providers of schemes. Regulation 8 prescribes the periods for which the records must be preserved.

Regulations 9 to 11 make provision about where employers fail to pay contributions. Regulation 9 prescribes the period after which an employer may be required by the Regulator to pay both its own contributions and contributions in respect of its jobholders or workers. Regulation 10 makes provision about how interest is to be determined in a notice issued by the Regulator. Regulation 11 sets out the way in which the Regulator will be able to estimate the amount of contributions due by an employer in a compliance notice or unpaid contributions notice, where that employer has failed to pay contributions on behalf, or in respect, of a worker.

Regulations 12 to 14 relate to the Regulator’s powers to issue penalties.

Regulation 15 prescribes periods within which the Regulator may review a notice under section 43 of the Act if the Regulator is asked to do so by the person to whom the notice is issued, or if the Regulator considers it to be appropriate. It also sets out three presumptions relating to the issue of a notice.

Regulation 16 sets out the time limits within which—

a complaint is made to the Regulator about a contravention of section 54 of the Act, or  
the Regulator informs the employer of an investigation of such a contravention,

in order for the Regulator to issue a compliance notice in respect of that contravention.

An assessment of the cost to business of these Regulations is included in a Regulatory Impact Assessment, a copy of which has been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Assessment are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast BT7 2JA or from the website: <http://www.dsdni.gov.uk/index/ssa/ssani-publications/ssani-pensions-publications.htm>. A copy of the Assessment is also annexed to the Explanatory Memorandum which is available alongside this Statutory Rule on the website: <http://www.opsi.gov.uk/legislation/northernireland/ni-srni.htm>.

**Changes to legislation:**

There are currently no known outstanding effects for the The Employers' Duties (Registration and Compliance) Regulations (Northern Ireland) 2010.