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STATUTORY RULES OF NORTHERN IRELAND

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**2012 No. 237**

**PENSIONS**

**The Occupational and Personal Pension  
Schemes (Automatic Enrolment) (Amendment)  
Regulations (Northern Ireland) 2012**

*Made* - - - - *8th June 2012*

*Coming into operation* *1st July 2012*

*Approved by resolution of the Assembly on 10th December 2012*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 107A(15)(b) and 177(2) to (4) of the Pension Schemes (Northern Ireland) Act 1993<sup>(1)</sup>, Articles 49(8) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995<sup>(2)</sup>, and now vested in it<sup>(3)</sup>, and sections 2(3), 3(2), (5) and (6), 5(2), (4), (6), (7) and (8), 6(1)(b) and (2), 7(4) to (6), 8(2)(b) and (3) to (6), 9(3), 10, 15(1) and (2), 16(2) and (3)(c), 17(1)(c), 18(c), 22(4) to (7), 23(1)(b) and (c), (3) and (6), 24(1), 25, 27, 28(1), (2)(b), (3A) and (4) to (7), 30(5), (6)(c) and (7A), 33(2), 37(3), 59 and 113(2) of the Pensions (No. 2) Act (Northern Ireland) 2008<sup>(4)</sup>.

**Citation, commencement and interpretation**

**1.—**(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations (Northern Ireland) 2012 and shall come into operation—

- (a) except for the purposes of regulation 2(2), on 1st July 2012 immediately after the coming into operation of regulation 2 of the Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012<sup>(5)</sup>, and
- (b) for the purposes of regulation 2(2), on 1st July 2012 immediately after the coming into operation of the other provisions of these Regulations.

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(1) 1993 c. 49; section 107A was inserted by Article 10 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)); see also subsection (18) of that section as added by section 49 of the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.))

(2) S.I. 1995/3213 (N.I. 22); Article 49(8) was substituted by Article 11(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(3) See Article 8(b) of S.R. 1999 No. 481

(4) 2008 c. 13 (N.I.); sections 2(3) and 5(4) were substituted by section 5(1) and (3) of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)); section 5(8) was amended by section 5(4) of that Act; section 6(1)(b) was amended by section 8 of that Act; section 23 was substituted by section 12(2) of that Act; section 28 was amended by sections 13 and 14 of that Act; section 30(5) was amended by section 16(2) of that Act; section 30(7A) was inserted by section 15(4) of that Act; section 59 was amended by section 33(2) of that Act

(5) S.R. 2012 No. 232

(2) The Interpretation Act (Northern Ireland) 1954<sup>(6)</sup> shall apply to these Regulations as it applies to an Act of the Assembly.

### **Amendment of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations**

2.—(1) The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010<sup>(7)</sup> are amended in accordance with paragraphs (2) to (5).

(2) In regulation 1(1) (commencement) for “1st October 2012” substitute “1st July 2012 immediately after the coming into operation of regulation 2 of the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations (Northern Ireland) 2012”.

(3) After Part 7 (automatic enrolment following the transitional period for defined benefit and hybrid schemes) insert—

## **“PART 7A**

### **Certification that a quality or alternative requirement is satisfied**

#### **Effect of a certificate under section 28**

**32A.** Subject to regulation 32H, a scheme to which section 28 (certification that quality requirement or alternative requirement is satisfied) applies is to be taken to satisfy the relevant quality requirement<sup>(8)</sup> in relation to each of an employer’s relevant jobholders<sup>(9)</sup> if the certificate in question is given in accordance with regulations 32B to 32D in relation to the employer and those jobholders.

#### **Giving of a certificate, retention and disclosure**

**32B.—**(1) Subject to paragraph (2), a certificate under section 28(1) (certification that quality requirement or alternative requirement is satisfied) must be given by the employer or by a person who is authorised by the employer to give the certificate on the employer’s behalf.

(2) The person who gives the certificate must have regard to any guidance that is issued by the Department.

(3) A certificate may be given for a certification period of 18 months or any part of such a period.

(4) A certificate must be given no later than the end of a period of one month beginning with the first day of the certification period.

(5) The employer or a person as referred to in paragraph (1) may, at any time before the end of the certification period, amend the certificate so that the certification period ends on a different day, being a day after the day on which the amendment is made and not later than the last day of the period of 18 months beginning with the first day of the certification period.

(6) Where a certificate has been amended under paragraph (5), it may be amended again under that paragraph and so on with reference to any further amendment that is made under that paragraph.

<sup>(6)</sup> 1954 c. 33 (N.I.)

<sup>(7)</sup> S.R. 2010 No. 122 as amended by S.R. 2012 No. 232

<sup>(8)</sup> See section 28(4) of the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.)) for the definition of “relevant quality requirement”; subsection (4) was amended by section 14(3) of the Pensions Act (Northern Ireland) 2012

<sup>(9)</sup> See section 28(1A) of the Pensions (No. 2) Act (Northern Ireland) 2008 for the definition of “relevant jobholder”; subsection (1A) was inserted by section 13(4) of the Pensions Act (Northern Ireland) 2012

(7) The employer must retain the certificate for a period of 6 years after the end of the certification period and must provide a copy of the certificate to the Regulator on receiving from the Regulator a notification requesting such a copy.

(8) The employer must, where a request for a copy of the certificate is received within the period of 6 years after the end of the certification period, from—

- (a) a relevant jobholder, or
- (b) any independent trade union recognised to any extent for the purposes of collective bargaining in relation to any relevant jobholder,

send a copy of the certificate to the person who requested it, within a period of 2 months after the day on which the employer received the request.

(9) For the purposes of paragraph (8), “independent trade union” has the meaning given in Article 2(3) of the Employment Rights (Northern Ireland) Order 1996<sup>(10)</sup>.

### **Form of certificate**

**32C.** A certificate under section 28(1) (certification that quality requirement or alternative requirement is satisfied) must be in writing and contain the following information—

- (a) whether the certificate relates to part of a scheme and, if so, which part;
- (b) the employer pension scheme reference within the meaning of regulation 1(2) of the Employers’ Duties (Registration and Compliance) Regulations (Northern Ireland) 2010<sup>(11)</sup>;
- (c) whether the certificate relates to all of the jobholders of the employer who are active members of the scheme or part-scheme in question;
- (d) where the certificate relates to only some of the jobholders of the employer who are active members of the scheme or part-scheme (“the active members”)—
  - (i) the names and roles of the relevant jobholders;
  - (ii) where one or more of the active members have not been included in the certificate because they have chosen to pay contributions at a level such that the relevant quality requirement or alternative requirement is not met, the names and roles of those active members, and
  - (iii) where one or more of the active members have not been included in the certificate because, in the opinion of the person who gives the certificate, the contributions made by the employer and the member will clearly meet the relevant quality requirement, the names and roles of those active members;
- (e) where the certificate is given with respect to an alternative requirement—
  - (i) under regulation 32E or 32G, which of the sets of requirements in regulation 32E applies, or
  - (ii) under regulation 32F, which of the sets of requirements in that regulation applies;
- (f) where the certificate relates to a hybrid scheme to which regulation 43<sup>(12)</sup> applies, the percentages referred to in regulation 43(4)(a) and (b);
- (g) where there is an upper limit to the amount of contributions that may be paid as referred to in regulation 32E(5) or 32F(8), that limit;

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<sup>(10)</sup> S.I. 1996/1919 (N.I. 16)

<sup>(11)</sup> S.R. 2010 No. 186; the definition of “employer pension scheme reference” was amended by regulation 4(2)(b)(i) of S.R. 2012 No. 232

<sup>(12)</sup> Regulation 43 was amended by regulation 2(20) of S.R. 2012 No. 232

- (h) the certification period, and
- (i) whether that period has been amended and, if so, the previous certification period or periods.

### **Renewal of certificate**

**32D.**—(1) Paragraph (2) applies where—

- (a) it is proposed to give, by or on behalf of an employer, a certificate under section 28(1) (certification that quality requirement or alternative requirement is satisfied) (“the further certificate”), and
- (b) the certification period of one or more reference certificates has ended, or will end, within a period of 2 years before the day on which it is proposed that the certification period of the further certificate will begin.

(2) Where this paragraph applies, before the further certificate is given, the employer must—

- (a) assess whether, during the certification period of any reference certificate as referred to in paragraph (1)(b) and in relation to the jobholders to whom that certificate applies, all of the elements of the alternative requirement or relevant quality requirement were, or will be, met;
- (b) where an element of the alternative requirement or relevant quality requirement was not, or will not be, met, consider what (if any) action needs to be taken by the employer in order to ensure that the alternative requirement or relevant quality requirement will be met in relation to the jobholders to whom the further certificate will apply, for the proposed period of the further certificate, and take any such action;
- (c) compile a record of—
  - (i) the assessment made under sub-paragraph (a), and
  - (ii) the action (if any) that the employer takes, as referred to in sub-paragraph (b);
- (d) retain that record for a period of 6 years beginning with the day on which the record was compiled, and
- (e) provide a copy of that record to the Regulator on receiving a notification from the Regulator requesting such a copy.

(3) Paragraph (2) applies even where, under regulation 32H(2), in relation to a reference certificate and the jobholders to whom it applies, the scheme is not to be treated by virtue of regulation 32A as having satisfied the relevant quality requirement.

(4) For the purposes of paragraphs (1) to (3), a “reference certificate” means a certificate under section 28(1) that has been given, by or on behalf of the employer, in relation to some or all of the jobholders to whom the further certificate is to apply.

### **Alternative requirements for a money purchase scheme**

**32E.**—(1) In relation to a money purchase scheme to which section 20 (quality requirement: UK money purchase schemes) applies or which is an occupational pension scheme within section 18(b) (occupational pension schemes with main administration in an EEA state other than the UK), the prescribed alternative requirement is the first, second or third set of requirements set out in paragraph (2), (3) or (4).

(2) The first set of requirements is that under the scheme—

- (a) the employer of the relevant jobholder must pay contributions in respect of the jobholder;

- (b) the employer's contribution must be equal to or more than 4% of the amount of the relevant jobholder's pensionable earnings in the certification period;
  - (c) the total amount of the contributions paid by the relevant jobholder and the employer must be equal to or more than 9% of the jobholder's pensionable earnings in the certification period, and
  - (d) the pensionable earnings of the relevant jobholder must be equal to or more than the basic pay of that jobholder.
- (3) The second set of requirements is that—
- (a) under the scheme—
    - (i) the employer of the relevant jobholder must pay contributions in respect of the jobholder;
    - (ii) the employer's contribution must be equal to or more than 3% of the amount of the relevant jobholder's pensionable earnings in the certification period;
    - (iii) the total amount of the contributions paid by the relevant jobholder and the employer must be equal to or more than 8% of the amount of the jobholder's pensionable earnings in the certification period, and
    - (iv) the pensionable earnings of the relevant jobholder must be equal to or more than the basic pay of that jobholder, and
  - (b) taking all of the relevant jobholders together, the pensionable earnings of those jobholders constitute at least 85% of the earnings of those jobholders in the certification period.
- (4) The third set of requirements is that under the scheme—
- (a) the employer of the relevant jobholder must pay contributions in respect of the jobholder;
  - (b) the employer's contribution must be equal to or more than 3% of the amount of the relevant jobholder's earnings in the certification period, and
  - (c) the total amount of the contributions paid by the relevant jobholder and the employer must be equal to or more than 7% of the amount of the jobholder's earnings in that period.
- (5) Subject to paragraph (6), for the purposes of paragraphs (1) to (4), a scheme as referred to in paragraph (1) may satisfy the first, second or third set of requirements even though under the scheme there is an upper limit (however expressed) to the amount of contributions that may be paid by the employer or the relevant jobholder or both of those persons.
- (6) The upper limit must not result in the payment of contributions by the employer, or by the employer and the relevant jobholder, that are less than those required by the relevant quality requirement.
- (7) For the purposes of paragraphs (2) to (6), a reference to "the relevant jobholder" is a reference to each of the relevant jobholders.

#### **Alternative requirements for a personal pension scheme**

**32F.**—(1) In relation to a personal pension scheme to which section 26 (quality requirement: UK personal pension schemes) applies or which is referred to in regulation 32J(1), the prescribed alternative requirement is the first, second or third set of requirements set out in paragraph (2), (4) or (6).

- (2) The first set of requirements is that—

- (a) all of the benefits that may be provided to the relevant jobholder under the scheme are money purchase benefits;
  - (b) there is, in relation to the relevant jobholder, an agreement between the provider of the scheme and the employer under which—
    - (i) the employer must pay contributions in respect of the jobholder;
    - (ii) the employer’s contribution must be equal to or more than 4% of the amount of the jobholder’s pensionable earnings in the certification period, and
    - (iii) the pensionable earnings of the jobholder must be equal to or more than the basic pay of that jobholder;
  - (c) if there is a shortfall, there is an agreement between the provider of the scheme and the relevant jobholder which provides that the jobholder must pay contributions which are equal to or more than the shortfall, and
  - (d) there are direct payment arrangements between the relevant jobholder and the employer within the meaning of section 107A(13) of the 1993 Act (monitoring of employers’ payments to personal pension schemes).
- (3) In paragraph (2)(c) “shortfall” means the difference (if any) between—
- (a) the employer’s contributions in respect of the relevant jobholder under the agreement referred to in paragraph (2)(b), and
  - (b) 9% of the amount of the relevant jobholder’s pensionable earnings in the certification period, being earnings which are equal to or more than the basic pay of that jobholder.
- (4) The second set of requirements is that—
- (a) all of the benefits that may be provided to the relevant jobholder under the scheme are money purchase benefits;
  - (b) there is, in relation to the relevant jobholder, an agreement between the provider of the scheme and the employer under which—
    - (i) the employer must pay contributions in respect of the jobholder;
    - (ii) the employer’s contribution must be equal to or more than 3% of the amount of the jobholder’s pensionable earnings in the certification period, and
    - (iii) the pensionable earnings of the jobholder must be equal to or more than the basic pay of that jobholder;
  - (c) if there is a shortfall, there is an agreement between the provider of the scheme and the relevant jobholder which provides that the jobholder must pay contributions which are equal to or more than the shortfall;
  - (d) taking all of the relevant jobholders together, the pensionable earnings of the jobholders constitute at least 85% of the earnings of the jobholders in the certification period, and
  - (e) there are direct payment arrangements between the relevant jobholder and the employer within the meaning of section 107A of the 1993 Act.
- (5) In paragraph (4)(c) “shortfall” means the difference (if any) between—
- (a) the employer’s contributions in respect of the relevant jobholder under the agreement referred to in paragraph (4)(b), and

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(13) 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 amended by Article 245 of, and Schedule 11 to, the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) and section 49 of the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.))

- (b) 8% of the amount of the relevant jobholder’s pensionable earnings in the certification period, being earnings which are equal to or more than the basic pay of that jobholder.
- (6) The third set of requirements is that—
  - (a) all of the benefits that may be provided to the relevant jobholder under the scheme are money purchase benefits;
  - (b) there is, in relation to the relevant jobholder, an agreement between the provider of the scheme and the employer under which—
    - (i) the employer must pay contributions in respect of the jobholder, and
    - (ii) the employer’s contribution must be equal to or more than 3% of the amount of the jobholder’s earnings in the certification period;
  - (c) if there is a shortfall, there is an agreement between the provider of the scheme and the relevant jobholder which provides that the jobholder must pay contributions which are equal to or more than the shortfall, and
  - (d) there are direct payment arrangements between the relevant jobholder and the employer within the meaning of section 107A of the 1993 Act.
- (7) In paragraph (6)(c) “shortfall” means the difference (if any) between—
  - (a) the employer’s contributions in respect of the relevant jobholder under the agreement referred to in paragraph (6)(b), and
  - (b) 7% of the amount of the relevant jobholder’s earnings in the certification period.

(8) Subject to paragraph (9), for the purposes of paragraphs (1) to (7), a scheme as referred to in paragraph (1) may satisfy the first, second or third set of requirements even though under the agreements referred to in paragraphs (2) to (7) there is an upper limit (however expressed) to the amount of contributions that may be paid by the employer or the relevant jobholder or both of those persons.

(9) The upper limit must not result in the payment of contributions by the employer, or by the employer and the relevant jobholder, that are less than those required by the relevant quality requirement.

(10) For the purposes of paragraphs (2) to (9), a reference to “the relevant jobholder” is a reference to each of the relevant jobholders.

### **Alternative requirements for a hybrid scheme**

**32G.**—(1) Subject to paragraph (2), in relation to a hybrid scheme to the extent to which requirements within section 24(1)(a) (quality requirement: UK hybrid schemes) apply or which is referred to in regulation 32J(2), the prescribed alternative requirement is any of the sets of requirements set out in regulation 32E in relation to a money purchase scheme.

(2) Where, by virtue of a rule made under section 24(2) to (4), regulation 43(2) to (4) applies in relation to a hybrid scheme as referred to in paragraph (1), the prescribed alternative requirement is any of the sets of requirements set out in regulation 32E in relation to a money purchase scheme, as modified by regulation 43 but as if regulation 43 were modified as follows—

- (a) in paragraph (2) for “paragraph (a) quality requirements” there were substituted “elements of the alternative requirement”;
- (b) for paragraph (3)(a) there were substituted —
  - “(a) all of the elements of the alternative requirement are met apart from either or both of the employer’s contribution requirement (“requirement X”) and the total contribution requirement;”;

- (c) for paragraph (4)(a) there were substituted —
  - “(a) the extent to which requirement X is met as a proportion of the minimum rate of employer’s contribution specified in regulation 32E(2)(b), (3)(a)(ii) or (4)(b), as the case may be”, and
- (d) after paragraph (6) there were added—
  - “(7) For the purposes of paragraphs (2) to (4)—
    - “the alternative requirement” means any of the sets of requirements set out in regulation 32E in relation to a money purchase scheme;
    - “the employer’s contribution requirement” means the requirement set out in regulation 32E(2)(b), (3)(a)(ii) or (4)(b), as the case may be;
    - “the total contribution requirement” means the requirement set out in regulation 32E(2)(c), (3)(a)(iii) or (4)(c), as the case may be.”.

**Scheme not to be treated as satisfying the relevant quality requirement in certain circumstances**

**32H.—(1) Where—**

- (a) a certificate has been given in relation to an employer and the employer’s relevant jobholders with respect to a relevant quality requirement or an alternative requirement under regulation 32E, 32F or 32G;
- (b) the Regulator is of the view referred to in paragraph (3), and
- (c) one of the conditions referred to in paragraph (4) is, or both of them are, satisfied,

the Regulator may give to the employer a notice as referred to in paragraph (5).

(2) Subject to paragraphs (8) and (9), where the Regulator gives a notice as referred to in paragraph (5) and a requirement of the notice is not complied with within the time specified in the notice, the scheme is not to be treated by virtue of regulation 32A as having satisfied the relevant quality requirement in relation to the relevant jobholders.

(3) The view referred to is that, when the certificate was given, there were not reasonable grounds for a person to be of the opinion that the scheme was able to satisfy the relevant quality requirement or the applicable alternative requirement, as the case may be, with respect to one or more of the relevant jobholders throughout the certification period.

(4) The conditions referred to are that, in relation to all or any part of the certification period and one or more of the relevant jobholders—

- (a) a scheme shortfall has occurred;
- (b) where the alternative requirement in regulation 32E(3) (including as applied by regulation 32G) or 32F(4) applied, the condition referred to in regulation 32E(3)(b) or 32F(4)(d) was not met.

(5) The notice referred to is a notice with respect to one or more of the relevant jobholders (not necessarily all of the relevant jobholders referred to in paragraph (4)) and the relevant payment period, requiring the employer, within the period specified in the notice, to pay to the trustees, managers or provider of the scheme—

- (a) subject to sub-paragraph (b), where paragraph (4)(a) applies, the scheme shortfall, or
- (b) where paragraph (4)(b) applies (whether or not paragraph (4)(a) also applies), the shortfall between the contributions that were required to be paid by the employer and those relevant jobholders under the requirements of the scheme or the agreements referred to in regulation 32F(4), as the case may be, and the contributions that



were required to be paid by those persons under the first set of requirements in regulation 32E or 32F respectively.

(6) A notice as referred to in paragraph (5) may also require the employer, within a period specified in the notice, to amend the certificate, under regulation 32B, so that the certification period ends on a specified day, being a day before the last day of the certification period but not before the last day of the relevant payment period.

(7) A notice as referred to in paragraph (5) must be copied to—

- (a) in the case of a money purchase or hybrid scheme, the trustees or managers of the scheme, or
- (b) in the case of a personal pension scheme, the provider of the scheme.

(8) Where a notice as referred to in paragraph (5) has been given and, under regulation 32B, the employer amends the certificate so that the certification period ends before the last day of the relevant payment period—

- (a) the relevant payment period shall be treated as if it ended on the last day of the new certification period;
- (b) the employer must, within a period of 2 weeks beginning with the day on which the certificate was amended, notify the Regulator in writing of the amendment, and
- (c) the Regulator may decide to alter the period, as set out in the notice as referred to in paragraph (5), within which the employer must pay a shortfall of contributions as referred to in that paragraph.

(9) Where the Regulator decides under paragraph (8)(c) to alter the period within which the employer must pay a shortfall, the Regulator must give a notice to the employer informing the employer of the new period within which the shortfall must be paid.

(10) For the purposes of this regulation—

“the relevant payment period” means a period, set out in the notice as referred to in paragraph (5), that constitutes all or part of the certification period;

“scheme shortfall” means the shortfall between the contributions that are required to be paid by the employer and a relevant jobholder under the scheme, contribution agreements<sup>(14)</sup> or like agreements referred to in regulation 32F, as the case may be, and the contributions that are required to be paid by those persons under the relevant quality requirement or the applicable alternative requirement (ignoring the requirements in regulations 32E(3)(b) and 32F(4)(d)), as the case may be.

### **Contributions under alternative requirements during transitional periods**

**32I.—**(1) During the first transitional period referred to in section 29(1) (transitional periods for money purchase and personal pension schemes) and the second transitional period referred to in section 29(3), but not for the purposes of regulation 32G, there are substituted for the percentages referred to in the provisions mentioned in Column 1 of the Table the percentage shown in the corresponding entry for the transitional period in question.

Table

<i>Provision of Regulations</i>	<i>1st Transitional Period</i>	<i>2nd Transitional Period</i>
Regulations 32E(2)(b) and 32F(2)(b)(ii)	2%	3%

<sup>(14)</sup> See section 28(8) of the Pensions (No. 2) Act (Northern Ireland) 2008, for the definition of “contribution agreements”; section 28(8) was amended by section 14(5) of the Pensions Act (Northern Ireland) 2012

<i>Provision of Regulations</i>	<i>1st Transitional Period</i>	<i>2nd Transitional Period</i>
(first set of requirements – employer)		
Regulations 32E(2)(c) and 32F(3)(b)	3%	6%
(first set of requirements – total contributions)		
Regulations 32E(3)(a)(ii) and 32F(4)(b)(ii)	1%	2%
(second set of requirements – employer)		
Regulations 32E(3)(a)(iii) and 32F(5)(b)	2%	5%
(second set of requirements – total contributions)		
Regulations 32E(4)(b) and 32F(6)(b)(ii)	1%	2%
(third set of requirements – employer)		
Regulations 32E(4)(c) and 32F(7)(b)	2%	5%
(third set of requirements – total contributions)		

### **Pension schemes based in an EEA state other than the United Kingdom**

**32J.**—(1) Section 28 (certification that quality requirement or alternative requirement is satisfied) applies to a personal pension scheme to which section 26 (quality requirement: UK personal pension schemes) does not apply where the operation of the scheme is carried on in an EEA state other than the United Kingdom.

(2) Section 28 applies to a hybrid scheme that is an occupational pension scheme within section 18(b) (occupational pension schemes with main administration in an EEA state other than the UK) to the extent that the requirements under section 24(1)(a) (quality requirement: UK hybrid schemes) as modified by regulation 45(6) apply.

(3) A scheme as referred to in section 28(3A)(15) satisfies the relevant quality requirement where—

- (a) in the case of a money purchase scheme that is an occupational pension scheme within section 18(b), it satisfies the requirements referred to in regulation 45(1)(a);
- (b) in the case of a personal pension scheme as referred to in paragraph (1), it satisfies the requirements referred to in regulation 46(a);
- (c) in the case of a hybrid scheme as referred to in paragraph (2), it satisfies the requirements referred to in that paragraph.

### **Interpretation**

**32K.**—(1) In this Part—

“alternative requirement” means an alternative requirement prescribed by regulation 32E, 32F or 32G, including regulations 32E and 32F as modified by regulation 32I;

“basic pay” means the gross earnings of the jobholder from the jobholder’s employment by the employer, disregarding the gross amount of—

- (a) any commission, bonuses, overtime or similar payments;
- (b) any shift premium pay, and

- (c) any reasonable allowance with respect to—
  - (i) any duty of the jobholder, such as a duty in connection with the role of fire or bomb warden, that is ancillary to the main duties of the jobholder’s employment;
  - (ii) the cost of relocation of the jobholder to a different place of work;
  - (iii) in a case not covered by sub-paragraph (ii), the purchase, lease or maintenance of a vehicle;
  - (iv) in a case not covered by sub-paragraph (ii) or (iii), the purchase, lease or maintenance of an item;
  - (v) in a case not covered by sub-paragraph (ii), (iii) or (iv), the delivery of a service to the jobholder;

“certification period” means the period for which a certificate is in force;

“earnings” has the same meaning as in section 13(3) (qualifying earnings);

“pensionable earnings” means the gross earnings of the jobholder on which contributions are payable to the pension scheme in question by the employer or the jobholder;

“shift premium pay” means, where the employer applies different rates of pay to different periods of time for which the jobholder works within a certification period, the difference between the earnings that result from the application of the different rates of pay to the periods to which each of them respectively applies and the earnings that would result from the application of the lowest of the different rates of pay to the total time worked during the certification period.

(2) In regulations 32E to 32J and this regulation “certificate” means a certificate that is given in accordance with regulations 32B to 32D.”.

(4) For regulation 35 (further conditions applicable to automatic enrolment schemes) substitute—

**“Further conditions applicable to automatic enrolment schemes**

**35.—**(1) The conditions prescribed for the purposes of section 17(1)(c) (automatic enrolment schemes) are—

- (a) that the scheme must be—
  - (i) an occupational pension scheme within section 18(a) or (b) (occupational pension schemes with main administration in the UK or in an EEA state other than the UK), or
  - (ii) a personal pension scheme where the operation of the scheme—
    - (aa) is regulated by a competent authority, and
    - (bb) is carried on by a person who is in relation to that activity authorised by a competent authority, and
- (b) where the scheme is an occupational pension scheme within section 18(b) or a personal pension scheme where the operation of the scheme is carried on in accordance with sub-paragraph (a)(ii) by a person authorised by a competent authority other than that of the United Kingdom, the regulatory requirements applicable must provide that—
  - (i) at least 70% of the relevant benefits will be designated for the purpose of providing the jobholder with an income for life, and

- (ii) the benefits payable to the jobholder under the scheme are payable no earlier than they would be under pension rule 1 in section 165(1) of the Finance Act 2004<sup>(16)</sup> (pension rules).

(2) For the purposes of this regulation—

“competent authority” has, as the case may be, the meaning given in—

- (a) Article 4(4) of Directive 2006/48/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions<sup>(17)</sup>;
- (b) Article 4(22) of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments<sup>(18)</sup>;
- (c) Article 2(1)(h) of Directive 2009/65/EC of the European Parliament and of the Council on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities<sup>(19)</sup>, or
- (d) Article 1(n) of Directive 2002/83/EC of the European Parliament and of the Council concerning life assurance<sup>(20)</sup>;

“regulatory requirements” includes provisions of legislation that concern tax;

“relevant benefits” means—

- (a) any money purchase benefits applicable to the jobholder, and
- (b) in relation to a defined benefits scheme, or the defined benefits element of a hybrid scheme, that provides for a sum of money to be made available for the provision of benefits to a member, that sum.”.

(5) In regulation 36 (certain schemes providing average salary benefits excluded from being qualifying schemes)—

- (a) in paragraph (4) for the words from “by—” to the end substitute—

“by—

- (a) in relation to a scheme which has members on 1st July 2012, the percentage increase in the retail prices index for the year by reference to which the revaluation is made;
- (b) in relation to any scheme, the percentage increase in the general level of prices for the year by reference to which the revaluation is made, or
- (c) in relation to any scheme, 2.5%,

whichever is the lesser or the least.”.

- (b) for paragraph (5) substitute—

“(5) In paragraph (4)—

“retail prices index” means—

- (a) the general index of retail prices (for all items) published by the Statistics Board<sup>(21)</sup>, or
- (b) where that index is not published for a month, any substituted index or figures published by the Board;

<sup>(16)</sup> 2004 c. 12

<sup>(17)</sup> OJ No. L 177, 30.6.06, p.1

<sup>(18)</sup> OJ No. L 145, 30.4.04, p.1

<sup>(19)</sup> OJ No. L 302, 17.11.09, p.32

<sup>(20)</sup> OJ No. L 345, 19.12.02, p.1

<sup>(21)</sup> The Statistics Board is established by section 1 of the Statistics and Registration Service Act 2007 (c. 18)

“general level of prices” means the general level of prices determined in accordance with regulation 36(5) of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(22) (certain schemes providing average salary benefits excluded from being qualifying schemes).”.

Sealed with the Official Seal of the Department for Social Development on 8th June 2012

(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 amend the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 (“the 2010 Regulations”).

Regulation 2(2) amends regulation 1 of the 2010 Regulations to provide that they come into operation on 1st July 2012 instead of 1st October 2012.

Regulation 2(3) inserts Part 7A (regulations 32A to 32K) into the 2010 Regulations to make detailed provision with regard to certification under section 28 of the Pensions (No. 2) Act (Northern Ireland) 2008 (“the Act”)—

regulation 32A provides that a scheme satisfies the relevant quality requirement if the certificate is given in accordance with regulations 32B to 32D;

regulations 32B to 32D make provision in relation to the giving of a certificate, the period it is in force, the keeping of records and the provision of information;

regulations 32E to 32G and 32I prescribe alternative quality requirements in relation to which a certificate may be given;

regulation 32H sets out circumstances in which, where a certificate has been given, a scheme is not to be treated as having satisfied the relevant quality requirement in the Act;

regulation 32J sets out provisions in relation to the giving of a certificate with respect to schemes that have their main administration in an EEA state other than the United Kingdom;

regulation 32K sets out definitions for Part 7A.

Regulation 2(4) substitutes regulation 35 of the 2010 Regulations to include conditions to be satisfied by certain defined benefits schemes to be used as automatic enrolment schemes.

Regulation 2(5) amends regulation 36 of the 2010 Regulations to provide that the minimum rate for revaluation of benefits in a scheme which provides for average salary benefits must be an annual increase in line with the increase in the general level of prices or 2.5% whichever is the lesser (with a variation for such schemes which have members on 1st July 2012).

The Pensions (2012 Act) (Commencement No. 1) Order (Northern Ireland) 2012 ([S.R. 2012 No. 233 \(C. 19\)](#)) provides for the coming into operation of section 33(2) of the Pensions Act (Northern Ireland) 2012 ([c. 3 \(N.I.\)](#)), which amends section 59 of the Act, one of the enabling provisions under which these Regulations are made, on 7th June 2012.

As these Regulations, in so far as they are made under the Pensions (Northern Ireland) Order 1995, make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement to consult under Article 117(1) of that Order does not apply by virtue of paragraph (2) (e) of that Article.