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DRAFT STATUTORY INSTRUMENTS

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**2010 No.**

The Occupational and Personal Pension Schemes  
(Automatic Enrolment) Regulations 2010

PART 13

Non-UK Pension Schemes

**Description of an occupational pension scheme with its main administration outside the EEA States**

**44.** A pension scheme that has its main administration outside the EEA States is an occupational pension scheme for the purposes of section 18(c) (occupational pension schemes) of the Act if it is an occupational pension scheme within the meaning of section 1(1) of the 1993 Act.

**Quality requirements: non-UK occupational pension schemes**

**45.—(1)** A money purchase scheme within section 18(b) or (c) (occupational pension schemes) of the Act satisfies the quality requirement for the purposes of section 25 (quality requirement: non-UK occupational pension schemes) of the Act in relation to a jobholder—

- (a) if it satisfies the requirements for a money purchase scheme under section 20(1) (quality requirement: UK money purchase schemes) of the Act; or
- (b) if Article 6 of Directive [98/49/EC](#) of the European Council of 29 June 1998 on safeguarding the supplementary pension rights of employed and self employed persons moving within the Community<sup>(1)</sup> applies in relation to the jobholder and the scheme is a supplementary pension scheme within the meaning given by Article 3(b) of that Directive.

(2) For the purposes of paragraph (1), section 20(1) of the Act is to be read as if for the words “that has its main administration in the United Kingdom” there were substituted “within section 18(b) or (c)”.

(3) A defined benefits scheme within section 18(b) or (c) of the Act satisfies the quality requirement for the purposes of section 25 of the Act in relation to the jobholder—

- (a) if it satisfies the requirements for a defined benefits scheme under sections 21 to 23 (quality requirement: UK defined benefits schemes) of the Act; or
- (b) if Article 6 of Directive [98/49/EC](#) of the European Council of 29 June 1998 on safeguarding the supplementary pension rights of employed and self employed persons moving within the Community applies in relation to the jobholder and the scheme is a supplementary pension scheme within the meaning given by Article 3(b) of that Directive.

(4) For the purposes of paragraph (3), sections 21 to 23 of the Act are to be read as if for the words “that has its main administration in the United Kingdom” there were substituted “within section 18(b) or (c)”.

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(1) OJ L 209, 25.7.1998 p.46-49.

(5) Section 24 (quality requirement: UK hybrid schemes) of the Act applies to any hybrid scheme within section 18(b) or (c) of the Act as it applies to a hybrid scheme that has its main administration in the United Kingdom.

(6) For the purposes of paragraph (5)—

- (a) the reference in section 24(1)(a) to the requirements for a money purchase scheme under section 20 of the Act; and
- (b) the reference in section 24(1)(b) to the requirements for a defined benefits scheme under sections 21 to 23 of the Act,

are to be read subject to the modifications made by paragraphs (2) and (4).

(7) Accordingly, a hybrid scheme within section 18(b) or (c) of the Act satisfies the quality requirement for the purposes of section 25 of the Act in relation to the jobholder if the scheme falls within a description of hybrid schemes specified in any rule made under section 24(2) to (4) of the Act and either—

- (a) the scheme satisfies such of the requirements referred to in paragraph (6)(a) or (b) as the rule in question may specify as being appropriate to schemes of that description, subject to any prescribed modification of those requirements which is referred to in that rule; or
- (b) the requirement is that Article 6 of Directive 98/49/EC of the European Council of 29 June 1998 on safeguarding the supplementary pension rights of employed and self employed persons moving within the Community<sup>(2)</sup> applies in relation to the jobholder and the scheme is a supplementary pension scheme within the meaning given by Article 3(b) of that Directive.

**46.** A pension scheme to which section 26 (quality requirement: UK personal pension schemes) of the Act does not apply, satisfies the quality requirement for the purposes of section 27 (quality requirement: other personal pension schemes) of the Act in relation to a jobholder—

- (a) if the conditions in subsections (3) to (7) of section 26 are satisfied; or
- (b) if Article 6 of Directive 98/49/EC of the European Council of 29 June 1998 on safeguarding the supplementary pension rights of employed and self employed persons moving within the Community<sup>(3)</sup> applies in relation to the jobholder and the scheme is a supplementary pension scheme within the meaning given by Article 3(b) of that Directive.

### **Prescribed requirements for non-UK qualifying schemes**

**47.**—(1) Where—

- (a) the requirements set out in paragraphs (2) and (3) are satisfied, and
- (b) the requirement set out in one of paragraphs (4), (5), (6) or (7) is satisfied

section 16(1)(b) of the Act does not apply in relation to a money purchase scheme or a personal pension scheme to which section 25 or 27 of the Act applies.

(2) The requirements to be satisfied are that—

- (a) the scheme is an occupational pension scheme and there is, in the country or territory in which it has its main administration, a body—
  - (i) which regulates occupational pension schemes; and
  - (ii) which regulates that scheme; or
- (b) the scheme is a personal pension scheme and there is, in the country or territory in which the personal pension scheme provider is established, a body—

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(2) OJ L 209, 25.7.1998 p.46-49.

(3) OJ L 209, 25.7.1998 p.46-49.

- (i) which regulates personal pension schemes; and
- (ii) which regulates the personal pension scheme provider in relation to that scheme.

(3) The requirement to be satisfied is that the regulatory requirements applicable to the money purchase scheme or the personal pension scheme provide that some of the benefits applicable to the jobholder may be designated for the purpose of providing that jobholder with an income for life.

(4) The requirement to be satisfied is that the scheme is a qualifying overseas pension scheme.

(5) The requirement to be satisfied is that relief from tax is given in respect of contributions made by an individual under a double taxation agreement for which a deduction of tax is given under the Income and Corporation Taxes Act 1988<sup>(4)</sup>.

(6) The requirement to be satisfied is that relief from tax is given in respect of contributions made by an individual under an arrangement entered into by the individual for which a deduction of tax is given under Chapter 2 of Part 5 (Employment Income: Deductions allowed from earnings) of the Income Tax (Earnings and Pensions) Act 2003<sup>(5)</sup> for that tax year in accordance with paragraph 51 of Schedule 36 (Pension Schemes etc.) to the Finance Act 2004.

(7) This paragraph applies in relation to money purchase schemes and the requirement to be satisfied is that the employer's contribution, however calculated, includes an additional amount, the value of which represents the value of any relief from tax which would have been applicable in relation to the jobholder's contributions if the scheme had been registered under Chapter 2 of Part 4 (Pension Schemes etc.) of the Finance Act 2004.

(8) For the purposes of this regulation—

“double taxation agreement” means an agreement having effect by virtue of section 788 (relief by agreement with other territories) of the Income and Corporation Taxes Act 1988;

“qualifying overseas pension scheme” has the meaning given in Schedule 33 (overseas pension schemes: migrant member relief) to the Finance Act 2004.

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(4) 1988 c.1.

(5) 2003 c.1.