

Draft Regulations laid before Parliament under section 143(4) and (5)(a) and (b) of the Pensions Act 2008, for approval by resolution of each House of Parliament.

These draft Regulations supersede the draft Regulations of the same title which were laid before Parliament and published on 12th January 2010, and are being issued free of charge to all known recipients of those draft Regulations.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2010 No.

PENSIONS

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

Made - - - - - *******

Coming into force - - - - - *1st October 2012*

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The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 111A(15)(b), 181(a) and 182(2) and (3) of the Pension Schemes Act 1993(b), sections 49(8), 124(1)(c) and 174(2) and (3) of the Pensions Act 1995(d) and sections 2(3), 3(2), (5) and (6), 4(1) and (3), 5(2) and (4), (6), (7) and (8), 6(1)(b) and (2), 7(4), (5) and (6), 8(2)(b), (3), (4), (5) and 8(6), 9(3), 10, 15, 16(2) and (3)(c), 18(c), 22(4) to (7), 23(1)(b) and (3),

(a) Section 181 of the Pension Schemes Act 1993 is cited for the meaning it gives to “prescribed” and “regulations”.
(b) 1993 c.48; section 111A(15) was inserted by section 9 of the Welfare Reform and Pensions Act 1999 (c.30).
(c) Section 124(1) of the Pensions Act 1995 is cited for the meaning it gives to “prescribed” and “regulations”.
(d) 1995 c.26; section 49(8) was substituted for section 49(8) as originally enacted by section 10 of the Welfare Reform and Pensions Act 1999.

24(1)(a) and (b), 25, 27, 30(6)(c), 33(2), 37(3), 99(a) and 144(2) and (4) of the Pensions Act 2008(b).

In accordance with section 185(1) of the Pension Schemes Act 1993 and section 120(1) of the Pensions Act 1995, the Secretary of State has consulted with such persons as the Secretary of State considers appropriate.

A draft of these Regulations was laid before Parliament in accordance with section 143(4) and (5)(a) and (b) of the Pensions Act 2008 and approved by a resolution of each House of Parliament.

PART 1

Citation, commencement and interpretation

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 and shall come into force on 1st October 2012.

(2) In these Regulations—

“the Act” means the Pensions Act 2008;

“the 1993 Act” means the Pension Schemes Act 1993;

“the 1995 Act” means the Pensions Act 1995;

“applicable pay reference period” means—

(a) a period of one week; or

(b) in the case of a jobholder who is paid their regular wage or salary by reference to a period longer than a week, that period;

“automatic enrolment date” has the meaning given by section 3(7) (automatic enrolment) of the Act;

“automatic re-enrolment date” means the date determined in accordance with regulation 12;

“enrolment date” means the date determined in accordance with regulation 18(6);

“enrolment information” has the meaning given by regulation 2;

“jobholder information” has the meaning given by regulation 3;

“joining notice” means a notice given under section 9(2) (workers without qualifying earnings) of the Act;

“opt in” means the jobholder’s right under section 7(3) of the Act (jobholder’s right to opt in) by notice to require the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme;

“opt in notice” means a notice given under section 7(3) (jobholder’s right to opt in) of the Act;

“opt out” means the jobholder’s right to give notice under section 8 (jobholder’s right to opt out) of the Act;

“opt out notice” means a notice in the form set out in the Schedule;

“opt out period” means the period determined in accordance with regulation 9(2) or (3);

“staging date” means the date on which sections 2 to 8 of the Act first apply in relation to the employer.

(a) Section 99 of the Pensions Act 2008 is cited for the meaning it gives to “prescribed” and “regulations”.

(b) 2008 c.30.

Enrolment information

2.—(1) In these Regulations “enrolment information” is—

- (a) a statement that the jobholder has been or will be automatically enrolled, automatically re-enrolled or enrolled, as the case may be, into a pension scheme to help save for the jobholder’s retirement;
- (b) the jobholder’s automatic enrolment date, automatic re-enrolment date or enrolment date, as the case may be, or for a jobholder to whom regulation 28 or 29 applies, the day or date mentioned in regulation 6 as modified respectively by regulation 28 or 29, as the case may be;
- (c) the name, address, telephone number and electronic contact details of the scheme in respect of which the jobholder is or will be an active member;
- (d) the value of any contributions payable to the scheme by the employer and the jobholder in any applicable pay reference period;
- (e) a statement that any contributions payable to the scheme by the jobholder have been or will be deducted from any qualifying earnings or pensionable pay due to the jobholder in any applicable pay reference period;
- (f) confirmation as to whether tax relief is or will be given in accordance with section 192 (relief at source) or 193 (relief under net pay arrangements) of the Finance Act 2004(a);
- (g) a statement that the employer may not take any action or make any omission, by which (without the jobholder ceasing to be employed by the employer) the jobholder ceases to be an active member of the scheme or the scheme ceases to be a qualifying scheme unless the jobholder is or becomes an active member of another qualifying scheme;
- (h) a statement that the jobholder has a right to opt out of the scheme during the opt out period;
- (i) a statement indicating the start and end date of the opt out period applicable to the jobholder, where that information is known to the employer prior to the employer giving the enrolment information to the jobholder;
- (j) a statement that the opt out period is the period determined in accordance with regulation 9(2) or (3) where the start and end date of the opt out period applicable to the jobholder are not known to the employer prior to the employer giving the enrolment information to the jobholder;
- (k) the source from which the opt out notice may be obtained;
- (l) a statement that opting out means that the jobholder will be treated for all purposes as not having become an active member of the scheme on that occasion;
- (m) a statement that after a valid opt out notice is given to the employer in accordance with regulation 9(2) or (3), any contributions paid by the jobholder will be refunded to the jobholder by the employer;
- (n) a statement that where the jobholder opts out the jobholder may opt in, in which case the employer will be required to arrange for that jobholder to become an active member of an automatic enrolment scheme once in any 12 month period;
- (o) a statement that after the opt out period the jobholder may cease to make contributions towards their pension in accordance with scheme rules;
- (p) a statement that a jobholder who opts out or who ceases active membership of the scheme will normally be automatically re-enrolled into an automatic enrolment scheme by the employer in accordance with regulations made under section 5 (automatic re-enrolment) of the Act; and

(a) 2004 c.12; section 192(4) was substituted for section 192(4) as originally enacted by section 6(5) and paragraphs 10 and 11 of Part 2 of Schedule 2 to the Finance Act 2004; section 192(5) was repealed by sections 1027 and 1031 of the Income Tax Act 2007 (c.3).

(q) a statement giving details of where to obtain further information about pensions and saving for retirement.

(2) The information given to the jobholder under paragraph (1)(d) includes information on any change in the value of any contributions payable to the scheme by the employer or jobholder in any applicable pay reference period which will occur as a result of any changes to contributions brought about by the transitional periods for money purchase and personal pension schemes under section 29 (transitional periods for money purchase and personal pension schemes) of the Act.

(3) For the purposes of this regulation “the value” of contributions may be expressed as a fixed amount or a percentage of any qualifying earnings or pensionable pay due to the jobholder in any applicable pay reference period.

Jobholder information

3.—(1) In these Regulations “jobholder information” is the jobholder’s—

- (a) name;
- (b) date of birth;
- (c) postal residential address;
- (d) gender;
- (e) automatic enrolment date, automatic re-enrolment date or enrolment date, as the case may be, or for a jobholder to whom regulation 28 or 29 applies, the date mentioned in regulation 7(1) as modified by regulation 28 or 29, as the case may be;
- (f) national insurance number;
- (g) the gross earnings due to the jobholder in any applicable pay reference period;
- (h) the value of any contributions payable to the scheme by the employer and the jobholder in any applicable pay reference period, where this information is available to the employer;
- (i) postal work address;
- (j) individual work e-mail address, where an individual work e-mail address is allocated to that jobholder; and
- (k) personal e-mail address, where the employer holds this information.

(2) For the purposes of paragraph (1)(h), “the value” of contributions may be expressed as a fixed amount or a percentage of any qualifying earnings or pensionable pay due to the jobholder in any applicable pay reference period.

Pay reference periods for the purposes of section 1(1)(c) of the Act

4.—(1) The pay reference period for the purposes of section 1(1)(c) of the Act (jobholders), except in the case of person A, is—

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

(2) Subject to paragraphs (3) and (4), in the case of person A the pay reference period for the purposes of section 1(1)(c) of the Act is a period of 12 months beginning on—

- (a) the staging date; and
- (b) every anniversary of that date.

(3) Where person A is employed by the employer after the staging date, person A’s first pay reference period begins on the date person A is employed by the employer and ends on the same day as that relevant where paragraph (2)(a) or (b) applies.

(4) Where, on any day during the period mentioned in paragraph (2) or (3), the earnings of person A exceed the amount mentioned in section 13(1)(a) of the Act—

(a) person A's first pay reference period for the purposes of section 1(1)(c) of the Act begins on the day on which the period mentioned in paragraph (2) or (3) began and ends on the day before the day on which the earnings of person A exceeded the amount mentioned in section 13(1)(a) of the Act; and

(b) thereafter the pay reference period applicable in relation to person A for the purposes of section 1(1)(c) of the Act is the period mentioned in paragraph (1)(a) or (b).

(5) A person's earnings shall be determined by calculating or, in the case of person A estimating, the sum of any earnings payable to that person in the pay reference period prescribed in paragraph (1), (2) or (3).

(6) For the purposes of paragraph (2) or (3), person A's earnings shall be determined by adding to the regular wage or salary payable to that person under the contract of employment over the period mentioned in paragraph (2) or (3), any other earnings payable to that person paid by the employer at any time during the same period.

(7) For the purposes of this regulation—

“earnings” means any items of a description mentioned in section 13(3) of the Act that are payable to a person in connection with that person's employment;

“person A” is a person—

(a) who is employed under a contract of employment;

(b) who pursuant to that contract receives a regular wage or salary of less than the amount mentioned in section 13(1)(a) of the Act (qualifying earnings) during the period mentioned to in paragraph (2) or (3); and

(c) whose earnings during the period mentioned in paragraph (2) or (3) will not, in the estimation of the employer, exceed the amount mentioned in section 13(1)(a) of the Act.

Pay reference periods for the purposes of section 20(1)(b) and (c) and section 26(4)(b) and (5)(b) of the Act

5.—(1) The pay reference period for the purposes of section 20(1)(b) and (c) (quality requirement: UK money purchase schemes) and section 26(4)(b) and (5)(b) (quality requirement: UK personal pension schemes) of the Act is as follows.

(2) Subject to paragraphs (3) to (5), the pay reference period in relation to a jobholder is 12 months beginning on—

(a) the staging date (“the jobholder's first pay reference period”); and

(b) every anniversary of that date.

(3) Where a person becomes a jobholder after the staging date, the jobholder's first pay reference period begins on the jobholder's automatic enrolment date and ends on the same day as that of the other jobholders of the employer.

(4) Where a jobholder's automatic enrolment date is postponed in accordance with regulation 25, the first pay reference period begins on the jobholder's automatic enrolment date and ends on the same day as that of the other jobholders of the employer.

(5) The pay reference period ends on the date on which a person ceases to be a jobholder in relation to the employer.

PART 2

Automatic enrolment, opt out and refunds

Arrangements to achieve active membership

6.—(1) The arrangements the employer must make in accordance with section 3(2) (automatic enrolment) of the Act are to enter into arrangements with—

- (a) the trustees or managers of an automatic enrolment scheme which is an occupational pension scheme, so that before the end of a period of one month beginning with the automatic enrolment date the jobholder to whom section 3 of the Act applies becomes an active member of that scheme with effect from the automatic enrolment date; or
- (b) the provider of an automatic enrolment scheme which is a personal pension scheme, so that before the end of a period of one month beginning with the automatic enrolment date the jobholder to whom section 3 of the Act applies is given information about the terms and conditions of the agreement to be deemed to exist under paragraph (2).

(2) Where the employer enters into arrangements with a personal pension scheme provider under paragraph (1)(b), the jobholder is deemed to have entered into an agreement to be an active member of that scheme with effect from the automatic enrolment date, on the later of—

- (a) the date on which the personal pension scheme provider gives the information required by paragraph (1)(b); or
- (b) the date on which the employer gives the jobholder the enrolment information in accordance with regulation 7(1)(a).

(3) The terms and conditions of an agreement deemed to exist under paragraph (2) must, as a minimum—

- (a) explain the purpose of the personal pension scheme;
- (b) specify the services to be provided by the personal pension scheme provider;
- (c) specify the value of any contributions payable by the jobholder, where this information is available to the personal pension scheme provider;
- (d) specify the charges which may be payable to the personal pension scheme provider; and
- (e) in the absence of a choice made by the jobholder, explain the investment strategy adopted by the personal pension scheme provider in relation to any contributions payable to the scheme by or in respect of the jobholder.

(4) In paragraph (1)(b) the reference to “terms and conditions” is a reference to the terms and conditions mentioned in paragraph (3).

7.—(1) Subject to paragraph (2), for the purposes of the arrangements under section 3(2) of the Act, at any time before the end of a period of one month beginning with the automatic enrolment date, the employer must give—

- (a) the jobholder the enrolment information in writing; and
- (b) the trustees or managers of the occupational pension scheme or the personal pension scheme provider the jobholder information in writing.

(2) The requirement in paragraph (1)(b) does not apply in relation to the information specified in regulation 3(1)(g), (h), (i), (j) or (k), where the trustees or managers of the occupational pension scheme notify, or the personal pension scheme provider notifies, the employer that they do not require that piece of information for the purposes of arrangements under section 3(2) of the Act.

(3) Where the information referred to in regulation 3(1)(f) is not available to the employer on the automatic enrolment date, the employer must give the trustees or managers of the occupational pension scheme or the personal pension scheme provider that information within one month from the date on which the employer receives it.

8. An employer must, on or after the automatic enrolment date, deduct any contributions payable by the jobholder to the scheme, from any qualifying earnings or pensionable pay due to the jobholder in any applicable pay reference period.

Opting Out

9.—(1) A jobholder who has become an active member of an occupational pension scheme or a personal pension scheme in accordance with arrangements under section 3(2) of the Act, may opt out by giving their employer a valid opt out notice obtained and given in accordance with this regulation.

(2) Where the jobholder has become an active member of an occupational pension scheme, the jobholder must give their employer a valid opt out notice within a period of one month beginning with the later of—

- (a) the date on which the jobholder became an active member of the scheme in accordance with regulation 6(1)(a), or
- (b) the date on which the jobholder was given the enrolment information.

(3) Where the jobholder has become an active member of a personal pension scheme, the jobholder must give their employer a valid opt out notice within a period of one month beginning with the date on which the agreement was deemed to exist under regulation 6(2).

(4) Subject to paragraph (5), the jobholder may only obtain an opt out notice from the scheme in which the jobholder is an active member.

(5) Where the jobholder is an active member of a scheme which is an occupational pension scheme and that scheme has, in its trust instrument, expressly delegated its administrative functions to the employer, the jobholder may obtain an opt out notice from that employer.

(6) An opt out notice is valid if—

- (a) it is in the form set out in the Schedule;
- (b) it includes the jobholder's name;
- (c) it includes the jobholder's national insurance number or date of birth;
- (d) it is signed by the jobholder or, where the notice is in an electronic format, it must include a statement confirming that the jobholder personally submitted the notice; and
- (e) it is dated.

(7) Where the employer is given an opt out notice which is not valid—

- (a) the employer must inform the jobholder of the reason for the invalidity, and
- (b) paragraphs (2) and (3) are modified so that for the reference to “one month” there is substituted “6 weeks”.

10. Where an employer is given a valid opt out notice, the employer must inform the scheme in which the jobholder is an active member that a valid opt out notice has been received.

Refunds

11.—(1) Where an employer receives a valid opt out notice, that employer must refund to the jobholder before the refund date any contributions paid to the scheme by the jobholder and any contributions made on behalf of the jobholder, except where any of those refunds are required to be paid as tax.

(2) Where a scheme receives the information required by regulation 10, the trustees or managers of the occupational pension scheme or the provider of the personal pension scheme, as the case may be, must refund to the employer before the refund date any contributions made to the scheme by the jobholder and any contributions made to the scheme by the employer on behalf or in respect of the jobholder.

(3) For the purposes of this regulation “the refund date” is—

- (a) the date one month from the date on which the employer is given a valid opt out notice; or
- (b) where the opt out notice is given to the employer after the employer's payroll arrangements have closed, the last day of the second applicable pay reference period following the date on which a valid opt out notice is given.

PART 3

Automatic re-enrolment

Automatic re-enrolment dates

12.—(1) Subject to paragraphs (2), (3) and (4), the automatic re-enrolment date for the purposes of section 5 (automatic re-enrolment) of the Act—

- (a) is the date chosen at the discretion of the employer, within a period of one month beginning with the third anniversary of the staging date; and
- (b) thereafter, is the date chosen at the discretion of the employer, within a period of one month beginning with the third anniversary of the date chosen for the previous automatic re-enrolment date.

(2) In a case under section 6(3) (timing of automatic re-enrolment) of the Act, the automatic re-enrolment date for the purposes of section 5 of the Act is the day after the day on which—

- (a) the jobholder ceases to be an active member of the scheme; or
- (b) the scheme ceases to be a scheme of the relevant kind in accordance with section 4 (postponement of automatic enrolment) of the Act.

(3) In a case under section 6(4) of the Act, the automatic re-enrolment date for the purposes of section 5 is the day after the day on which—

- (a) the jobholder ceases to be an active member of the scheme; or
- (b) the scheme ceases to be a qualifying scheme.

(4) In a case under section 6(5) of the Act, the automatic re-enrolment date for the purposes of section 5 is the first day on which all the requirements of section 1(1) (jobholders) of the Act are met (so that the person is a jobholder from that date).

Arrangements to achieve active membership

13.—(1) Except where the jobholder becomes an active member of an automatic enrolment scheme under paragraph (2), the arrangements in regulations 6, 7 and 8 are the arrangements prescribed to achieve active membership for the purposes of section 5 of the Act, but with the following modifications—

- (a) in regulation 6 for all references to “section 3” substitute “section 5”;
- (b) in regulations 6, 7 and 8 for all references to “section 3(2)” substitute “section 5(2)”; and
- (c) in regulations 6, 7 and 8 for all references to “the automatic enrolment date” substitute “the automatic re-enrolment date”.

(2) Subject to paragraph (3), where before the jobholder’s automatic re-enrolment date, the jobholder is a member of a personal pension scheme, or in a case under section 6(5) of the Act a member of a personal pension scheme or an occupational pension scheme, the employer may meet the obligation in section 5(2) of the Act by—

- (a) before the end of a period of one month beginning with the automatic re-enrolment date, entering into arrangements with the provider or the trustees or managers of the scheme of which the jobholder is a member so that—
 - (i) the scheme is an automatic enrolment scheme; and
 - (ii) the jobholder is an active member of that scheme; and
- (b) satisfying the requirements of regulation 7, as if for all references in regulation 7 to “section 3(2)” there was substituted “section 5(2)” and for all references to “the automatic enrolment date” there was substituted “the automatic re-enrolment date”.

(3) Paragraph (2)(b) does not apply in a case under section 6(5) of the Act.

Jobholders excluded from automatic re-enrolment

14. For the purposes of section 5(4) of the Act the prescribed period is the period of 12 months before the automatic re-enrolment date.

Opting out

15. The arrangements in regulations 9 and 10 are the arrangements for the purposes of section 8 (jobholder's right to opt out) of the Act in relation to a jobholder who has become an active member of an automatic enrolment scheme under section 5 of the Act, but with the modification that in paragraph (1) of regulation 9 for "section 3(2)" substitute "section 5(2)".

Refunds

16. The arrangements in regulation 11 are the arrangements for the purposes of section 8 of the Act in relation to a jobholder who has become an active member of an automatic enrolment scheme under section 5 of the Act.

PART 4

Jobholders opting in to pension saving

Information on the right to opt in to pension saving

17.—(1) Subject to paragraph (3), at any time before the end of a period of one month beginning with the date on which section 7 (jobholder's right to opt in) of the Act first applies to a jobholder, the employer must give the jobholder the information specified in paragraph (2).

(2) The information, which must be given in writing, is—

- (a) a statement that the jobholder may, by notice, require the employer to make arrangements for the jobholder to become an active member of an automatic enrolment scheme;
- (b) a statement that the opt in notice must be in writing and be signed by the jobholder or, where the notice is in an electronic format, include a statement confirming that the jobholder personally submitted the notice;
- (c) a statement that the opt in notice must be given to the employer;
- (d) the value of any contributions payable to the scheme by the employer and the jobholder in any applicable pay reference period; and
- (e) a statement giving details of where to obtain further information about pensions and saving for retirement.

(3) This regulation does not apply in relation to jobholders—

- (a) who have given notice under section 8 (jobholder's right to opt out) of the Act; or
- (b) in relation to whom section 30 (transitional period for defined benefits and hybrid schemes) of the Act applies.

(4) For the purposes of this regulation, "the value" of contributions may be expressed as a fixed amount or a percentage of any qualifying earnings or pensionable pay due to the jobholder in any applicable pay reference period.

Opt in notices and arrangements to achieve active membership

18.—(1) Where the jobholder wishes to opt in, the jobholder must give an opt in notice to the employer.

(2) An opt in notice must be—

- (a) in writing; and

(b) signed by the jobholder or, where the notice is in an electronic format, it must include a statement confirming that the jobholder personally submitted the notice.

(3) Where the employer is given an opt in notice, except where a jobholder becomes an active member of an automatic enrolment scheme under paragraph (4), the arrangements in regulations 6, 7 and 8 are the arrangements in relation to the jobholder who gave that employer an opt in notice, but with the following modifications—

- (a) in regulation 6 for all references to “section 3” substitute “section 7”;
- (b) in regulations 6, 7 and 8 for all references to “section 3(2)” substitute “section 7(3)”; and
- (c) in regulations 6, 7 and 8 for all references to “the automatic enrolment date” substitute “the enrolment date”.

(4) Where the jobholder is a member of a personal pension scheme before the enrolment date, the employer may meet the obligation in section 7(3) of the Act by—

- (a) before the end of a period of one month beginning with the enrolment date, entering into arrangements with the provider of the scheme of which the jobholder is a member so that—
 - (i) the scheme becomes an automatic enrolment scheme; and
 - (ii) the jobholder becomes an active member of that scheme; and
- (b) satisfying the requirements contained in regulation 7, as if for all references in regulation 7 to “section 3(2)” there was substituted “section 7(3)” and for all references to “the automatic enrolment date” there was substituted “the enrolment date”.

(5) Where a jobholder gives an opt in notice to the employer, but in writing withdraws that notice before the enrolment date, the employer is not required to make the arrangements prescribed by this regulation.

(6) For the purposes of this regulation, the enrolment date is—

- (a) the first day of the jobholder’s applicable pay reference period which begins after the date on which the employer is given the opt in notice; or
- (b) where the opt in notice is given after the employer’s payroll arrangements have closed for the purposes of the jobholder’s applicable pay reference period referred to in subparagraph (a), the first day of the jobholder’s second applicable pay reference period which begins after the date on which the employer is given the opt in notice.

Opting out

19. The arrangements in regulations 9 and 10 are the arrangements for the purposes of section 8 (jobholder’s right to opt out) of the Act in relation to a jobholder who has given an employer an opt in notice, but with the modification that in paragraph (1) of regulation 9 for “section 3(2)” substitute “section 7(3)”.

Refunds

20. The arrangements in regulation 11 are the arrangements for the purposes of section 8 of the Act in relation to a jobholder who has given an employer an opt in notice.

PART 5

Workers joining pension saving

Information

21.—(1) At any time before the end of a period of one month beginning with the date on which section 9 (workers without qualifying earnings) of the Act first applies to a worker, the worker’s employer must give the worker the information specified in paragraph (2).

- (2) The information, which must be given in writing, is—
- (a) a statement that the worker may, by giving a joining notice, require the employer to make arrangements for the worker to become an active member of a pension scheme;
 - (b) a statement that a joining notice must be in writing and be signed by the worker or, where the notice is in an electronic format, include a statement confirming that the worker personally submitted the notice;
 - (c) a statement that the worker may, subject to the scheme rules, choose how much to contribute to a pension scheme; and
 - (d) a statement giving details of where to obtain further information about pensions and saving for retirement.

Form and content of joining notices

22.—(1) A joining notice must be in writing and, save where paragraph (2) applies, be signed by the worker.

(2) Where the joining notice is in an electronic format, it must include a statement confirming that the worker personally submitted the notice.

Arrangements to achieve active membership

23.—(1) The arrangements an employer who is given a joining notice by a worker must make for the purpose of section 9(2) of the Act are to—

- (a) enter into arrangements with—
 - (i) the trustees or managers of an occupational pension scheme which satisfies the requirements of section 9(7) of the Act; or
 - (ii) the provider of a personal pension scheme which satisfies the requirements of section 9(7) of the Act,

so that the worker who is the subject of the joining notice becomes an active member of the scheme in accordance with the scheme rules or requirements applicable to that scheme; and

- (b) provide the trustees or managers of the occupational pension scheme or the personal pension scheme provider with the information specified in regulation 3(1)(a) to (d) and (f) to (k).

(2) The requirement in paragraph (1)(b) does not apply in relation to the information specified in regulation 3(1)(g), (h), (i), (j) or (k), where the trustees or managers of the occupational pension scheme notify, or the personal pension scheme provider notifies, the employer that they do not require that piece of information to achieve active membership of that scheme.

(3) Where the information referred to in regulation 3(1)(f) is not available to the employer on the date the notice is received by the employer, the employer must give the trustees or managers of the occupational pension scheme or the personal pension scheme provider that information within one month from the date on which the employer receives it.

(4) For the purposes of this regulation, any reference to ‘the jobholder’ in regulation 3(1) shall be read as a reference to ‘worker’.

PART 6

Postponement of automatic enrolment

Information

24.—(1) At any time before the end of a period of one month beginning with the date on which the automatic enrolment date was postponed under regulation 25, the jobholder’s employer must give the jobholder the information specified in paragraph (2).

(2) The information, which must be given in writing, is—

- (a) the jobholder’s automatic enrolment date;
- (b) a statement giving the reasons for postponement of the automatic enrolment date;
- (c) a statement that during the period prior to the automatic enrolment date the jobholder has no entitlement to become an active member of an automatic enrolment scheme under the Act and therefore no entitlement to contributions payable by the employer; and
- (d) a statement giving details of where to obtain further information about pensions and saving for retirement.

Postponement of the automatic enrolment date

25.—(1) Where a jobholder is within any of the cases set out in regulation 26, the jobholder’s automatic enrolment date is the date 3 months after the date (“postponement date”) otherwise applicable to that jobholder under section 3(7) (automatic enrolment) of the Act.

(2) For the purposes of section 4(3) of the Act, the prescribed period is the period of 3 months beginning with the automatic enrolment date for the jobholder determined under paragraph (1).

Cases in which automatic enrolment may be postponed

26.—(1) Each of cases 1 to 4 is a prescribed case for the purposes of regulation 25.

(2) Each case applies where a person whose automatic enrolment date in respect of previous employment with that employer—

- (a) occurred within a period of 12 months before the postponement date; and
- (b) was not postponed under regulation 25(1).

(3) Case 1 is where an automatic enrolment scheme which is a money purchase scheme is in existence on the person’s postponement date and—

- (a) the employer’s contribution payable in accordance with section 20(1)(b) (quality requirement: UK money purchase schemes) of the Act, however calculated, is equal to or more than 6% of the amount of the person’s qualifying earnings in any applicable pay reference period; and
- (b) the total amount of contributions payable by the person and the employer in accordance with section 20(1)(c) of the Act, however calculated, is equal to or more than 11% of the amount of the person’s qualifying earnings in any applicable pay reference period.

(4) Case 2 is where an automatic enrolment scheme which is a personal pension scheme is in existence on the person’s postponement date and—

- (a) the employer’s contribution payable in accordance with section 26(4)(b) (quality requirement: UK personal pension schemes) of the Act, however calculated, equal to or more than 6% of the amount of the person’s qualifying earnings in any applicable pay reference period; and
- (b) the total amount of contributions payable by the person and the employer in accordance with section 26(5)(b) of the Act, however calculated, is equal to or more than 11% of the amount of the person’s qualifying earnings in any applicable pay reference period.

(5) Case 3 is where an automatic enrolment scheme which is a defined benefits scheme is in existence on the person's postponement date and the scheme satisfies the requirements contained in section 21(1) or (2) (quality requirement: UK defined benefits schemes) of the Act.

(6) Case 4 is where an automatic enrolment scheme which is a hybrid scheme is in existence on the person's postponement date and the scheme—

- (a) falls within a description of hybrid schemes specified in any rule made under section 24(2) to (4) of the Act; and
- (b) satisfies such of the requirements referred to in section 24(1)(a) or (b) of the Act as the rule in question specifies as being appropriate to schemes of that description subject to—
 - (i) any prescribed modification of those requirements which is referred to in that rule; and
 - (ii) paragraph (7).

(7) When applying, in accordance with any such rule as is referred to in paragraph (6), the requirements for a money purchase scheme under section 20 of the Act—

- (a) the employer's contribution payable in accordance with section 20(1)(b) of the Act, however calculated, must be equal to or more than 6% of the amount of the jobholder's qualifying earnings in any applicable pay reference period; and
- (b) the total amount of contributions payable by the jobholder and the employer in accordance with section 20(1)(c) of the Act, however calculated, must be at least 11% of the amount of the jobholder's qualifying earnings in any applicable pay reference period.

(8) For the purposes of this regulation "postponement date" has the meaning given in regulation 25(1).

(9) In relation to Cases 1, 3 and 4, any reference to a particular provision of the Act is a reference to that provision as it applies to—

- (a) an occupational pension scheme within section 18(a) (occupational pension schemes with main administration in the UK) of the Act, or
- (b) an occupational pension scheme within section 18(b) (occupational pension schemes with main administration in an EEA State other than the UK) of the Act^(a).

(10) In relation to Case 2, any reference to section 26 of the Act is a reference to that provision as it applies to—

- (a) a personal pension scheme within section 26(1) (quality requirement: UK personal pension schemes) of the Act, or
- (b) a personal pension scheme within regulation 35(1)(a)(ii) (automatic enrolment schemes which are personal pension schemes regulated by a competent authority of an EEA State other than the UK)^(b).

(a) Sub-paragraphs (b) and (c) of section 20(1) are applied to occupational pension schemes within section 18(b) of the Act which are: money purchase schemes by regulation 45(1)(a); defined benefit schemes by regulation 45(3)(a) and hybrid schemes by regulation 45(5) to (7)(a).

(b) Paragraphs (4)(b) and (5)(b) of section 26 are applied to personal pension schemes within regulation 35(1)(a)(ii) by regulation 46(a).

PART 7

Automatic enrolment following the transitional period for defined benefit and hybrid schemes

Information

27.—(1) This regulation applies in relation to a jobholder affected by the transitional period for defined benefit and hybrid schemes under section 30 (transitional period for defined benefits and hybrid schemes) of the Act.

(2) At any time before the end of a period of two months beginning with the employer's first enrolment date, the jobholder's employer must give the jobholder the information specified in paragraph (3).

(3) The jobholder's employer must give the jobholder the following information in writing—

- (a) the name, address, telephone number and electronic contact details of the scheme in respect of which the jobholder will become an active member;
- (b) the jobholder's automatic enrolment date;
- (c) a statement that the jobholder may, by notice, require the employer to make arrangements for the jobholder to join the scheme;
- (d) a statement that the opt in notice must be in writing and be signed by the jobholder or, where the notice is in an electronic format, include a statement confirming that the jobholder personally submitted the notice;
- (e) a statement that the opt in notice must be given to the employer;
- (f) the value of any contributions payable to the scheme by the employer and the jobholder in any applicable pay reference period; and
- (g) a statement giving details of where to obtain further information about pensions and saving for retirement.

(4) For the purposes of this regulation—

“employer's first enrolment date” has the meaning given in section 30(9) of the Act;

“the value” of contributions may be expressed as a fixed amount or a percentage of any qualifying earnings or pensionable pay due to the jobholder in any applicable pay reference period.

Arrangements to achieve active membership

28. The arrangements prescribed in regulations 6, 7 and 8 are the arrangements prescribed for the purposes of section 3(2) (automatic enrolment) of the Act as modified by section 30(3) (transitional period for defined benefits and hybrid schemes) of the Act, but with the following modifications—

(a) for regulation 6 substitute—

“6.—(1) An employer must meet the obligation in section 3(2) (automatic enrolment) of the Act by entering into arrangements with the trustees or managers of an automatic enrolment scheme which is a defined benefits scheme or a hybrid scheme.

(2) An employer must ensure that a jobholder to whom section 3 of the Act applies becomes an active member of that scheme with effect from the day after the end of the transitional period prescribed for the purposes of section 30 (transitional period for defined benefits and hybrid schemes) of the Act.

(3) An employer must carry out the duties in paragraphs (1) and (2) before the end of a period of one month beginning with the day after the end of the transitional period prescribed for the purposes of section 30 of the Act.”; and

- (b) in regulations 7 and 8 for all references to “the automatic enrolment date” substitute “the day after the end of the transitional period prescribed for the purposes of section 30 of the Act”.

29. The arrangements prescribed in regulations 6, 7 and 8 are prescribed for the purposes of section 3(2) (automatic enrolment) of the Act as modified by section 30(5) (transitional period for defined benefits and hybrid schemes) of the Act, but with the following modifications—

- (a) for regulation 6 substitute—

“6. An employer must meet the obligation in section 3(2) (automatic enrolment) of the Act by entering into arrangements with—

- (a) the trustees or managers of an automatic enrolment scheme which is a defined benefits scheme or a hybrid scheme, so that, before the end of a period of one month beginning with the closure date, a jobholder to whom section 3 of the Act applies becomes an active member of that scheme with effect from the closure date; or
 - (b) the trustees or managers of an automatic enrolment scheme which is a money purchase scheme, so that before the end of a period of one month beginning with the closure date a jobholder to whom section 3 of the Act applies becomes an active member of that scheme with effect from the automatic enrolment date.”.
- (b) in regulations 7 and 8 for all references to “the automatic enrolment date” substitute “the closure date”; and
 - (c) at the end of regulation 7 add—

“(4) At the request of the jobholder the employer must, for the period prescribed in paragraph (5), deduct any contributions which would have been payable by the jobholder to the scheme in respect of the period beginning on the automatic enrolment date and ending on the closure date, from any qualifying earnings or pensionable pay due to the jobholder in any applicable pay reference period.

(5) For the purposes of paragraph (4), the prescribed period is a period of—

- (a) 5 years beginning with the date on which section 3 (automatic enrolment) of the Act comes into force in accordance with provision made by order by the Secretary of State under section 149(1) of the Act; or
- (b) such shorter period as is agreed between the jobholder and the employer.

(6) For the purposes of this regulation and regulation 6 “closure date” has the meaning given by section 30(4) (transitional period for defined benefits and hybrid schemes) of the Act.”.

Opting out

30. The arrangements in regulations 9 and 10 are the arrangements for the purposes of section 8 (jobholder’s right to opt out) of the Act as modified by section 30(3).

31. The arrangements in regulations 9 and 10 are the arrangements for the purposes of section 8 of the Act as modified by section 30(5), but with the modification that in paragraph (2)(a) of regulation 9 for “regulation 6(1)(a)” substitute “regulation 6(1)(a) or (b)”.

Refunds

32. The arrangements in regulation 11 are the arrangements for the purposes of section 8 of the Act as modified by section 30(3) or (5) of the Act.

PART 8

Existing members of qualifying schemes

Information

33. At any time before the end of a period of 2 months beginning with the automatic enrolment date, the employer of a jobholder who is an active member of a qualifying scheme on the automatic enrolment date must give that jobholder the following information in writing—

- (a) the name, address and electronic contact details of the scheme of which the jobholder is an active member;
- (b) confirmation that the scheme of which the jobholder is an active member is a qualifying scheme;
- (c) a statement that the employer may not take any action or make any omission, by which (without the jobholder ceasing to be employed by the employer) the jobholder ceases to be an active member of the scheme or the scheme ceases to be a qualifying scheme unless the jobholder is or within a period of one month becomes an active member of another qualifying scheme.

Continuity of scheme membership

34. The prescribed period for the purposes of section 2(3) (continuity of scheme membership) of the Act is one month beginning with the date on which—

- (a) the jobholder ceases to be an active member of a qualifying scheme; or
- (b) the scheme ceases to be a qualifying scheme.

PART 9

Automatic enrolment schemes

Further conditions applicable to automatic enrolment schemes

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

- (a) that the scheme must be—
 - (i) an occupational pension scheme within section 18(a) or (b) (occupational pension schemes) of the Act; 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 the meaning of section 18(b) (occupational pension schemes) of the Act or a personal pension scheme where the operation of the scheme is carried on in accordance with paragraph (1)(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 any money purchase benefits applicable to the jobholder will be designated for the purpose of providing that 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(a).

(2) For the purposes of this regulation “competent authority” has, as the case may be, the meaning given in—

- (a) paragraph 4 of Article 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(b);
- (b) paragraph 22 of Article 4 of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments(c);
- (c) paragraph 8 of Article 1a of Directive 85/611/EEC of the European Council on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities(d); or
- (d) paragraph (n) of Article 1 of Directive 2002/83/EC of the European Parliament and of the Council concerning life assurance(e).

PART 10

Exclusion as a qualifying scheme

Certain schemes providing average salary benefits excluded from being qualifying schemes

36.—(1) A pension scheme which provides for average salary benefits to be provided to or in respect of a jobholder is not a qualifying scheme if, subject to paragraph (3), the scheme has any of the features specified in paragraph (2).

(2) The specified features are that, in relation to any jobholder who has accrued rights to benefits under the scheme (“accrued benefits”)—

- (a) there is no provision for revaluation of such benefits;
- (b) such benefits are to be revalued at less than the minimum rate; or
- (c) such benefits are to be revalued only on the exercise of a discretionary power,

at any time when the jobholder’s pensionable service is continuing.

(3) Paragraph (1) does not apply to a scheme with the feature specified in paragraph (2)(c) if—

- (a) the funding of the scheme takes account of the exercise of the discretionary power and does so on the assumption that accrued benefits would be revalued at or above the minimum rate; and
- (b) such funding is provided for in the scheme’s statement of funding principles under section 223 (statement of funding principles) of the Pensions Act 2004(f) or, if the scheme is not required to have such a statement, in an equivalent statement of the scheme’s funding plan.

(4) For the purposes of this regulation, the minimum rate on a revaluation of accrued benefits is an annual increase by—

- (a) the percentage increase in the retail prices index for the year by reference to which the revaluation is made; or
- (b) 2.5 %,

whichever is the lesser.

(5) In paragraph (4)(a), “retail prices index” means—

-
- (a) 2004 c.12.
 - (b) OJ L 177, 30.6.2006, p1.
 - (c) OJ L 145, 30.4.2004, p1.
 - (d) OJ L 375, 31.12.85, p3 (as amended by Directive 2001/107/EC OJ L 41, 13.2.02, p20).
 - (e) OJ L 345, 19.12.02, p.1.
 - (f) 2004 c.35.

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

PART 11

Test Scheme

Test scheme: requirements to revalue accrued benefits and increase pensions in payment

- 37.**—(1) Paragraph (2) applies for the purposes of section 23(1)(b) (test scheme) of the Act.
- (2) The following must be satisfied in relation to a test scheme—
- (a) the requirements of section 84(1) (basis of revaluation) of the 1993 Act; and
 - (b) the requirements of section 51 (annual increase in rate of pension) of the 1995 Act^(a).
- (3) For the purposes of paragraph (2)(a), section 84(1) of the 1993 Act shall have effect as if the words “Subject to subsections (2) and (3),” were omitted.

Staged increase in appropriate age

38.—(1) In paragraph (2), “relevant determination” means a determination under section 22 (test scheme standard) of the Act as to whether a scheme satisfies the test scheme standard in relation to a jobholder.

(2) For the purposes of making any relevant determination on or after the date specified in an entry in Column 1 of the Table, the higher “appropriate age” prescribed for the purposes of section 23(3) of the Act is the age specified in Column 2 of the same entry.

Table

<i>Date</i>	<i>Pension age in test scheme</i>
6 April 2024	66 years
6 April 2034	67 years
6 April 2044	68 years

Requirements for meeting the test scheme standard

- 39.**—(1) This regulation applies for the purposes of section 22(4) of the Act.
- (2) No person other than—
- (a) the scheme actuary, or
 - (b) the employer of the relevant members of the scheme,
- may certify that a scheme satisfies the test scheme standard.
- (3) An employer may certify a scheme under paragraph (2)(b) only in cases that do not require any calculation, comparison or assessment of a description usually carried out by actuaries.
- (4) In determining whether a scheme satisfies the test scheme standard, a scheme actuary or employer—
- (a) must have regard to the benefits to be provided under the scheme for persons who, at the date by reference to which the determination is made (which may precede the date on which it is made), are relevant members of the scheme; and
 - (b) must not have regard to—

^(a) Section 51 was amended by paragraph 51 of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c.30), section 51(1) of the Child Support, Pensions and Social Security Act 2000 (c.19), section 278 of the Pensions Act 2004 (c.35) and S.I. 2006/745.

- (i) pension credit benefits;
- (ii) death benefits;
- (iii) discretionary benefits (apart from those arising from discretionary pre-retirement revaluation made in the case of schemes providing for average salary benefits);
- (iv) survivors' benefits;
- (v) money purchase benefits (but this is subject to regulations 41 and 42);
- (vi) benefits in respect of any person who is not a jobholder for the purposes of the Act;
- (vii) benefits in respect of any jobholder whose annual rate of benefit accrual under the scheme has been reduced below the rate specified in section 23(4)(a) of the Act, where the reduction is made as a result of a request made by the jobholder in question in accordance with scheme rules; or
- (viii) benefits in respect of any jobholder who has given notice under section 8 (jobholder's right to opt out) of the Act.

(5) A scheme actuary or employer may not certify that a scheme satisfies the test scheme standard if the benefits to be provided for more than 10% of relevant members are not at least as valuable as the benefits which would be provided for them under a test scheme.

(6) In determining whether—

- (a) any of paragraphs (3) to (5) apply in relation to a scheme; or
- (b) a scheme otherwise satisfies the test scheme standard,

a scheme actuary or employer must follow any guidance issued by the Secretary of State under section 22(5) of the Act which is for the time being in force.

(7) “Scheme actuary” has the meaning given in section 22(7) of the Act except—

- (a) where the scheme is a defined benefits or hybrid scheme within section 18(b) (occupational pension schemes) of the Act;
- (b) where the scheme is a defined benefits or hybrid scheme within section 18(c) of the Act and there is an actuary appointed to the scheme who satisfies the requirements of regulations made under section 47(5) (professional advisers) of the 1995 Act^(a); or
- (c) in any other circumstances where, by virtue of regulations made under section 47 of the 1995 Act^(b), the scheme is not required to appoint a scheme actuary.

(8) In any case falling within paragraph (7)(b), “scheme actuary” means the actuary referred to in that paragraph who is appointed to the scheme.

(9) “Relevant members” has the meaning given in section 22(2) of the Act.

PART 12

Hybrid schemes

Interpretation

40. In this Part—

“the paragraph (a) quality requirements” means the requirements for a money purchase scheme under section 20 of the Act (referred to in relation to hybrid schemes in paragraph (a) of section 24(1) (quality requirements: UK hybrid schemes) of the Act);

“the paragraph (b) quality requirements” means the requirements for a defined benefits scheme under sections 21 to 23 of the Act (referred to in relation to hybrid schemes in paragraph (b) of section 24(1) of the Act);

^(a) See the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715).

^(b) Ibid.

“relevant rule” means any rule made under section 24(2) to (4) of the Act(a).

Modification of test scheme standard: money purchase benefit lump sum accruals

41.—(1) Paragraph (2) applies where a relevant rule—

- (a) specifies a description of hybrid schemes; and
- (b) provides that the paragraph (b) quality requirements are to apply to any scheme of that description subject to the modifications made by this regulation.

(2) In determining whether any such scheme satisfies the paragraph (b) quality requirements in relation to a jobholder, section 23 (test scheme) of the Act has effect as if for subsection (4) there were substituted—

“(4) The requirements of either subsection (4A) or (4B) must be satisfied in relation to the amount (“the amount”) available for the provision of a pension to a member at the appropriate age.

(4A) The requirements of this subsection are that the amount must accrue at an annual rate of at least 16% of qualifying earnings.

(4B) The requirements of this subsection are that the amount must—

- (a) accrue at an annual rate of at least 8% of qualifying earnings; and
- (b) until the date on which the member attains normal pension age (within the meaning of the Pension Schemes Act 1993), be increased as a minimum by 3.5% per annum, in addition to any increase that is required by virtue of regulation 37(2)(a) of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.”.

(3) Where the modification described in paragraph (2) has effect in relation to a hybrid scheme of the relevant description, regulation 39 is to be read as if, after paragraph (4) there were inserted—

“(4A) Where, in relation to a scheme to which the modification described in regulation 41(2) applies, an employer is determining whether the scheme satisfies the test scheme standard—

- (a) the employer must choose between a test scheme which satisfies the requirements of section 23(4A) of the Act or those of section 23(4B) of the Act; and
- (b) having made that choice, that is the test scheme which the employer must apply in relation to all persons who are relevant members.”.

Modification of test scheme standard: final salary lump sum accruals

42.—(1) Paragraph (2) applies where a relevant rule—

- (a) specifies a description of hybrid schemes; and
- (b) provides that the paragraph (b) quality requirements are to apply to any scheme of that description subject to the modification made by this regulation.

(2) In determining whether any such scheme satisfies the paragraph (b) quality requirements in relation to a jobholder, section 23 of the Act has effect as if for subsection (4) there were substituted—

“(4) The amount available for the provision of a pension to a member must accrue at an annual rate of at least 16% of average qualifying earnings in the last three tax years preceding the end of pensionable service.”.

(a) The rules are available at www.dwp.gov.uk.

Modification allowing different quality requirements to be satisfied in aggregate

43.—(1) Paragraphs (2) to (5) apply where a relevant rule—

- (a) specifies a description of hybrid schemes; and
- (b) provides that—
 - (i) the provisions of any scheme of that description which relate to defined benefits and the provisions of the scheme relating to money purchase benefits are to be treated as if they provided for benefits under separate schemes;
 - (ii) in respect of the money purchase benefits provisions, the paragraph (a) quality requirements are to apply; and
 - (iii) in respect of the defined benefits provisions, the paragraph (b) quality requirements are to apply; and
 - (iv) those quality requirements are to apply to the scheme subject to the modifications made by this regulation.

(2) Notwithstanding that not all of the paragraph (a) quality requirements or the paragraph (b) quality requirements are satisfied in relation to the scheme, those requirements are nevertheless to be treated as having been satisfied in relation to any jobholder in the circumstances set out in paragraph (3).

(3) The circumstances are that—

- (a) all of the paragraph (a) quality requirements are met apart from either or both of the requirement in section 20(1)(b) of the Act (“requirement X”) and the requirement in section 20(1)(c) of the Act;
- (b) all of the paragraph (b) quality requirements are met apart from the requirement in section 23(4) of the Act (“requirement Y”); and
- (c) having carried out the calculations set out in paragraph (4)(a) and (b), the aggregate of the resulting percentages is at least 100.

(4) Each of the following is to be calculated as a percentage—

- (a) the extent to which requirement X is met as a proportion of the minimum rate of employer’s contribution specified in section 20(1)(b) of the Act;
- (b) the extent to which requirement Y is met as a proportion of the annual rate of pension specified in section 23(4) of the Act.

(5) In relation to a scheme to which any modification described in regulation 41 or 42 applies by virtue of a relevant rule, the reference in paragraph (3)(b) to the requirement in section 23(4) of the Act is to that requirement as modified by regulation 41 or 42, as the case may be.

(6) Where paragraphs (2) to (5) have effect in relation to a hybrid scheme of the relevant description, regulation 39 is to be read as if, for paragraph (5), there were substituted—

“(5) A scheme actuary or employer may not certify that a scheme satisfies the test scheme standard if the aggregate percentage referred to in regulation 43(3)(c) is less than 100 in relation to more than 10% of relevant members.”.

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^(a) 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), section 21 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)”.

(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^(b) 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.

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

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

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^(a) 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—
 - (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^(b).

(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^(c) 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;

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

(b) 1988 c.1.

(c) 2003 c.1.

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

PART 14

Due dates

Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996

48. For regulation 16 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996(a) substitute—

“Prescribed time in which an employer must make payments to trustees or managers

16.—(1) Save as provided in paragraph (2), the prescribed period for the purposes of section 49(8) of the 1995 Act (amount deducted from earnings to be paid to the trustees or managers of the scheme within a prescribed period) is 19 days commencing from the end of the month in which the amount is deducted from the earnings in question.

(2) Where a jobholder becomes an active member of an occupational pension scheme in accordance with arrangements provided for in regulation 6, 13, 18, 28 or 29 of the 2010 Regulations, in relation to any contributions deducted between the relevant date and the end of the opt out period, the prescribed period for the purposes of section 49(8) of the 1995 Act is the period commencing on the relevant date and ending on the last day of the second month after the month which includes the relevant date.

(3) For the purposes of this regulation—

“the 2008 Act” means the Pensions Act 2008;

“the 2010 Regulations” means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010;

“automatic enrolment date” has the meaning given by section 3(7) of the 2008 Act (automatic enrolment);

“automatic re-enrolment date” means the date determined in accordance with regulation 12 of the 2010 Regulations;

“enrolment date” has the meaning given by regulation 18(6) of the 2010 Regulations;

“jobholder” has the meaning given by section 1(1) of the 2008 Act (jobholders);

“opt out period” means the period prescribed by regulation 9 of the 2010 Regulations within which a jobholder who has become an active member of an occupational pension scheme in accordance with arrangements under section 3(2) of the 2008 Act, may give notice under section 8 (jobholder’s right to opt out) of that Act; and

“relevant date” means the automatic enrolment date, the automatic re-enrolment date or the enrolment date, as the case may be, or for a jobholder to whom regulation 28 or 29 of the 2010 Regulations applies, the day or date mentioned in regulation 6 of those Regulations as modified respectively by regulation 28 or 29, as the case may be. ”.

Amendment of the Personal Pension Schemes (Payments by Employers) Regulations 2000

49. For regulation 5 of the Personal Pension Schemes (Payments by Employers) Regulations 2000(b), substitute—

(a) S.I. 1996/1715. Regulation 16 was amended by S.I. 1997/786 and 2000/679.

(b) S.I. 2000/2692.

“Prescribed period for the purpose of calculating the due date for the payment of any contribution on behalf of an employee

5.—(1) Save as provided in paragraph (2), the prescribed period for the purposes of section 111A(15)(b) of the 1993 Act (meaning of “due date” where a contribution payable under the direct payment arrangements falls to be paid on behalf of the employee) is the period of 19 days commencing on the day following the last day of the month in which the deduction was made from the employee’s earnings.

(2) Where a jobholder becomes an active member of a personal pension scheme in accordance with arrangements provided for in regulation 6, 13, 18, 28 or 29 of the 2010 Regulations, in relation to any contributions deducted between the relevant date and the end of the opt out period, the prescribed period for the purposes of section 111A(15)(b) of the 1993 Act is the period commencing on the relevant date and ending on the last day of the second month after the month which includes the relevant date.

(3) For the purposes of this regulation—

“the 2008 Act” means the Pensions Act 2008;

“the 2010 Regulations” means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010;

“automatic enrolment date” has the meaning given by section 3(7) of the 2008 Act (automatic enrolment);

“automatic re-enrolment date” means the date determined in accordance with regulation 12 of the 2010 Regulations;

“enrolment date” has the meaning given by regulation 18(6) of the 2010 Regulations;

“jobholder” has the meaning given by section 1(1) of the 2008 Act (jobholders);

“opt out period” means the period prescribed by regulation 9 of the 2010 Regulations within which a jobholder who has become an active member of an occupational pension scheme in accordance with arrangements under section 3(2) of the 2008 Act, may give notice under section 8 (jobholder’s right to opt out) of that Act;

“relevant date” means the automatic enrolment date, the automatic re-enrolment date or the enrolment date, as the case may be, or for a jobholder to whom regulation 28 or 29 of the 2010 Regulations applies, the day or date mentioned in regulation 6 of those Regulations as modified respectively by regulation 28 or 29, as the case may be.”.

Due Date for the purposes of section 37(3) of the Act

50.—(1) This regulation defines “due date” for the purposes of section 37 (unpaid contributions notices) of the Act.

(2) Subject to paragraphs (3) to (6), “due date” means the 19th day of the month following the month during which either—

(a) relevant contributions payable to—

- (i) the trustees or managers of an occupational pension scheme, or
- (ii) the provider of a personal pension scheme,

were deducted by an employer (whether or not under section 33 (deduction of contributions) of the Act); or

(b) relevant contributions payable to—

- (i) an occupational pension scheme under a payment schedule, or
 - (ii) a personal pension scheme under direct payment arrangements,
- were due but not made by an employer.

(3) Where a jobholder becomes an active member of an occupational pension scheme or a personal pension scheme in accordance with regulations 6, 13, 18, 28, or 29, paragraph (2) does not apply in respect of contributions—

- (a) deducted from the relevant date to the end of the opt out period; or
 - (b) due but not made from the relevant date to the end of the opt out period,
- in which case paragraph (4) applies.
- (4) Where this paragraph applies, “due date” means the last day of the second month after the month which includes the relevant date.
- (5) Paragraphs (2) and (3) do not apply where an employer uses either—
- (a) a defined benefits scheme; or
 - (b) a hybrid scheme,
- to comply with sections 2 to 9 of the Act, in which case paragraph (6) applies.
- (6) Where a scheme used by an employer to comply with sections 2 to 9 of the Act—
- (a) is a defined benefits scheme, “due date” means the due dates of relevant contributions payable by or on behalf of—
 - (i) active members of a scheme, and
 - (ii) an employer,
 under a schedule of contributions; or
 - (b) is a hybrid scheme, “due date” in respect of any part of that scheme providing—
 - (i) defined benefits, has the same meaning as in sub-paragraph (a); or
 - (ii) money purchase benefits, has the same meaning as in paragraph (2), except where a jobholder becomes an active member of an occupational pension scheme or a personal pension scheme in accordance with regulation 6, 13, 18, 28 or 29, in which case it has the same meaning as in paragraph (4).
- (7) For the purposes of this regulation—
- “direct payment arrangements” has the meaning given in section 111A of the 1993 Act(a);
- “payment schedule” has the meaning given in section 87 (schedules of payments to money purchase schemes) of the 1995 Act(b);
- “relevant date” means the automatic enrolment date, the automatic re-enrolment date or the enrolment date, as the case may be, or for a jobholder to whom regulation 28 or 29 applies, the day or date mentioned in regulation 6 as modified respectively by regulation 28 or 29, as the case may be;
- “schedule of contributions” has the meaning given in section 227(2) of the Pensions Act 2004.

Signed by authority of the Secretary of State for Work and Pensions

Name
Parliamentary Under Secretary of State,
Department for Work and Pensions

Date

SCHEDULE

Regulation 9(6)(a)

Form of opt out notice

(a) Section 111A was inserted by the Welfare Reform and Pensions Act 1999, section 9 and amended by section 268 of the Pensions Act 2004.

(b) Section 87 of the 1995 Act has been amended but not in a way material to these Regulations.

Notice to opt out of pension saving

IF YOU WANT TO OPT OUT OF PENSION SAVING FILL IN THIS FORM AND GIVE IT TO YOUR EMPLOYER

Your full name

.....

Your employer's name

.....

Your national insurance number or date of birth

.....

I wish to opt out of pension saving.

I understand that if I opt out I will lose the right to pension contributions from my employer.

I understand that if I opt out I may have a lower income when I retire.

SIGNED

.....

DATE

.....

WHAT YOU NEED TO KNOW

Your employer cannot ask you or force you to opt out.

If you are asked or forced to opt out you can tell the Pensions Regulator – see www.thepensionsregulator.gov.uk.

If you change your mind you may be able to opt back in – write to your employer if you want to do this.

If you stay opted out your employer will normally put you back into pension saving in around 3 years.

If you change job your new employer will normally put you back into pension saving straight away.

If you have another job your other employer might also put you into pension saving, now or in the future. This notice only opts you out of pension saving with the employer you name above. A separate notice must be filled out and given to any other employer you work for if you wish to opt out of that pension saving as well.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision under the Pensions Act 2008 (the Act). They are one of a package of measures which implement Part 1 of the Act.

Part 1 of the Regulations provides definitions. Parts 2, 3, 4 and 7 prescribe the arrangements an employer must make for a jobholder to become an active member of an automatic enrolment scheme with effect from the automatic enrolment date (Part 2), the automatic re-enrolment date (Part 3), the enrolment date (Part 4) or the date applicable to jobholders affected by the transitional period for defined benefit and hybrid schemes under section 30 of the Act (Part 7), as the case may be. The process is largely similar in each case. The same Parts also provide for opting out and refunds of contributions where a jobholder has been automatically enrolled, automatically re-enrolled or opts in, as the case may be. Part 3, in addition, prescribes the automatic re-enrolment dates.

Part 5 prescribes the arrangements an employer must make for a worker (on request) to become an active member of a pension scheme.

Part 6 enables an employer to postpone a person's automatic enrolment date by 3 months provided an employer has an existing occupational money purchase or hybrid pension scheme or personal pension scheme under which the employer and jobholder contributions are at a specified greater level than the level of contributions normally required in relation to a qualifying scheme under the Act or the employer has an existing defined benefit scheme. Postponement may only apply as long as the jobholder's postponement date, in relation to previous employment with the employer, has not been postponed in the last 12 months.

Part 8 makes provision for the period (3 months) within which an employer will not breach the duty in section 2 of the Act when moving jobholders between schemes.

Parts 2 to 8 also require the employer to provide the jobholder or worker, as the case may be, with certain information about the effect of sections 2 to 9 of the Act in relation to them

Part 9 imposes a geographical restriction, the effect of which is to prescribe that only schemes established in the UK or an EEA State which fulfil certain requirements, may be used as automatic enrolment schemes for the purposes of the Act.

Part 10 provides that certain schemes which provide average salary benefits are excluded from being qualifying schemes for the purposes of the Act unless certain conditions are met.

Part 11 prescribes further requirements that apply to the test scheme described in section 23 of the Act. It also makes provision for an actuary or the employer to determine whether the pensions to be provided for the relevant members are broadly equivalent to, or better than, the pensions which would be provided for them under the test scheme, and about how such determinations are to be made.

Part 12 contains modifications of the quality requirements under section 20 or 21 of the Act so as to reflect detailed characteristics of certain hybrid schemes. The Hybrid Schemes Quality Requirements Rules 2010, made under section 24(2) of the Act, underpin the operation of Part 12 (Hybrid Schemes) of these Regulations. The Rules will be made early in 2010. They provide for the application of these quality requirements to different descriptions of hybrid schemes, subject to prescribed modifications.

Part 13 sets out the quality requirements applicable to non-UK schemes and the requirements which a non-UK scheme must meet if section 16(1)(b) (registration under Chapter 2 of Part 4 of the Finance Act 2004) of the Act is not to apply.

Part 14 sets the dates by which pension contributions must be paid by the employer to the scheme and makes provision related to the Regulator's power to issue an unpaid contribution notice.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Work and Pensions, ERSP, Level 7, Caxton House, Tothill Street, London, SW1H 9NA and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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