STATUTORY INSTRUMENTS

2010 No. 772

PENSIONS

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

Made - - - -	*11th March 2010*
Coming into force - -	*1st October 2012*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 111A(15)(b), 181 [M1] and 182(2) and (3) of the Pension Schemes Act 1993 [M2], sections 49(8), 124(1) [M3] and 174(2) and (3) of the Pensions Act 1995 [M4] 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), 24(1)(a) and (b), 25, 27, 30(6)(c), 33(2), 37(3), 99 [M5] and 144(2) and (4) of the Pensions Act 2008 [M6].

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.

Marginal Citations

M1 Section 181 of the Pension Schemes Act 1993 is cited for the meaning it gives to “prescribed” and “regulations”.

M2 1993 c.48; section 111A(15) was inserted by section 9 of the Welfare Reform and Pensions Act 1999 (c.30).

M3 Section 124(1) of the Pensions Act 1995 is cited for the meaning it gives to “prescribed” and “regulations”.

M4 1995 c.26; section 49(8) was substituted for section 49(8) as originally enacted by section 10 of the Welfare Reform and Pensions Act 1999.

M5 Section 99 of the Pensions Act 2008 is cited for the meaning it gives to “prescribed” and “regulations”.

M6 2008 c.30.

PART 1

Citation, commencement and interpretation

Citation, commencement[F1, expiry] 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 **[**F2 1st July 2012, immediately after the time when the amendments made by the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012 come into force**]** .

[F3 (1A) Subject to paragraph (1B), regulation 52 ceases to have effect on 1st July 2020.

(1B) Regulation 52 does not cease to have effect in relation to an employer and a person employed or engaged by it in any capacity on board a ship where, immediately before 1st July 2020—

(a) the person is a jobholder and an active member of a qualifying scheme; or

(b) the employer is required to make arrangements in respect of the person under—

(i) in relation to Great Britain, section 5(2) (where section 5 applies by virtue of section 5(1A) or (1B)), 7(3) or 9(2) of the Act; or

(ii) in relation to Northern Ireland, any corresponding provisions in force there.**]**

(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 **[**F4 Schedule 1**]** ;

"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.

Textual Amendments

F1 Word in reg. 1 heading inserted (1.7.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012 (S.I. 2012/1257), regs. 1(2)(a), **3(a)**

F2 Words in reg. 1(1) substituted (1.7.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012 (S.I. 2012/1257), regs. 1(2)(b), **3(b)**

F3 Reg. 1(1A)(1B) inserted (1.7.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012 (S.I. 2012/1257), regs. 1(2)(a), **3(c)**

F4 Words in reg. 1 substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **43(1)**

Enrolment information

[[F5]**2.** In these Regulations "enrolment information" means the information described in paragraphs 1-15, **[**[F6]and 24**]** of Schedule 2.**]**

Textual Amendments

F5 Reg. 2 substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **18**

F6 Words in reg. 2 substituted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **3**

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 [F7sections 1(1)(c), 3(1)(c) and 5(1)(c)] of the Act

[F8 4.—(1) This regulation applies for the purposes of sections 1(1)(c), 3(1)(c) and 5(1)(c) of the Act (jobholders, automatic enrolment and automatic re-enrolment).

(2) The pay reference period in respect of a person is determined in accordance with paragraph (3) or paragraphs (4) and (5), whichever the employer may decide.

(3) For the purposes of this paragraph, the pay reference period 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.

(4) For the purposes of this paragraph, subject to paragraph (6)(b), a pay reference period is—

(a) a period equal in length to the usual interval between payments of the person's regular wage or salary; or

(b) the period of a week,

whichever is the longer.

(5) For the purposes of paragraph (4), pay reference periods commence—

(a) where the person is paid monthly, on the first day of a tax month;

(b) where the person is paid weekly or the pay reference period is a week, on the first day of a tax week;

(c) where the person is paid at intervals of multiple weeks, on—

(i) 6th April; and

(ii) the first day of the tax week which commences immediately after the expiry of a pay interval period beginning on 6th April, unless paragraph (6) applies; and

(d) where the person is paid at intervals of multiple months, on—

(i) 6th April; and

(ii) the first day of the tax month which commences immediately after the expiry of a pay interval period beginning on 6th April, unless paragraph (6) applies.

(6) Where paragraphs (4) and (5) apply and a pay reference period includes the last day of a tax year—

(a) the next pay reference period commences on 6th April; and

(b) if the qualifying earnings which, but for this sub-paragraph, would fall in that pay reference period, are paid or payable on or after 6th April, the pay reference period ends on 5th April.

(7) In this regulation—

"pay interval period" means a period which is equal in length to the usual interval between payments and each whole multiple of that period;

"tax month" means the period beginning with the sixth day of the month and ending on the fifth day of the following month; and

"tax week" means one of the successive periods in a tax year beginning with the first day of that year and every seventh day after that (so that the last day of a tax year or, in the case of a tax year ending in a leap year, the last two days is treated as a separate week).**]**

Textual Amendments

F7 Words in reg. 4 heading substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **19(a)**

F8 Reg. 4 substituted (1.11.2013) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(1), **5(2)**

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

[F9 5.—(1) The pay reference periods 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 are as follows.

(2) A pay reference period may be either—

(a) subject to paragraph (10), a period of a year, ending on the day before an anniversary of the employer's staging date;

(b) a period which is equal in length to the period by reference to which the jobholder is paid their regular wage or salary, commencing on the first day of that period; or

(c) subject to paragraph (4)(b), a period which is equal in length to the usual interval between payments of the jobholder's regular wage or salary, commencing on the date determined in accordance with paragraph (3).

(3) Where paragraph (2)(c) applies, pay reference periods in respect of a person commence—

(a) where the person is paid monthly, on the first day of a tax month;

(b) where the person is paid weekly, on the first day of a tax week;

(c) where the person is paid at intervals of multiple weeks, on—

(i) 6th April; and

(ii) the first day of the tax week which commences immediately after the expiry of a pay interval period beginning on 6th April, unless paragraph (4) applies; and

(d) where the person is paid at intervals of multiple months, on—

(i) 6th April; and

(ii) the first day of the tax month which commences immediately after the expiry of a pay interval period beginning on 6th April, unless paragraph (4) applies.

(4) Where paragraph (2)(c) applies and a pay reference period includes the last day of a tax year—

(a) the next pay reference period commences on 6th April; and

(b) if the qualifying earnings which, but for this sub-paragraph, would fall in that pay reference period, are paid or payable on or after 6th April, the pay reference period ends on 5th April.

(5) Where paragraph (2)(a) applies, the first pay reference period in respect of a person commences—

(a) on the relevant day; or

(b) where there has been a period beginning after the relevant day, during which the requirements of section 1(1)(a) or (c) of the Act were not met but the person remained an active member of a qualifying scheme, on the day following the last day of that period.

(6) Where paragraph (2)(b) applies, the first pay reference period in respect of a person commences on the first day determined in accordance with that paragraph which falls on or after the relevant day.

(7) Where paragraph (2)(c) applies, the first pay reference period in respect of a person commences on the first day determined in accordance with paragraph (3) which falls on or after the relevant day.

(8) Subject to paragraph (2)(c), a pay reference period in relation to any person ends on the day before the day on which the next pay reference period begins.

(9) Where a person ceases to be a jobholder of the employer or ceases to be an active member of a qualifying scheme the last pay reference period—

(a) ends on the day on which the person's status so changes, where paragraph (2)(a) applies; or

(b) is the pay reference period which includes the day on which the person's status so changes, where paragraph (2)(b) or (c) applies.

(10) A pay reference period under paragraph (2)(a) may be less than a year if it either commences or ends within the period of a year ending on the day before an anniversary of the employer's staging date.

(11) In this regulation—

"relevant day" means the first day on or after the staging date on which the person is both a jobholder and an active member of a qualifying scheme; and

"pay interval period", "tax week" and "tax month" have the same meaning as in regulation 4.**]**

Textual Amendments

F9 Reg. 5 substituted (1.11.2013) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(1), **5(3)**

[[F10]PART 1A

Exemption **[**[F11]and Exceptions**]**

Textual Amendments

F10 Pt. 1A inserted (2.7.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) (No. 2) Regulations 2012 (S.I. 2012/1477), regs. 1, **2**

F11 Words in Pt. 1A heading added (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **4**

Exemption of European employers

5A. Sections 2(1), 3(2), 5(2), 7(3), 9(2) and 54 of the Act (employer's obligations regarding membership of a qualifying scheme) do not apply in relation to a person's employment of an individual in relation to whom the person is a European employer.**]**

[[F12]Notice of termination of employment

5B.—(1) This regulation applies, subject to paragraph (3), where notice of termination of a worker's employment is given before the end of the period of six weeks beginning with the automatic enrolment date or automatic re-enrolment date, as the case may be.

(2) Where this regulation applies—

(a) sections 3(2) (automatic enrolment) and 5(2) (automatic re-enrolment) of the Act are to be read as if for "must" there were substituted "may";

(b) section 7(3) (jobholder's right to opt in) of the Act is to be read as if there were inserted at the end—

"unless notice of termination of employment of that jobholder has been given (and the jobholder and the employer have not agreed that such notice is withdrawn)".

(c) section 9(2) (workers without qualifying earnings) of the Act is to be read as if there were inserted at the end—

"unless notice of termination of employment of that worker has been given (and the worker and the employer have not agreed that such notice is withdrawn)".

(3) Where a jobholder and employer agree that the notice of termination of the jobholder's employment referred to in this regulation is withdrawn, paragraphs (1) and (2) cease to apply on the date of that agreement and, subject to paragraph (4), for the purposes of sections 3(2) and 5(2) of the Act, as the case may be—

(a) the automatic enrolment date; or

(b) the automatic re-enrolment date,

is the date of that agreement.

(4) Where, on the date referred to in paragraph (3), section 3 or 5, as the case may be, does not apply to the jobholder, the next date on which one of those sections applies to that jobholder is to be taken as the automatic enrolment date or automatic re-enrolment date, as the case may be, in relation to that jobholder.

Textual Amendments

F12 Regs. 5B-5F inserted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **5**

Former members

5C.—(1) This regulation applies where a person (P) is a jobholder and—

(a) P ceased to be an active member of a qualifying scheme because of an action or omission by P or an action by the employer at P's request; or

(b) at a time when P was a worker, but not a jobholder, ceased to be an active member of a scheme which would have been a qualifying scheme in relation to P, had P been a jobholder, because of an action or omission by P or an action by the employer at P's request.

(2) This regulation also applies where a jobholder gives notice under section 8 of the Act (jobholder's right to opt out).

(3) Where this regulation applies in relation to the jobholder mentioned in paragraphs (1) or (2)—

(a) during the period of 12 months beginning with the date that jobholder ceased to be an active member or gives notice, sections 3(2) and 5(2) of the Act are to be read as if for "must" there were substituted "may"; and

(b) after the expiry of that period, section 3(2) of the Act does not apply.

Textual Amendments

F12 Regs. 5B-5F inserted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **5**

Tax protection

5D.—(1) This regulation applies where an employer has reasonable grounds to believe that one of the following provisions applies in relation to a jobholder—

(a) paragraph 7 (primary protection) or 12 (enhanced protection) of Schedule 36 (pension schemes etc: transitional provisions and savings) to the Finance Act 2004;

(b) paragraph 14 of Schedule 18 to the Finance Act 2011 (fixed protection 2012);

(c) paragraph 1 of Schedule 22 to the Finance Act 2013 (fixed protection 2014);

(d) paragraph 1 of Schedule 6 to the Finance Act 2014 (individual protection 2014).

[F13(e) paragraph 1 (fixed protection 2016) or 9 (individual protection 2016) of Schedule 4 to the Finance Act 2016.**]**

(2) Where this regulation applies, in relation to the jobholder referred to in paragraph (1), sections 3(2) and 5(2) of the Act are to be read as if for "must" there were substituted "may".

Textual Amendments

F12 Regs. 5B-5F inserted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **5**

F13 Reg. 5D(1)(e) inserted (6.3.2017) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2017 (S.I. 2017/79), regs. 1, **2**

Winding-up lump sum

5E.—(1) This regulation applies to a worker where—

(a) that worker has received a winding-up lump sum as defined in paragraph 10 of Schedule 29 to the Finance Act 2004 (winding-up lump sums) ("paragraph 10");

(b) at the time the winding-up lump sum was paid, the worker was employed by the person mentioned in sub-paragraph (1)(c) of paragraph 10; and

[F14(c) during the period of 12 months beginning with the date on which the winding-up lump sum was paid—

(i) the worker has ceased to be employed and been re-employed by that person; and

(ii) after re-employment, either section 3(1) (automatic enrolment) or 5(1A) or (1B) (automatic re-enrolment) of the Act applies to the worker.**]**

(2) In relation to the worker to whom this regulation applies—

(a) during the period of 12 months beginning with the date on which the winding-up lump sum was paid—

(i) sections 3(2) and 5(2) of the Act are to be read as if for "must" there were substituted "may"; and

(ii) sections 7 and 9 of the Act do not apply; and

(b) after the expiry of that period, section 3(2) of the Act does not apply.

Textual Amendments

F12 Regs. 5B-5F inserted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **5**

F14 Reg. 5E(1)(c) substituted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/311), regs. 1(1), **4(2)**

[F15Company directors

5EA.—(1) This regulation applies to a jobholder who holds office as a director of the company by which that jobholder is employed.

(2) In relation to the jobholder to whom this regulation applies, sections 3(2) (automatic enrolment) and 5(2) (automatic re-enrolment) of the Act are to be read as if for "must" there were substituted "may".

Textual Amendments

F12 Regs. 5B-5F inserted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **5**

F15 Reg. 5EA - Reg. 5EB inserted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/311), regs. 1(1), **4(3)**

Limited liability partnerships

5EB.—(1) This regulation applies where a person (P) is a jobholder and—

(a) P is a member of a limited liability partnership;

(b) qualifying earnings are payable to P by that limited liability partnership; and

(c) P is not treated for income tax purposes as being employed by that limited liability partnership under section 863A of the Income Tax (Trading and other Income) Act 2005 (limited liability partnerships: salaried members).

(2) Where this regulation applies, in relation to the jobholder referred to in paragraph (1), sections 3(2) and 5(2) of the Act are to be read as if for "must" there were substituted "may".**]**

Textual Amendments

F12 Regs. 5B-5F inserted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **5**

F15 Reg. 5EA - Reg. 5EB inserted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/311), regs. 1(1), **4(3)**

Effect of exercise of discretion

5F.—(1) This regulation applies to an employer who—

(a) exercises a discretion under section 3(2) or 5(2) of the Act, as conferred by regulations 5B, 5C, 5D**[**F16, 5E, 5EA or 5EB**]**, so that the prescribed arrangements are made whereby the jobholder will become an active member of an automatic enrolment scheme;

(b) makes the arrangements referred to in section 7(3) of the Act for a jobholder, unless notice of termination of employment of that jobholder has been given (and the jobholder and the employer have not agreed that such notice is withdrawn); or

(c) makes the arrangements referred to in section 9(2) of the Act for a worker, unless notice of termination of employment of that worker has been given (and the worker and the employer have not agreed that such notice is withdrawn).

(2) In relation to the employer to whom this regulation applies, the employer is to be treated for all purposes as if the employer were acting under the duty which would apply by virtue of section 3(2) or 5(2) of the Act or were required to make the arrangements in section 7(3) or 9(2) of the Act but for the provisions of this Part.**]**

Textual Amendments

F12 Regs. 5B-5F inserted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **5**

F16 Words in reg. 5F(1)(a) substituted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/311), regs. 1(1), **4(4)**

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 **[**[F17]six weeks**]** 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 **[**[F17]six weeks**]** 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).

Textual Amendments

F17 Words in reg. 6(1) substituted (1.4.2014) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(2), **5(4)**

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 **[**[F18]six weeks**]** 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 **[**[F18]six weeks**]** from the date on which the employer receives it.

Textual Amendments

F18 Words in reg. 7(1)(3) substituted (1.4.2014) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(2), **5(4)**

8. An employer must, on or after the automatic enrolment date, deduct any contributions payable by the jobholder to the scheme, from [F19]... qualifying earnings or pensionable pay due to the jobholder [F20]....

Textual Amendments

F19 Words in reg. 8 omitted (1.11.2013) by virtue of The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(1), **5(5)(a)**

F20 Words in reg. 8 omitted (1.11.2013) by virtue of The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(1), **5(5)(b)**

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—

[[F21](a) it includes the wording set out in Schedule 1;**]**

[[F21](aa) it includes statements from the jobholder to the effect that the jobholder wishes to opt out of pension saving and understands that, in so doing, the jobholder will lose the right to pension contributions from the employer and may have a lower income upon retirement;**]**

(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 ”.

[[F22](8) Where an employer has accepted as valid an opt out notice prior to the coming into force of the 2013 Regulations, the notice is deemed to be valid on the coming into force of the 2013 Regulations.

(9) In this regulation “the 2013 Regulations” means the Automatic Enrolment (Miscellaneous Amendments) Regulations 2013.**]**

Textual Amendments

F21 Reg. 9(6)(a)(aa) substituted for reg. 9(6)(a) (1.11.2013) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(1), **5(6)(a)**

F22 Reg. 9(8)(9) inserted (1.11.2013) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(1), **5(6)(b)**

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 [F23]... (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 **[**[F24]beginning 3 months before, and ending at the end of the period of 3 months 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 **[**[F24]beginning 3 months before, and ending at the end of the period of 3 months beginning with,**]** the third anniversary of the date chosen for the previous automatic re-enrolment date.

[F25](2) . . . . . .

(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 **[**[F26]the jobholder ceases to be an active member of the 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).

Textual Amendments

F23 Words in reg. 12(1) omitted (1.7.2012) by virtue of The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **21(a)**

F24 Words in reg. 12(1)(a)(b) substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **21(b)**

F25 Reg. 12(2) omitted (1.7.2012) by virtue of The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **21(c)**

F26 Words in reg. 12(3) substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **21(d)**

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 **[**[F27]six weeks**]** 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.

Textual Amendments

F27 Words in reg. 13(2)(a) substituted (1.4.2014) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(2), **5(4)**

Jobholders excluded from automatic re-enrolment

[F28]**14.** . . . . . .

Textual Amendments

F28 Reg. 14 revoked (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **6**

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

[F29]**17.** . . . . . .

Textual Amendments

F29 Reg. 17 revoked (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **6**

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 **[**[F30]six weeks**]** 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 sub-paragraph (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.

Textual Amendments

F30 Words in reg. 18(4)(a) substituted (1.4.2014) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(2), **5(4)**

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

[F31Information to be given to workers

21. At any time before the end of the period of six weeks beginning with the date on which section 7 (jobholder's right to opt in) or section 9 (workers without qualifying earnings) of the Act, as the case may be, first applies to a worker, the employer must give—

(a) the jobholder to whom section 7 applies, in writing, the information described in—

(i) paragraphs 16 and 24 of Schedule 2; or

(ii) paragraphs 18 and 24 of Schedule 2; and

(b) the worker to whom section 9 applies, in writing, the information described in—

(i) paragraphs 17 and 24 of Schedule 2; or

(ii) paragraphs 18 and 24 of Schedule 2.]

Textual Amendments

F31 Reg. 21 substituted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **7**

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 **[**[F32]six weeks**]** 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'.

Textual Amendments

F32 Words in reg. 23(3) substituted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **8**

PART 6

Postponement of automatic enrolment [F33or disapplication of automatic enrolment]

Textual Amendments

F33 Words in Pt. 6 heading inserted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **25**

[F34Prescribed requirements for the purposes of section 4(1), (2) and (3) of the Act

24.—(1) [F35A notice under section 4(1), (2) or (3) of the Act (postponement or disapplication of automatic enrolment) given by an employer to all workers must be in writing and, subject to paragraphs (1A) and (1B), include the information described in paragraphs 18, 20, 21 and 24 of Schedule 2;

(1A) In the case of workers who are jobholders and who are not active members of a qualifying scheme, the notice referred to in paragraph (1) must include the information described in either paragraph 16 or 18 and in paragraphs 20, 21 and 24; and

(1B) In the case of workers who are not jobholders and are not active members of a qualifying scheme, the notice referred to in paragraph (1) must include the information described in either paragraph 17 or 18 and in paragraphs 20, 21 and 24]

F36(2) . . . . . .

(3) For the purposes of section 4(5) of the Act, the prescribed period is the period of [F37six weeks] beginning with the day after the starting day.]

Textual Amendments

F34 Reg. 24 substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **26**

F35 Reg. 24(1)-(1B) substituted for reg. 24(1) (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **9(a)**

F36 Reg. 24(2) omitted (1.4.2015) by virtue of The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **9(b)**

F37 Words in reg. 24(3) substituted (1.4.2014) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(2), **5(7)**

Postponement of the automatic enrolment date

F38**25.** . . . . . .

Textual Amendments

F38 Regs. 25 26 revoked (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **27**

Cases in which automatic enrolment may be postponed

F38**26.** . . . . . .

Textual Amendments

F38 Regs. 25 26 revoked (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **27**

PART 7

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

[[F39]Notice to be given under section 30(3) of the Act

27. Where the employer gives the jobholder the notice mentioned in section 30(3) of the Act (transitional period for defined benefits and hybrid schemes), that notice must—

(a) be in writing;

(b) be given at any time before the end of the period of **[**[F40]six weeks**]** beginning with the employer's first enrolment date; and

(c) include the information described in **[**[F41]paragraphs 16 or 18 and paragraphs 22 and 24**]** of Schedule 2.**]**

Textual Amendments

F39 Reg. 27 substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **28**

F40 Words in reg. 27(b) substituted (1.4.2014) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(2), **5(7)**

F41 Words in reg. 27(c) substituted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **10**

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 **[**[F42]six weeks**]** 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 ".

Textual Amendments

F42 Words in reg. 28(a) substituted (1.4.2014) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(2), **5(4)**

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 **[**[F43]regulation 6(1)**]** substitute—

[[F44]"**(1)].** 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 **[**[F45]six weeks**]** 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;[F46]...

(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 **[**[F45]six weeks**]** 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;**[**[F47] or

(c) the provider of an automatic enrolment scheme which is a personal pension scheme so that before the end of the period of **[**[F48]six weeks**]** beginning with the closure date the jobholder to whom section 3 of the Act applies receives information about the terms and conditions mentioned in paragraph (4)."**]**

[[F49](aa) in regulation 6(2) and (4) for "paragraph (1)(b)" each time it occurs substitute "paragraph (1)(c)"**]**

(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.".

Textual Amendments

F43 Words in reg. 29(a) substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **29(a)**

F44 Word in reg. 29 substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **29(b)**

F45 Words in reg. 29(a) substituted (1.4.2014) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(2), **5(4)**

F46 Word in reg. 29 omitted (1.7.2012) by virtue of The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **29(c)**

F47 Words in reg. 29 inserted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **29(d)**

F48 Words in reg. 29(a) substituted (1.4.2014) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(2), **5(7)**

F49 Reg. 29(aa) inserted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **29(e)**

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.

[F50PART 7A

Certification that a quality or alternative requirement is satisfied

Textual Amendments

F50 Pt. 7A inserted (1.7.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012 (S.I. 2012/1257), regs. 1(2)(a), **4**

Effect of a certificate under section 28 of the Act

32A. Subject to regulation 32H, a scheme to which section 28 of the Act applies is to be taken to satisfy the relevant quality requirement in relation to each of an employer's relevant jobholders

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) of the Act must be given by the employer or by a person who is authorised by the employer to give the certificate on its behalf.

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

(3) A certificate may be given for a certification period of eighteen 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 eighteen 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.

(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 purpose of paragraph (8), "independent trade union" has the meaning given in section 235(1) of the Employment Rights Act 1996.

Form of certificate

32C. A certificate under section 28(1) of the Act 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 of the Employers' Duties (Registration and Compliance) Regulations 2010;

(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 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;

(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) of the Act ("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) of the Act 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 of the Act applies or which is an occupational pension scheme within section 18(b) of the Act, the prescribed alternative requirement is the first, second or third set of requirements below.

(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 the proviso in 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 proviso referred to is that 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 of the Act applies or which is referred to in regulation 32J(1), the prescribed alternative requirement is the first, second or third set of requirements below.

(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 111A of the Pension Schemes Act 1993.

(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 111A of the Pension Schemes Act 1993.

(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

(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 111A of the Pension Schemes Act 1993.

(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 the proviso in 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 above 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 proviso referred to is that 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) of the Act 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) of the Act, 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" substitute "elements of the alternative requirement";

(b) for paragraph (3)(a), substitute—

"(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), substitute—

"(a) the extent to which requirement X is met as a proportion of the minimum rate of employer's contribution specified in 32E(2)(b), (3)(a)(ii) or (4)(b), as the case may be"; and

(d) after paragraph (6) of regulation 43, add—

"(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; and

"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 its 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 (9) and (10), 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 32G) or 32F(4) applied, the condition referred to 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, manager 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 manager 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 though it ended on the last day of the new certification period;

(b) the employer must, within a period of two 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—

(a) "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; and

(b) "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 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) and the second transitional period referred to in section 29(3) of the Act[F51]... there are substituted for the percentages referred to in the provisions in the first column of the table below the percentage shown in the corresponding entry for the transitional period in question.

Provision of Regulations	1st Transitional Period	2nd Transitional Period
Regulations 32E(2)(b) and 32F(2)(b)(ii) (first set of requirements – employer)	2%	3%
Regulations 32E(2)(c) and 32F(3)(b) (first set of requirements –	3%	6%

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

Textual Amendments

F51 Words in reg. 32I(1) omitted (1.4.2014) by virtue of The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2014 (S.I. 2014/715), regs. 1, **2(2)**

Pension schemes based in an EEA State other than the United Kingdom

32J.—(1) Section 28 of the Act applies to a personal pension scheme to which section 26 of the Act does not apply where the operation of the scheme is carried on in an EEA State other than the United Kingdom.

(2) Section 28 of the Act applies to a hybrid scheme that is an occupational pension scheme within section 18(b) of the Act to the extent that the requirements under section 24(1)(a) of the Act as modified by regulation 45(6) apply.

(3) A scheme as referred to in section 28(3A) of the Act 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) of the Act, 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.

Definitions

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 their 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) of the Act;

"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 apply 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.**]**

[[F52]PART 7B

Textual Amendments

F52 Pt. 7B inserted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **11**

Alternative quality requirements: UK defined benefits schemes

Alternative quality requirements for UK defined benefits schemes

32L.—(1) A defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if section 23A(1)(a) of the Act (alternative

quality requirements for UK defined benefits schemes) is satisfied and for the purpose of that section, the scheme is of a prescribed description if the conditions in paragraph (2) are satisfied.

(2) The conditions referred to in paragraph (1) are—

(a) the benefits provided to the member are calculated by reference to factors which include the contributions made to the scheme by, or on behalf or in respect of, the member;

(b) the contributions referred to in sub-paragraph (a) are converted in accordance with the scheme rules, as soon as reasonably practicable and no later than one month after their receipt into the scheme, into a right to an income for life;

(c) the benefits payable to the member under the scheme are payable no later than the member's pensionable age;

(d) following any conversion referred to in sub-paragraph (b), the amount of the member's benefits under the scheme cannot be reduced unless this is at the member's request;

(e) following any valuation of the scheme's assets and determination of its liabilities, the trustees or managers of the scheme have absolute discretion to use any excess assets to increase the benefits of the members in relation to whose contributions the excess assets may be attributed; and

(f) where a member's benefits are increased using the excess assets referred to in sub-paragraph (e), the amount of those benefits cannot be reduced unless this is at the member's request.

(3) For the purposes of paragraph (2)(c), pensionable age is to be determined in accordance with paragraph 1 of Schedule 4 to the Pensions Act 1995 (pensionable ages for men and women).

32M.—(1) A defined benefit scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if section 23A(1)(b) of the Act is satisfied.

(2) Terms defined for the purpose of section 23A have the meanings prescribed in the following paragraphs.

(3) Subject to paragraphs (4)**[**[F53], (5A)**]** and (6), the relevant members are the active members of the defined benefits scheme of which the jobholder is a member.

(4) **[**[F54]Subject to paragraph (5A),**]** where there is or was, as the case may be, a material difference in the cost of providing the benefits accruing for different groups of relevant members over the relevant period by taking into account the criteria under which members accrue or accrued benefits including—

(a) the rate at which benefits accrue or accrued;

(b) the provision of survivor's benefits;

(c) the normal pension age;

(d) the definition of 'pensionable earnings' used by the scheme;

(e) the method of revaluation provided for by Schedule 3 to the 1993 Act (methods of revaluing accrued pension benefits);

(f) the method of an annual increase in the rate of pension provided for under section 51 of the 1995 Act (annual increase in rate of pension) or under the scheme rules;

(g) the maximum pensionable service period;

(h) the calculation of service; and

(i) the terms for retirement before normal pension age,

the relevant members are the active members of each such group.

(5) For the purposes of paragraph (4), whether a difference in cost is a material difference is to be determined by the actuary.

[

[F55](5A) Subject to paragraph (5C), where the conditions in paragraph (5B) are met, the employer of the jobholder may choose, notwithstanding paragraph (4), that the relevant members are the members of the scheme who were active members and in contracted-out employment on the effective date of the most recent written report from an actuary.

(5B) The conditions to be met for the purposes of paragraph (5A) are—

(a) the jobholder was in contracted-out employment on 5th April 2016; and

(b) the rules of the scheme of which the jobholder is a member have not been amended, on or after the coming into force of these Regulations, in any way which would mean that the rules of the scheme would not satisfy the contracting-out requirements if those requirements were still in force.

(5C) Paragraph (5A) applies until the earliest of—

(a) the date the first written report determining whether there is, or was, a material difference in the cost of providing the benefits accruing for different groups of relevant members over the relevant period, taking into account the criteria mentioned in paragraph (4), is signed by an actuary after 5th April 2016;

(b) 5th April 2019.

(5D) For the purposes of paragraph (5A), the effective date of the most recent written report is the date by reference to which the information in that report is stated.**]**

(6) Subject to **[**[F56]paragraphs (4) and (5A)**]**, in the case of a multi-employer scheme, the employer of the jobholder may choose that the relevant members are the active members who are also employed by that employer.

(7) Subject to paragraph (8), the relevant period is—

(a) where the most recent written report signed (including by way of an electronic signature (within the meaning given in section 7(2) of the Electronic Communications Act 2000) by an actuary provides details of the cost of accruals by reference to a period which begins later than the date of that report, that period; and

(b) in any other case, any period of 12 months.

(8) Where, after the date of the report referred to in paragraph (7)(a) or the period referred to in paragraph (7)(b) begins (whether or not it has ended), a change is made to the benefits provided to a relevant member, the relevant period is a period of 12 months commencing with the day on which that change takes effect.

(9) Relevant earnings are the earnings which the scheme uses to determine pensionable earnings provided that they are **[**[F57]equal to or more than**]** the relevant member's—

(a) qualifying earnings;

[[F58](b) basic pay;**]**

(c) [F59]... basic pay and, taking all the relevant members together, the pensionable earnings of those members constitute at least 85 per cent of the earnings of those members in the relevant period;

[[F60](d) earnings; or**]**

(e) basic pay above—

(i) the amount of the lower earnings limit specified for the purposes of section 5(1)(a)(i) of the Social Security Contributions and Benefits Act 1992 (earnings limits and thresholds for Class 1 contributions); or

(ii) the amount of the basic state pension specified in the first figure in section 44(4) of that Act (category A retirement pension).

(10) Subject to paragraph (11), for the purposes of section 23A(1)(b), the prescribed percentage is, in relation to—

(a) paragraph (9)(a) and (c), 10 per cent.;

(b) paragraph (9)(b), 11 per cent.;

(c) paragraph (9)(d), 9 per cent.; and

(d) paragraph (9)(e), 13 per cent..

(11) Where the scheme does not provide pension benefits payable on the death of a relevant member, the respective percentages mentioned in paragraph (10) are to be reduced by 1 per cent.

(12) In this regulation—

"actuary" means an actuary appointed by the scheme or the employer;

"basic pay" means the gross earnings of the relevant member from their employment by the employer, disregarding the gross amount of—

(a) any commission, bonuses, overtime or similar payments;

(b) any shift premium pay, as defined in regulation 32K as if —

(i) "jobholder" read "relevant member"; and

(ii) "within a certification period" and "during the certification period" were omitted; and

(c) any reasonable allowance with respect to—

(i) any duty of the relevant member, such as a duty in connection with the fire or bomb warden, that is ancillary to the main duties of the relevant member's employment;

(ii) the cost of relocation of the relevant member 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 relevant member;

[[F61]"contracted-out employment" has the meaning given in section 8(1) of the 1993 Act (meaning of "contracted-out employment");

"contracting-out requirements" means the requirements set out in section 9 of the 1993 Act (requirements for certification of schemes: general) as they had effect immediately before 6th April 2016;**]**

"multi-employer scheme" means an occupational pension scheme in relation to which there is more than one employer;

"normal pension age" has the meaning given by section 180 of the 1993 Act (normal pension age);

"pensionable earnings" means the gross earnings of the relevant member on which contributions are payable to the pension scheme in question by the employer or the relevant member.**]**

Textual Amendments

F53 Words in reg. 32M(3) inserted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/311), regs. 1(1), 5(2)

F54 Words in reg. 32M(4) inserted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/311), regs. 1(1), 5(3)

F55 Reg. 32M(5A) - (5D) inserted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/311), regs. 1(1), 5(4)

F56 Words in reg. 32M(6) substituted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/311), regs. 1(1), 5(5)

F57 Words in reg. 32M(9) inserted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/311), regs. 1(1), 5(6)(a)

F58 Words in reg. 32M(9)(b) substituted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/311), regs. 1(1), 5(6)(b)

F59 Words in reg. 32M(9)(c) omitted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/311), regs. 1(1), 5(6)(c)

F60 Words in reg. 32M(9)(d) substituted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/311), regs. 1(1), 5(6)(d)

F61 Words in reg. 32M(12) inserted (6.4.2016) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/311), regs. 1(1), 5(7)

PART 8

Existing members of qualifying schemes

Information

[F62]33. . . . . . .

Textual Amendments

F62 Reg. 33 revoked (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **12**

Continuity of scheme membership

[F63]34. . . . . . .

Textual Amendments

F63 Reg. 34 revoked (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **31**

PART 9

Automatic enrolment schemes

Further conditions applicable to automatic enrolment schemes

[[F64]**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 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; **[**[F65]and**]**

[[F65](c) except as provided in paragraph (1A), that the provisions governing any part of an occupational pension scheme or of a personal pension scheme that provides money purchase benefits must not include a provision that allows for—

(i) any amount to be deducted from any payments made to the scheme by or on behalf or in respect of the jobholder;

(ii) any amount to be deducted from any income or capital gain arising from the investment of such payments; or

(iii) the value of the jobholder's rights under the scheme to be reduced by any amount,

where the amount is to be paid to a third party under an agreement between the employer and the third party.**]**

[[F66](1A) Paragraph (1)(c) does not apply where an employer has entered into a legally enforceable agreement with a third party before 10th May 2013 under which an amount is to be paid to the third party in one or more of the ways set out in paragraph (1)(c)(i) to (iii).**]**

(2) For the purposes of this regulation—

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

(a) **[**[F67]paragraph (40) of Article 4(1) of Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;**]**

(b) **[**[F68]paragraph 22 of Article 4 of Directive 2004/39/EC**]**[F68]paragraph 26 of Article 4 of Directive 2014/65/EU**]** of the European Parliament and of the Council on markets in financial instruments;

(c) paragraph 1(h) of Article 2 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; or

(d) **[**[F69]Article 13(10) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);**]**

"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**]**

[[F70]"third party" means any person other than—

(a) the jobholder;

(b) where the scheme is an occupational pension scheme, the trustee or manager of the scheme; or

(c) where the scheme is a personal pension scheme, the provider of the scheme.**]**

Textual Amendments

F64 Reg. 35 substituted (1.7.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012 (S.I. 2012/1257), regs. 1(2)(a), **5**

F65 Reg. 35(1)(c) and word inserted (14.9.2013) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2013 (S.I. 2013/2328), regs. 1(2), **2(2)**

F66 Reg. 35(1A) inserted (14.9.2013) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2013 (S.I. 2013/2328), regs. 1(2), **2(3)**

F67 Words in reg. 35(2) substituted (1.1.2014) by The Capital Requirements Regulations 2013 (S.I. 2013/3115), reg. 1(2), **Sch. 2 para. 74**

F68 Words in reg. 35(2) substituted (29.6.2017 for specified purposes, 3.7.2017 for specified purposes, 31.7.2017 for specified purposes, 3.1.2018 in so far as not already in force) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (S.I. 2017/701), reg. 1(2)(3)(4)(6), **Sch. 5 para. 12** (with reg. 7)

F69 Reg. 35(2)(d) substituted (1.1.2016) by The Solvency 2 Regulations 2015 (S.I. 2015/575), reg. 1(2), **Sch. 2 para. 33(2)**

F70 Words in reg. 35(2) inserted (14.9.2013) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2013 (S.I. 2013/2328), regs. 1(2), **2(4)**

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 **[**[F71]paragraphs (2A) and (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

[[F72](c) a discretionary power may be exercised in the revaluation of such benefits,**]**

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

[[F73](2A) Paragraph (1) does not apply to a scheme with the feature specified in paragraph (2)(b) if—

(a) the funding of the scheme is based 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 of the Pensions Act 2004 (statement of funding principles) or, if the scheme is not required to have such a statement, in an equivalent statement of the scheme's funding plan.**]**

(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 [M7] or, if the scheme is not required to have such a statement, in an equivalent statement of the scheme's funding plan.

[[F74](4) For the purposes of this regulation, the minimum rate on a revaluation of accrued benefits is either—

(a) where a scheme is a scheme established under section 1 of the 2013 Act (schemes for persons in public service) or is a new public body pension scheme as defined in section 30(5) of the 2013 Act (new public body pension schemes), an annual increase or decrease by the relevant percentage for the year by reference to which the revaluation is made; or

(b) in any other case, an annual increase by whichever is the lesser or the least of—

(i) the percentage increase in the retail prices index for the year by reference to which the revaluation is made;

(ii) the percentage increase in the general level of prices for the year by reference to which the revaluation is made; and

(iii) 2.5%.**]**

[[F75](5) **[**[F74]In this regulation—

"the 2013 Act" means the Public Service Pensions Act 2013;

"general level of prices" means the general level of prices in Great Britain determined in such manner as the Secretary of State thinks fit;

"relevant percentage" means—

(a) where the scheme requires revaluation of accrued benefits by reference to a change in prices, the percentage change in prices specified in a Treasury order under section 9(2) of the 2013 Act (revaluation); or

(b) where the scheme requires revaluation of accrued benefits by reference to a change in earnings, the percentage change in earnings specified in a Treasury order under section 9(2) of the 2013 Act;

"retail prices index" means—

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

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

"Treasury order" has the meaning given in section 37 of the 2013 Act (general interpretation).**]**

(6) The Secretary of State shall publish from time to time the manner in which the general level of prices is to be determined.**]**

Textual Amendments

F71 Words in reg. 36(1) substituted (1.4.2014) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2014 (S.I. 2014/715), regs. 1, **2(3)(a)**

F72 Reg. 36(2)(c) substituted (1.11.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) (No. 3) Regulations 2012 (S.I. 2012/2691), regs. 1, **2(2)**

F73 Reg. 36(2A) inserted (1.4.2014) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2014 (S.I. 2014/715), regs. 1, **2(3)(b)**

F74 Reg. 36(4)(5) substituted (1.4.2014) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2014 (S.I. 2014/715), regs. 1, **2(3)(c)**

F75 Reg. 36(5)(6) substituted for reg. 36(5) (1.7.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012 (S.I. 2012/1257), regs. 1(2)(a), **6(b)**

Marginal Citations

M7 2004 c.35.

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 **[**[F76]section 23(1)(c)**]** (test scheme) of the Act.

(2) The following must be satisfied in relation to a test scheme—

(a) the requirements of **[**[F77]section 84**]** (basis of revaluation) of the 1993 Act; and

(b) the requirements of section 51 (annual increase in rate of pension) of the 1995 Act [M8]**[**[F78]in relation to a scheme which provides for a member to be entitled to a pension commencing at the appropriate age and continuing for life**]**.

[[F79](3) For the purposes of paragraph (2)(a)—

(a) a test scheme which falls within section 23(2)(a) of the Act and a test scheme which falls within regulation 39A(2) must satisfy the requirements of section 84 of the 1993 Act by reference to the final salary method; and

(b) a test scheme to which regulation 39A(3) applies must satisfy the requirements of section 84 of the 1993 Act by reference to the average salary method or the final salary method.**]**

Textual Amendments

F76 Words in reg. 37(1) substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **32(a)**

F77 Words in reg. 37(2)(a) substituted (1.11.2013) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(1), **5(8)(a)**

F78 Words in reg. 37(2)(b) added (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **32(b)**

F79 Reg. 37(3) substituted (1.11.2013) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(1), **5(8)(b)**

Marginal Citations

M8 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.

[[F80]Appropriate age

38.—(1) For the purposes of making a relevant determination, the appropriate age prescribed for a member whose pensionable age is over 65 is the age at which the member attains pensionable age.

(2) In this regulation, "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.**]**

Textual Amendments

F80 Reg. 38 and heading substituted (1.11.2013) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(1), **5(9)**

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—

(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 [F81]...;

(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 [M9]; or

(c) in any other circumstances where, by virtue of regulations made under section 47 of the 1995 Act [M10], 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.

Textual Amendments

F81 Words in reg. 39(4)(b)(v) omitted (1.7.2012) by virtue of The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **34**

Marginal Citations

M9 See the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715).

M10 Ibid.

[F82Lump sum test scheme requirements

39A.—(1) For the purposes of section 23(6) of the Act the requirement relating to the sum of money is specified in paragraph (2) in the case of a final salary lump sum test scheme and paragraph (3) in the case of an average salary lump sum test scheme.

(2) The requirement for a final salary lump sum test scheme is that the sum of money to be made available for the provision of benefits to a member amounts to 16% of final pensionable pay, multiplied by the number of years of pensionable service up to a maximum of 40 years.

(3) The requirement for an average salary lump sum test scheme is that either of the requirements specified in paragraph (4) or paragraph (5) is met.

(4) The requirement in this paragraph is that the sum of money to be made available for the provision of benefits to a member amounts to 16% of average annual qualifying earnings during pensionable service multiplied by the number of years of pensionable service up to a maximum of 40 years.

(5) The requirement in this paragraph is that the sum of money to be made available for the provision of benefits to a member amounts to the sum of—

(a) 8% of average annual qualifying earnings during pensionable service multiplied by the number of years of pensionable service up to a maximum of 40 years; plus

(b) during any period in which a member is deferred, an amount equal to an annual increase on accrued rights at 3.5% above any increase that is required by virtue of regulation 37(2)(a).

(6) For the purposes of paragraphs (4) and (5), average annual qualifying earnings are to be calculated on the basis that each year's qualifying earnings are revalued during pensionable service at—

(a) the minimum rate specified in regulation 36(4), where paragraph (4) applies; and

(b) 3.5% above the minimum rate specified in regulation 36(4), where paragraph (5) applies.

(7) In this regulation—

"average salary lump sum test scheme" means a test scheme falling within section 23(2)(b) of the Act under which the sum of money is determined by reference to average qualifying earnings over the period of pensionable service;

"final pensionable pay" means average annual qualifying earnings in the last three tax years preceding the end of pensionable service; and

"final salary lump sum test scheme" means a test scheme falling within section 23(2)(b) of the Act under which the sum of money is determined by reference to final pensionable pay.**]**

Textual Amendments

F82 Reg. 39A and heading substituted (1.11.2013) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(1), **5(10)**

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 **[**[F83]23A**]** of the Act (referred to in relation to hybrid schemes in paragraph (b) of section 24(1) of the Act);

"relevant rule" means any rule made under section 24(2) to (4) of the Act [M11].

Textual Amendments

F83 Word in reg. 40 substituted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **13**

Marginal Citations

M11 The rules are available at www.dwp.gov.uk.

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

[F84]**41.** . . . . . .

Textual Amendments

F84 Regs. 41 42 revoked (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **36**

Modification of test scheme standard: final salary lump sum accruals

[F84]**42.** . . . . . .

Textual Amendments

F84 Regs. 41 42 revoked (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **36**

Modification allowing different quality requirements to be satisfied in aggregate

43.—(1) **[**[F85]Paragraphs (2) to (4)**]** 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;

[[F86](b) all of the paragraph (b) quality requirements are met apart from the relevant benefit requirement ("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;

[[F87](b) the extent to which requirement Y is met as a proportion of—

(i) where the requirement in subsection (4) of section 23 of the Act applies, the annual rate of pension specified in that subsection; or

(ii) where a requirement in paragraph (4), (6) or (7) of regulation 39A applies, the sum of money to be made available for the provision of benefits as specified in the relevant paragraph.**]**

[[F88](5) Where paragraphs (2) to (4) 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.".**]**

[[F88](6) In this regulation, "the relevant benefit requirement" means—

(a) the requirements in subsection (4) of section 23 of the Act where that subsection applies; or

(b) one of the requirements specified in regulation 39A where that regulation applies.**]**

Textual Amendments

F85 Words in reg. 43(1) substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **37(a)**

F86 Reg. 43(3)(b) substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **37(b)**

F87 Reg. 43(4)(b) substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **37(c)**

F88 Reg. 43(5)(6) substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **37(d)**

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 [M12] 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 **[**[F89]23A**]** (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), **[**[F90]sections 21 and 23A 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)".

(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 **[**[F91]23A**]** 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 [M13] 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.

Textual Amendments

F89 Word in reg. 45(3)(a) substituted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **14(a)**

F90 Words in reg. 45(4) substituted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **14(b)**

F91 Word in reg. 45(6)(b) substituted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **14(c)**

Marginal Citations

M12 OJ L 209, 25.7.1998 p.46-49.

M13 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 [M14] 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.

Marginal Citations

M14 OJ L 209, 25.7.1998 p.46-49.

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 **[**[F92]an occupational pension 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 **[**[F92]an occupational pension 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 [M15].

(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 [M16] 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 **[**[F93]any money purchase benefits applicable to the jobholder**]** 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.

Textual Amendments

F92 Words in reg. 47(1)(3) substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **38(a)**

F93 Words in reg. 47(7) substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **38(b)**

Marginal Citations

M15 1988 c.1.

M16 2003 c.1.

[[F94]**Meaning of "provider"**

47A. For the purposes of the definition of "provider" in section 99 of the Act (interpretation of Part) a provider of a personal pension scheme to which section 26 of the Act (quality requirement: UK personal pension schemes) does not apply is a person whose normal business includes the provision of personal pensions.**]**

Textual Amendments

F94 Reg. 47A inserted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **39**

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 [M17] 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) **[**[F95]is—

(a) where the contribution payable on behalf of an active member is paid to the trustees or managers of the scheme by means of an electronic communication, 22 days; or

(b) in any other case, 19 days,

commencing on the day following the last day 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;

[[F96]"electronic communication" has the meaning given in section 15 of the Electronic Communications Act 2000;**]**

"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)**[**[F96], 5(2) or 7(3)**]** 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.".

Textual Amendments

F95 Words in reg. 48 substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **40(a)**

F96 Words in reg. 48 inserted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **40(b)**

Marginal Citations

M17 S.I. 1996/1715. Regulation 16 was amended by S.I. 1997/786 and 2000/679.

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 [M18], substitute—

"**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) **[**[F97]is the period of—

(a) where the contribution payable under the direct payment arrangements is paid to the trustees or managers of the scheme by means of an electronic communication, 22 days; or

(b) in any other case, 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 **[**[F98]an employee**]** 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;

[[F99]"electronic communication" has the meaning given in section 15 of the Electronic Communications Act 2000;**]**

"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)**[**[F99], 5(2) or 7(3)**]** 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.".

Textual Amendments

F97 Words in reg. 49 substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **41(a)**

F98 Words in reg. 49 substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **41(b)**

F99 Words in reg. 49 inserted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **41(c)**

Marginal Citations

M18 S.I. 2000/2692.

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 **[**[F100]22nd**]** 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.

[[F101](3) Where a jobholder becomes an active member of a qualifying scheme or a worker is enrolled pursuant to section 9 of the Act in a scheme which meets the requirements of section 9 of the Act, paragraph (2) does not apply in respect of contributions—

(a) deducted in the 3 month period commencing with the relevant date; or

(b) due but not made in the 3 month period commencing with the relevant date,

in which case paragraph (4) applies.**]**

(4) Where this paragraph applies, "due date" means the **[**[F102]22nd day of the fourth 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 [M19];

"payment schedule" has the meaning given in section 87 (schedules of payments to money purchase schemes) of the 1995 Act [M20];

[[F103]"relevant date" means the date from which active membership is effective.**]**

"schedule of contributions" has the meaning given in section 227(2) of the Pensions Act 2004.

Textual Amendments

F100 Word in reg. 50(2) substituted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), **42**

F101 Reg. 50(3) substituted (1.11.2013) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(1), **5(11)(a)**

F102 Words in reg. 50(4) substituted (1.11.2013) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(1), **5(11)(b)**

F103 Words in reg. 50(7) substituted (1.11.2013) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(1), **5(11)(c)**

Marginal Citations

M19 Section 111A was inserted by the Welfare Reform and Pensions Act 1999, section 9 and amended by section 268 of the Pensions Act 2004.

M20 Section 87 of the 1995 Act has been amended but not in a way material to these Regulations.

[F104PART 15

Special occupations

Textual Amendments

F104 Pt. 15 inserted (1.7.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012 (S.I. 2012/1257), regs. 1(2)(a), **7**

Police members appointed other than under a contract of employment

51.—(1) For the purposes of Part 1 of the Act, a police member who does not hold an appointment under a worker's contract is to be treated as if they were a worker employed by the SPSA under a worker's contract.

(2) In this regulation—

"police member" means a person—

(a) referred to in paragraph 7(2)(c) of Schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006 who is appointed as a police member of the Scottish Crime and Drug Enforcement Agency in accordance with paragraph 7(1) of that Schedule; or

(b) who serves as a member of staff of the SPSA by virtue of paragraph 10(2) of Schedule 1 to that Act; and

"the SPSA" means the Scottish Police Services Authority.

Persons working on vessels

52. The relevant provisions apply, without modification, in relation to a person employed or engaged in any capacity on board a ship as if such a person were a worker for the purposes of those provisions.**]**

[F105PART 16

Review

Textual Amendments

F105 Pt. 16 inserted (1.7.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012 (S.I. 2012/1257), regs. 1(2)(a), **8**

53.—(1) Before the end of the review period, the Secretary of State must—

(a) carry out a review of regulation 52;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by that regulation;

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(3) "Review period" means the period of six years beginning with 1st July 2012.**]**

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

Angela Eagle
Minister of State,

Department for Work and Pensions

[F106Schedule 1

Regulation 9(6)(a)

Information for workers

Textual Amendments

F106 Sch. 1 substituted (1.11.2013) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 (S.I. 2013/2556), regs. 1(1), **5(12)**

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.**]**

[F107SCHEDULE 2

Regulation 2, F108 ... 21, 24 [F109and 27]

Information

Textual Amendments

F107 Sch. 2 inserted (1.7.2012) by The Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 (S.I. 2012/215), regs. 1(2)(c), 43(3), **Sch.**

F108 Word in Sch. 2 omitted (1.4.2015) by virtue of The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **15(a)**

F109 Words in Sch. 2 substituted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **15(a)**

[F110 1. A statement that the jobholder has been, or will be, enrolled into a pension scheme.**]**

Textual Amendments

F110 Sch. 2 para. 1 substituted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **15(c)**

2. 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 by regulation 28 or 29, as the case may be.

[F111]**3.** . . . . . .

Textual Amendments

F111 Sch. 2 para. 3 omitted (1.4.2015) by virtue of The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **15(b)**

4.—(1) The value of any contributions payable to the scheme by the employer and the jobholder in any applicable pay reference period.

(2) The information to be given to the jobholder under sub-paragraph (1) 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 the result of any changes to contributions brought about by the transitional periods for money purchase and personal pension schemes under section 29 of the Act (transitional periods for money purchase and personal pension schemes).

(3) 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.

5. 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.

6. Confirmation as to whether tax relief is or will be given **[**[F112]on employee contributions.**]**

Textual Amendments

F112 Words in Sch. 2 para. 6 substituted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **15(d)**

[F113]**7.** . . . . . .

Textual Amendments

F113 Sch. 2 para. 7 omitted (1.4.2015) by virtue of The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **15(b)**

8. A statement that the jobholder has the right to opt out of the scheme during the opt out period.

9. A statement indicating the start and end dates of the opt out period applicable to the jobholder if that information is known to the employer but if not, a statement that the opt out period is the period determined in accordance with regulation 9(2) or (3) of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.

10. Where the opt out notice may be obtained.

11. 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.

12. 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.

13. 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.

14. A statement that, after the opt out period, the jobholder may cease to make contributions in accordance with scheme rules.

15. 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 of the Act (automatic re-enrolment).

16. A statement that the jobholder may, by giving written notice to the employer, require the employer to make arrangements for the jobholder to become an active member of an automatic enrolment scheme and that the jobholder will be entitled to employer's contributions.

17. A statement that the worker may, where they are working or ordinarily work in Great Britain and are aged at least 16 and under 75 and are not a member of a pension scheme that satisfies the requirements of section 9 of the Act, by giving written notice to the employer, require the employer to make arrangements for the worker to become an active member of such a pension scheme.

[[F114]**18.** A statement that by giving written notice to the employer, the worker who is aged at least 16 and under 75 and—

(a) who earns more than the lower qualifying earnings limit as specified in section 13(1)(a) of the Act (and the amount must be specified in the statement) and is not an active member of a qualifying scheme, may require the employer to arrange for that worker to become an active member of an automatic enrolment scheme and will be entitled to employer's contributions; or

(b) who earns no more than the lower qualifying earnings limit as specified in section 13(1)(a) of the Act (and the amount must be specified in the statement) and is not a member of a pension scheme that satisfies the requirements of section 9 of the Act, may require the employer to arrange for that worker to become an active member of such a pension scheme but will not be entitled to employer's contributions.**]**

Textual Amendments

F114 Sch. 2 para. 18 substituted (1.4.2015) by The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **15(e)**

[F115]**19.** . . . . . .

Textual Amendments

F115 Sch. 2 para. 19 omitted (1.4.2015) by virtue of The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **15(b)**

20. A statement that the employer has deferred automatic enrolment until the deferral date (and the date must be given).

21. A statement that the employer will automatically enrol the worker into an automatic enrolment scheme if, on the deferral date, the worker is aged 22 or more but less than state pension age, is working or ordinarily works in Great Britain, earnings of more than the amount specified in section 3(1)(c) of the Act (and the amount must be given) are payable to the worker and the worker is not already an active member of a qualifying scheme.

22. A statement that the employer intends to defer automatic enrolment in respect of that jobholder until the end of the transitional period for defined benefit and hybrid schemes.

[F116]**23.** . . . . . .

Textual Amendments

F116 Sch. 2 para. 23 omitted (1.4.2015) by virtue of The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **15(b)**

24. A statement that a written notice from the worker must be signed by the worker or, if it is given by means of an electronic communication, must include a statement that the worker personally submitted the notice.**]**

[F117]**25.** . . . . . .

Textual Amendments

F117 Sch. 2 para. 25 omitted (1.4.2015) by virtue of The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 (S.I. 2015/501), regs. 1, **15(b)**

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 prescribed 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.

Status:
Point in time view as at 03/07/2017.

Changes to legislation:
There are currently no known outstanding effects for the The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.