

STATUTORY INSTRUMENTS

2010 No. 772

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

[^{F1}PART 7B

Textual Amendments

F1 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)^{F2}, (5A)] and (6), the relevant members are the active members of the defined benefits scheme of which the jobholder is a member.

(4) [^{F3}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.

[
^{F4}(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 [^{F5}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 [^{F6}equal to or more than] the relevant member's—
- (a) qualifying earnings;
 - [^{F7}(b) basic pay;]
 - (c) ^{F8}... 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;
 - [^{F9}(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;

[^{F10}“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

- F2** 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)
- F3** 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)
- F4** 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)
- F5** 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)
- F6** 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)
- F7** 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)
- F8** 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)
- F9** 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)
- F10** 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)

Changes to legislation:

There are currently no known outstanding effects for the The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010, PART 7B.