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STATUTORY INSTRUMENTS

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**2013 No. 2556**

**The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013**

**Amendment of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010**

5.—(1) The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(1) are amended as follows.

(2) For regulation 4 (pay reference periods for the purposes of sections 1(1)(c), 3(1)(c) and 5(1)(c) of the Act) substitute—

“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

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(1) [S.I. 2010/772](#). [S.I. 2010/772](#) was amended by [S.I. 2012/215](#) and [S.I. 2012/1257](#). Other amendments have been made which are not relevant to these Regulations.

(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).”.

(3) For regulation 5 (pay reference periods for the purposes of section 20(1)(b) and (c) and section 26(4)(b) and (5)(b) of the Act) substitute—

“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.”.
- (4) In regulations 6(1), 7(1) and (3), 13(2)(a), 17(1), 18(4)(a), 21(1), the substituted regulation 6(3) in regulation 28(a) and the substituted paragraph (1)(a) and (b) in regulation 29(a), in each place in which it occurs for “one month” substitute “six weeks”.
- (5) In regulation 8 (arrangements to achieve active membership)—
  - (a) before “qualifying earnings” omit “any”; and
  - (b) omit “in any applicable pay reference period”.
- (6) In regulation 9 (opting out)—

- (a) for paragraph (6)(a) substitute—
  - “(a) it includes the wording set out in Schedule 1;
  - (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;”; and
- (b) after paragraph (7) insert—
  - “(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.”
- (7) In regulations 24(3), 27(b) and the substituted paragraph (1)(c) in regulation 29(a), in each place in which it occurs for “1 month” substitute “six weeks”.
- (8) In regulation 37 (test scheme: requirements to revalue accrued benefits and increase pensions in payment)—
  - (a) in paragraph (2)(a) for “section 84(1)” substitute “section 84”; and
  - (b) for paragraph (3) substitute—
    - “(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.”.
- (9) For regulation 38 (staged increase in appropriate age) and the heading immediately before it substitute—

**“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.”.
- (10) For regulation 39A (requirement for satisfying the test scheme under section 23(2)(b) of the Act) and the heading immediately before it substitute—

**“Lump 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.”.

(11) In regulation 50 (due date for the purposes of section 37(3) of the Act)—

(a) for paragraph (3) substitute—

“(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.”.

(b) in paragraph (4) for the words “last day” to the end substitute “22nd day of the fourth month after the month which includes the relevant date.”; and

(c) in paragraph (7) for the definition of “relevant date” substitute—

““relevant date” means the date from which active membership is effective.”.

(12) For Schedule 1 substitute—

“SCHEDULE 1

Regulation 9(6)(a)

Information for workers

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](http://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.”.