
STATUTORY INSTRUMENTS

2015 No. 501

**The Occupational and Personal Pension Schemes
(Automatic Enrolment) (Amendment) Regulations 2015**

Insertion of regulations 5B to 5F

5. After regulation 5A(1) (exemption of European employers) insert—

“Notice of termination of employment

5B.—(1) This regulation applies, subject to paragraph (3), where notice of termination of a worker’s(2) 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of employment of that jobholder has been given (and the jobholder and the employer have not agreed that such notice is withdrawn)”.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of employment of that worker has been given (and the worker and the employer have not agreed that such notice is withdrawn)”.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and employer agree that the notice of termination of the jobholder’s employment referred to in this regulation is withdrawn, paragraphs (1) and (2) cease to apply on the date of that agreement and, subject to paragraph (4), for the purposes of sections 3(2) and 5(2) of the Act, as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.

(1) Regulation 5A was inserted by [S.I. 2012/1477](#).

(2) A ‘worker’ includes a jobholder. *See* section 1 of the Pensions Act 2008.

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.

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⁽³⁾;
- (b) paragraph 14 of Schedule 18 to the Finance Act 2011⁽⁴⁾(fixed protection 2012);
- (c) paragraph 1 of Schedule 22 to the Finance Act 2013⁽⁵⁾ (fixed protection 2014);
- (d) paragraph 1 of Schedule 6 to the Finance Act 2014⁽⁶⁾ (individual protection 2014).

(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”.

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(7) 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

(3) 2004 c. 12. Paragraph 12 was amended by the Finance Act 2005 (c. 7), Schedule 10, paragraph 53(3) to (6); the Finance Act 2007 (c. 11), Schedule 20, paragraph 17, and Schedule 27, Part 3(2); the Equality Act 2010 (c. 15), Schedule 26, Part 1, paragraph 59; and the Corporation Tax Act 2010 (c. 4), Schedule 1, paragraph 432(2).

(4) 2011 c. 11. Paragraph 14 was amended by the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Amendment) Regulations (S.I. 2013/1740), regulation 2(2) to (5); and the Finance Act 2013 (c. 29), section 47(2).

(5) 2013 c. 29.

(6) 2014 c. 26.

(7) Paragraph 10 was amended by the Finance Act 2007, Schedule 20, paragraph 12 and Schedule 27, Part 3(2); and the Finance Act 2011, Schedule 16, paragraph 30 and Schedule 18, paragraph 5.

- (c) since the winding-up lump sum was paid, the worker has ceased to be employed and been re-employed by that person.
- (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.

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 or 5E, 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.”.