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*Changes to legislation: Pensions Act 2008, Chapter 1 is up to date with all changes known to be in force on or before 29 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*



# Pensions Act 2008

## 2008 CHAPTER 30

### PART 1

#### PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

### CHAPTER 1

#### EMPLOYERS' DUTIES

VALID FROM 30/06/2012

#### *Jobholders*

#### **1 Jobholders**

- (1) For the purposes of this Part a jobholder is a worker—
  - (a) who is working or ordinarily works in Great Britain under the worker's contract,
  - (b) who is aged at least 16 and under 75, and
  - (c) to whom qualifying earnings are payable by the employer in the relevant pay reference period (see sections 13 and 15).
- (2) Where a jobholder has more than one employer, or a succession of employers, this Chapter applies separately in relation to each employment.
- (3) Accordingly—
  - (a) references to the employer are references to the employer concerned;
  - (b) references to membership of a pension scheme are references to membership in relation to the employment concerned.

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## Employers' duties

### 2 Continuity of scheme membership

- (1) If a jobholder is an active member of a qualifying scheme, the employer must not take any action, or make any omission, by which (without the jobholder ceasing to be employed by the employer)—
  - (a) the jobholder ceases to be an active member of the scheme, or
  - (b) the scheme ceases to be a qualifying scheme.
- (2) Subsection (1) is not contravened if the jobholder remains an active member of another qualifying scheme.
- [<sup>F1</sup>(3) Subsection (1) is not contravened if by virtue of section 5 the jobholder becomes an active member of an automatic enrolment scheme with effect from—
  - (a) the day after the cessation referred to in paragraph (a) or (b) of subsection (1), or
  - (b) a day within the prescribed period (if a period is prescribed).]
- (4) Subsection (1) is not contravened if the action or omission is at the jobholder's request.
- (5) In this Part as it applies in the case of any jobholder, references to a qualifying scheme are references to a pension scheme which is a qualifying scheme in relation to that jobholder (see section 16).

#### Textual Amendments

- F1** S. 2(3) substituted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 4\(1\)](#), [38\(1\)\(4\)](#); [S.I. 2012/1681](#), [art. 2\(1\)\(a\)](#)

#### Modifications etc. (not altering text)

- C1** S. 2(1): Power to exclude conferred (3.11.2011) by [Pensions Act 2004 \(c. 35\)](#), [s. 292A](#) (as inserted by [Pensions Act 2011 \(c. 19\)](#), [ss. 18](#), [38\(1\)](#))
- C2** S. 2(1) excluded (2.7.2012) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) Regulations 2010 \(S.I. 2010/772\)](#), [regs. 1\(1\)](#) (as amended by [S.I. 2012/1257](#), [reg. 3\(b\)](#)) and 5A (as inserted by [S.I. 2012/1477](#), [regs. 1, 2](#))

#### Commencement Information

- II** S. 2 wholly in force at 30.6.2012; s. 2 in force for certain purposes at Royal Assent see [s. 149\(2\)\(k\)](#); s. 2 in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682](#), [art. 2\(1\)\(2\)\(a\)](#), [Sch. 1](#)

### 3 Automatic enrolment

- [<sup>F2</sup>(1) This section applies to a jobholder—
  - (a) who is aged at least 22,
  - (b) who has not reached pensionable age, and
  - (c) to whom earnings of more than £7,475 are payable by the employer in the relevant pay reference period (see section 15).]
- (2) The employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date.

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- (3) Subsection (2) does not apply if the jobholder was an active member of a qualifying scheme on the automatic enrolment date.
- (4) Subsection (2) does not apply if, within the prescribed period before the automatic enrolment date, the jobholder ceased to be an active member of a qualifying scheme because of any action or omission by the jobholder.
- (5) For the purposes of arrangements under subsection (2) regulations may require information to be provided to any person by the employer or—
- (a) where the arrangements relate to an occupational pension scheme, the trustees or managers of the scheme;
  - (b) where the arrangements relate to a personal pension scheme, the provider of the scheme.
- (6) For the purposes of arrangements made under subsection (2) in relation to a personal pension scheme, regulations may deem an agreement to exist (subject to section 8) between the jobholder and the provider of the scheme for the jobholder to be an active member of the scheme on terms and conditions determined in accordance with the regulations.
- [<sup>F3</sup>(6A) In this section “earnings” has the meaning given in section 13(3).
- (6B) In the case of a pay reference period of less or more than 12 months, subsection (1) applies as if the amount in paragraph (c) were proportionately less or more.]
- (7) The automatic enrolment date, in relation to any person, is the first day on which this section applies to the person as a jobholder of the employer. [<sup>F4</sup>This is subject to section 4.]
- (8) In this Part as it applies in the case of any jobholder, references to an automatic enrolment scheme are references to a pension scheme which is an automatic enrolment scheme in relation to that jobholder (see section 17).

#### Textual Amendments

- F2** S. 3(1) substituted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\), ss. 5\(1\), 38\(1\)\(4\); S.I. 2012/1681, art. 2\(2\)\(a\)](#)
- F3** S. 3(6A)(6B) inserted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\), ss. 5\(2\), 38\(1\)\(4\); S.I. 2012/1681, art. 2\(2\)\(a\)](#)
- F4** Words in s. 3(7) inserted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\), ss. 6\(1\), 38\(1\)\(4\); S.I. 2012/1681, art. 2\(1\)\(b\)](#)

#### Modifications etc. (not altering text)

- C3** S. 3(2): Power to exclude conferred (3.11.2011) by [Pensions Act 2004 \(c. 35\), s. 292A](#) (as inserted by [Pensions Act 2011 \(c. 19\), ss. 18, 38\(1\)](#))

#### Commencement Information

- I2** S. 3 wholly in force at 30.6.2012; s. 3 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 3 in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682, art. 2\(1\)\(2\)\(a\), Sch. 1](#)

### [<sup>F5</sup>4 Postponement or disapplication of automatic enrolment

- (1) Where—

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- (a) an employer (E) gives to a person employed by E on E's staging date ("the worker") notice that E intends to defer automatic enrolment for the worker until a date specified in the notice ("the deferral date"), and
- (b) any prescribed requirements in relation to the notice are met,
- the worker's automatic enrolment date is the deferral date if on that date section 3 applies to the worker as a jobholder of E; if not, subsection (4) applies.
- (2) Where—
- (a) a person ("the worker") begins to be employed by an employer (E) after E's staging date,
- (b) E gives the worker notice that E intends to defer automatic enrolment until a date specified in the notice ("the deferral date"), and
- (c) any prescribed requirements in relation to the notice are met,
- the worker's automatic enrolment date is the deferral date if on that date section 3 applies to the worker as a jobholder of E; if not, subsection (4) applies.
- (3) Where—
- (a) a person ("the worker") employed by an employer (E) becomes, after E's staging date, a jobholder to whom section 3 applies,
- (b) E gives the worker notice that E intends to defer automatic enrolment until a date specified in the notice ("the deferral date"), and
- (c) any prescribed requirements in relation to the notice are met,
- the worker's automatic enrolment date is the deferral date if on that date section 3 applies to the worker as a jobholder of E; if not, subsection (4) applies.
- (4) Where this subsection applies, section 3(2) does not apply in relation to any employment of the worker by E in the period beginning with the starting day and ending with the deferral date.
- (5) A notice under this section may be given on or before the starting day or within a prescribed period after that day.
- (6) The deferral date may be any date in the period of three months after the starting day.
- (7) An employer who gives a worker a notice under subsection (1) or (2) may not give the worker a notice under subsection (3) in relation to any occasion on or before the deferral date specified in the notice on which the worker becomes a jobholder to whom section 3 applies.
- (8) In this section—
- “staging date”, in relation to an employer of a particular description, means the date prescribed under section 12 in relation to employers of that description;
- “starting day” means—
- (a) E's staging date, in the case of a notice under subsection (1);
- (b) the day on which the worker begins to be employed by E, in the case of a notice under subsection (2);
- (c) the day on which the worker becomes a jobholder to whom section 3 applies, in the case of a notice under subsection (3).]

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#### Textual Amendments

- F5** S. 4 substituted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 6\(2\)](#), [38\(1\)\(4\)](#); [S.I. 2012/1681](#), [art. 2\(1\)\(b\)](#)

#### Commencement Information

- I3** S. 4 (as originally enacted) in force for certain purposes at Royal Assent see [s. 149\(2\)\(k\)](#)

## 5 Automatic re-enrolment

- [<sup>F6</sup>(1) This section applies to a jobholder—
- (a) who is aged at least 22,
  - (b) who has not reached pensionable age, and
  - (c) to whom earnings of more than £7,475 are payable by the employer in the relevant pay reference period (see section 15).]

- [<sup>F7</sup>(1A) This section also applies to a jobholder who—
- (a) is aged at least 22,
  - (b) has not reached pensionable age, and
  - (c) is not an active member of a qualifying scheme because there has been a period beginning at any time after the jobholder's automatic enrolment date during which the requirements of section 1(1)(a) or (c) were not met (so that the person was not a jobholder for that period).

- (1B) This section also applies to a jobholder who has ceased to be an active member of a qualifying scheme because of something other than an action or omission by the jobholder.]

- (2) The employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic re-enrolment date.

- (3) Subsection (2) does not apply if the jobholder was an active member of a qualifying scheme on the automatic re-enrolment date.

- [<sup>F8</sup>(4) Regulations may provide for subsection (2) not to apply in relation to a jobholder who in prescribed circumstances—

- (a) has ceased to be an active member of a qualifying scheme because of any action or omission by the jobholder, or by the employer at the jobholder's request, or
- (b) is treated as not being an active member of a qualifying scheme because the jobholder has given notice under section 8.]

- (5) <sup>F9</sup> .....

- (6) For the purposes of arrangements under subsection (2) regulations may require information to be provided to any person by the employer or—

- (a) where the arrangements relate to an occupational pension scheme, the trustees or managers of the scheme;
- (b) where the arrangements relate to a personal pension scheme, the provider of the scheme.

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(7) For the purposes of arrangements made under subsection (2) in relation to a personal pension scheme, regulations may deem an agreement to exist (subject to section 8) between the jobholder and the provider of the scheme for the jobholder to be an active member of the scheme on terms and conditions determined in accordance with the regulations.

[<sup>F10</sup>(7A) In this section “earnings” has the meaning given in section 13(3).

(7B) In the case of a pay reference period of less or more than 12 months, subsection (1) applies as if the amount in paragraph (c) were proportionately less or more.]

(8) Automatic re-enrolment dates are dates <sup>F11</sup>. . . that are to be determined in accordance with regulations.

#### Textual Amendments

- F6** S. 5(1) substituted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\), ss. 5\(3\), 38\(1\)\(4\); S.I. 2012/1681, art. 2\(2\)\(a\)](#)
- F7** S. 5(1A)(1B) inserted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\), ss. 4\(2\), 38\(1\)\(4\); S.I. 2012/1681, art. 2\(1\)\(a\)](#)
- F8** S. 5(4) substituted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\), ss. 4\(3\), 38\(1\)\(4\); S.I. 2012/1681, art. 2\(1\)\(a\)](#)
- F9** S. 5(5) omitted (3.11.2011 for specified purposes otherwise 30.6.2012) by virtue of [Pensions Act 2011 \(c. 19\), ss. 6\(3\), 38\(1\)\(4\); S.I. 2012/1681, art. 2\(1\)\(b\)](#)
- F10** S. 5(7A)(7B) inserted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\), ss. 5\(4\), 38\(1\)\(4\); S.I. 2012/1681, art. 2\(2\)\(a\)](#)
- F11** Words in s. 5(8) omitted (3.11.2011 for specified purposes otherwise 30.6.2012) by virtue of [Pensions Act 2011 \(c. 19\), ss. 4\(4\), 38\(1\)\(4\); S.I. 2012/1681, art. 2\(1\)\(a\)](#)

#### Modifications etc. (not altering text)

- C4** S. 5(2): Power to exclude conferred (3.11.2011) by [Pensions Act 2004 \(c. 35\), s. 292A](#) (as inserted by [Pensions Act 2011 \(c. 19\), ss. 18, 38\(1\)](#))

#### Commencement Information

- I4** S. 5 wholly in force at 30.6.2012; s. 5 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 5 in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682, art. 2\(1\)\(2\)\(a\), Sch. 1](#)

## 6 Timing of automatic re-enrolment

(1) Regulations under section 5(8) must either—

- (a) secure that for any jobholder there is no automatic re-enrolment date less than three years after the jobholder's automatic enrolment date, and that there is not more than one automatic re-enrolment date in any period of three years, or
- (b) secure that for any employer there is not more than one automatic re-enrolment date in any period of [<sup>F12</sup>2 years and 9 months].

(2) Subsection (1) does not restrict the provision that regulations may make about the timing of a jobholder's automatic re-enrolment date (“the relevant date”) in the following cases.

(3) <sup>F13</sup> . . . . .

(4) The [<sup>F14</sup>first case] is where—

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- (a) <sup>F15</sup> . . . the jobholder ceases to be an active member of a qualifying scheme <sup>F16</sup> . . . ,
  - (b) that event is not the effect of any action or omission by the jobholder <sup>F17</sup> . . . , and
  - (c) the relevant date is the jobholder's first automatic re-enrolment date after that [<sup>F18</sup>event].
- (5) The [<sup>F19</sup>second case] is where—
- (a) there is a period beginning at any time after the jobholder's automatic enrolment date during which the requirements of section 1(1)(a) or (c) are not met (so that the person is not a jobholder for that period), and
  - (b) the relevant date is the jobholder's first automatic re-enrolment date after that period.
- (6) <sup>F13</sup> . . . . .

#### Textual Amendments

- F12** Words in s. 6(1)(b) substituted (3.11.2011 for specified purposes otherwise prosp.) by [Pensions Act 2011 \(c. 19\)](#), [ss. 7, 38\(1\)\(4\)](#)
- F13** S. 6(3)(6) omitted (3.11.2011 for specified purposes otherwise 30.6.2012) by virtue of [Pensions Act 2011 \(c. 19\)](#), [ss. 6\(4\)\(a\), 38\(1\)\(4\)](#); S.I. 2012/1681, [art. 2\(1\)\(b\)](#)
- F14** Words in s. 6(4) substituted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 6\(4\)\(b\), 38\(1\)\(4\)](#); S.I. 2012/1681, [art. 2\(1\)\(b\)](#)
- F15** Words in s. 6(4)(a) omitted (3.11.2011 for specified purposes otherwise 30.6.2012) by virtue of [Pensions Act 2011 \(c. 19\)](#), [ss. 4\(5\)\(a\), 38\(1\)\(4\)](#); S.I. 2012/1681, [art. 2\(1\)\(a\)](#)
- F16** Words in s. 6(4)(a) omitted (3.11.2011 for specified purposes otherwise 30.6.2012) by virtue of [Pensions Act 2011 \(c. 19\)](#), [ss. 4\(5\)\(b\), 38\(1\)\(4\)](#); S.I. 2012/1681, [art. 2\(1\)\(a\)](#)
- F17** Words in s. 6(4)(b) omitted (3.11.2011 for specified purposes otherwise 30.6.2012) by virtue of [Pensions Act 2011 \(c. 19\)](#), [ss. 4\(5\)\(c\), 38\(1\)\(4\)](#); S.I. 2012/1681, [art. 2\(1\)\(a\)](#)
- F18** Words in s. 6(4)(c) substituted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 4\(5\)\(d\), 38\(1\)\(4\)](#); S.I. 2012/1681, [art. 2\(1\)\(a\)](#)
- F19** Words in s. 6(5) substituted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 6\(4\)\(c\), 38\(1\)\(4\)](#); S.I. 2012/1681, [art. 2\(1\)\(b\)](#)

#### Commencement Information

- I5** S. 6 wholly in force at 30.6.2012; s. 6 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 6 in force so far as not already in force at 30.6.2012 by S.I. 2012/1682, [art. 2\(1\)\(2\)\(a\)](#), Sch. 1

## 7 Jobholder's right to opt in

- (1) This section applies to a jobholder who is not an active member of a qualifying scheme.
- (2) But it does not apply at a time when—
  - (a) arrangements are required to be made under section 3 or 5 in respect of the jobholder, <sup>F20</sup> . . .
  - (b) <sup>F20</sup> . . . . .
- (3) The jobholder may by notice require the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme.
- (4) The Secretary of State may by regulations make provision—

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- (a) about the form and content of the notice;
  - (b) about the arrangements that the employer is required to make;
  - (c) for determining the date with effect from which the jobholder is to become an active member under the arrangements.
- (5) For the purposes of arrangements under subsection (3) regulations may require information to be provided to any person by the employer or—
- (a) where the arrangements relate to an occupational pension scheme, the trustees or managers of the scheme;
  - (b) where the arrangements relate to a personal pension scheme, the provider of the scheme.
- (6) For the purposes of arrangements made under subsection (3) in relation to a personal pension scheme, regulations may deem an agreement to exist (subject to section 8) between the jobholder and the provider of the scheme for the jobholder to be an active member of the scheme on terms and conditions determined in accordance with the regulations.
- (7) Subsections (8) and (9) apply where a jobholder becomes an active member of an automatic enrolment scheme in pursuance of a notice under this section and, within the period of 12 months beginning with the day on which that notice was given—
- (a) ceases to be an active member of that scheme, and
  - (b) gives the employer a further notice under this section.
- (8) The further notice does not have effect to require the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme.
- (9) But any arrangements the employer makes for the jobholder to become, within that period, an active member of such a scheme must be made in accordance with regulations under this section.

#### Textual Amendments

**F20** S. 7(2)(b) and preceding word omitted (3.11.2011 for specified purposes otherwise 30.6.2012) by virtue of [Pensions Act 2011 \(c. 19\)](#), [ss. 6\(5\)](#), [38\(1\)\(4\)](#); S.I. 2012/1681, [art. 2\(1\)\(b\)](#)

#### Modifications etc. (not altering text)

**C5** S. 7(3): Power to exclude conferred (3.11.2011) by [Pensions Act 2004 \(c. 35\)](#), [s. 292A](#) (as inserted by [Pensions Act 2011 \(c. 19\)](#), [ss. 18](#), [38\(1\)](#))

**C6** S. 7(3) excluded (2.7.2012) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) Regulations 2010 \(S.I. 2010/772\)](#), [regs. 1\(1\)](#) (as amended by S.I. 2012/1257, [reg. 3\(b\)](#)) and 5A (as inserted by S.I. 2012/1477, [regs. 1](#), [2](#))

#### Commencement Information

**I6** S. 7 wholly in force at 30.6.2012; s. 7 in force for certain purposes at Royal Assent see [s. 149\(2\)\(k\)](#); s. 7 in force so far as not already in force at 30.6.2012 by S.I. 2012/1682, [art. 2\(1\)\(2\)\(a\)](#), [Sch. 1](#)

## 8 Jobholder's right to opt out

- (1) This section applies on any occasion when arrangements under section 3(2), 5(2) or 7(3) apply to a jobholder (arrangements for the jobholder to become an active member of an automatic enrolment scheme).



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- (2) If the jobholder gives notice under this section—
- (a) the jobholder is to be treated for all purposes as not having become an active member of the scheme on that occasion;
  - (b) any contributions paid by the jobholder, or by the employer on behalf or in respect of the jobholder, on the basis that the jobholder has become an active member of the scheme on that occasion must be refunded in accordance with prescribed requirements.
- (3) Regulations under subsection (2)(b) may, in particular, make provision about—
- (a) the time within which contributions must be refunded;
  - (b) how the amount to be refunded is calculated;
  - (c) the procedure for refunding contributions.
- (4) The Secretary of State may by regulations make further provision in relation to notices under this section.
- (5) The regulations may in particular make provision—
- (a) as to the form and content of a notice;
  - (b) as to the period within which a notice must be given;
  - (c) as to the person to whom a notice must be given;
  - (d) requiring any person to make prescribed arrangements for enabling notices to be given;
  - (e) requiring any person to take prescribed action in consequence of a notice (in addition to any action prescribed under subsection (2)(b)).
- (6) The regulations must provide for the notice—
- (a) to include information about the effect in relation to jobholders of giving notice under this section, and
  - (b) to be signed or otherwise authorised by the jobholder.

#### Commencement Information

- I7** S. 8 wholly in force at 30.6.2012; s. 8 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 8 in force so far as not already in force at 30.6.2012 by S.I. 2012/1682, art. 2(1)(2)(a), Sch. 1

### *Duty in relation to workers without qualifying earnings*

## **9 Workers without qualifying earnings**

- (1) This section applies to a worker—
- (a) to whom paragraphs (a) and (b) of section 1(1) apply (working in Great Britain and aged between 16 and 75),
  - (b) to whom paragraph (c) of section 1(1) does not apply (qualifying earnings), and
  - (c) who is not an active member of a pension scheme that satisfies the requirements of this section.
- (2) The worker may by notice require the employer to arrange for the worker to become an active member of a pension scheme that satisfies the requirements of this section.

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- (3) The Secretary of State may by regulations make provision—
- (a) about the form and content of the notice;
  - (b) about the arrangements that the employer is required to make;
  - (c) for determining the date with effect from which the worker is (subject to compliance with any requirements of the scheme) to become an active member under the arrangements.
- (4) Subsections (5) and (6) apply where a worker becomes an active member of a pension scheme in pursuance of a notice under this section and, within the period of 12 months beginning with the day on which that notice was given—
- (a) ceases to be an active member of that scheme because of any action or omission by the worker, and
  - (b) gives the employer a further notice under this section.
- (5) The further notice does not have effect to require the employer to arrange for the worker to become an active member of a pension scheme.
- (6) But any arrangements the employer makes for the worker to become, within that period, an active member of a pension scheme that satisfies the requirements of this section must be made in accordance with regulations under this section.
- (7) A pension scheme satisfies the requirements of this section if—
- (a) it is registered under Chapter 2 of Part 4 of the Finance Act 2004 (c. 12), and
  - (b) in the case of a personal pension scheme, there are, in relation to the worker concerned, direct payment arrangements (within the meaning of section 111A of the Pension Schemes Act 1993 (c. 48)) between the worker and the employer.

**Modifications etc. (not altering text)**

- C7** S. 9(2): Power to exclude conferred (3.11.2011) by [Pensions Act 2004 \(c. 35\), s. 292A](#) (as inserted by [Pensions Act 2011 \(c. 19\), ss. 18, 38\(1\)](#))
- C8** S. 9(2) excluded (2.7.2012) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) Regulations 2010 \(S.I. 2010/772\), regs. 1\(1\)](#) (as amended by [S.I. 2012/1257, reg. 3\(b\)](#)) and [5A](#) (as inserted by [S.I. 2012/1477, regs. 1, 2](#))

**Commencement Information**

- I8** S. 9 wholly in force at 30.6.2012; s. 9 in force for certain purposes at Royal Assent see [s. 149\(2\)\(k\)](#); s. 9 in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682, art. 2\(1\)\(2\)\(a\)](#), [Sch. 1](#)

*Supplementary provision about the duties*

**10 Information to be given to workers**

- (1) The Secretary of State must make provision by regulations—
- (a) for all jobholders to be given information about the effect of sections 2 to 8 in relation to them;
  - (b) for all workers to whom section 9 applies to be given information about the effect of that section in relation to them;
  - (c) for a prescribed person to be required to provide the information.

*Status: Point in time view as at 03/11/2011. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Pensions Act 2008, Chapter 1 is up to date with all changes known to be in force on or before 29 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) Regulations under this section must state—
- (a) what information must be given;
  - (b) in what circumstances it must be given;
  - (c) how and when it must be given.

#### Commencement Information

- I9** S. 10 wholly in force at 30.6.2012; s. 10 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 10 in force so far as not already in force at 30.6.2012 by S.I. 2012/1682, art. 2(1)(2)(a), Sch. 1

## 11 Information to be given to the Pensions Regulator

- (1) The Secretary of State may make regulations requiring employers to provide the Pensions Regulator (“the Regulator”) with information about action they have taken or intend to take for the purposes of any provision of, or of regulations under, sections 2 to 10.
- (2) The regulations may in particular—
- (a) require an employer to provide information about pension schemes to which any action relates;
  - (b) require an employer to identify which of any prescribed descriptions a scheme falls within;
  - (c) require an employer to provide information that appears to the Secretary of State to be required for the performance by the Regulator of its functions under Chapter 2 of this Part;
  - (d) make provision about how and in what form any information is to be provided.

#### Commencement Information

- I10** S. 11 partly in force; s. 11 in force for certain purposes at Royal Assent see s. 149(2)(k)

## 12 Introduction of employers' duties

The Secretary of State may by regulations provide that sections 2 to 9 do not apply in the case of an employer of any description until such date after the commencement of those sections as is prescribed in relation to employers of that description.

#### Commencement Information

- I11** S. 12 partly in force; s. 12 in force for certain purposes at Royal Assent see s. 149(2)(k)

*[<sup>F21</sup>Qualifying earnings and earnings trigger]*

#### Textual Amendments

- F21** Cross-heading preceding s. 13 substituted (3.11.2011 for specified purposes otherwise 3.1.2012) by Pensions Act 2011 (c. 19), ss. 8(2), 38(1)(4); S.I. 2011/3034, art. 3(a)

*Status: Point in time view as at 03/11/2011. This version of this chapter contains provisions that are not valid for this point in time.*

*Changes to legislation: Pensions Act 2008, Chapter 1 is up to date with all changes known to be in force on or before 29 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### 13 Qualifying earnings

- (1) A person's qualifying earnings in a pay reference period of 12 months are the part (if any) of the gross earnings payable to that person in that period that is—
  - (a) more than £5,035, and
  - (b) not more than £33,540.
- (2) In the case of a pay reference period of less or more than 12 months, subsection (1) applies as if the amounts in paragraphs (a) and (b) were proportionately less or more.
- (3) In this section, “earnings”, in relation to a person, means sums of any of the following descriptions that are payable to the person in connection with the person's employment—
  - (a) salary, wages, commission, bonuses and overtime;
  - (b) statutory sick pay under Part 11 of the Social Security Contributions and Benefits Act 1992 (c. 4);
  - (c) statutory maternity pay under Part 12 of that Act;
  - (d) ordinary statutory paternity pay or additional statutory paternity pay under Part 12ZA of that Act;
  - (e) statutory adoption pay under Part 12ZB of that Act;
  - (f) sums prescribed for the purposes of this section.

#### Commencement Information

**I12** S. 13 wholly in force at 30.6.2012; s. 13 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 13 in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682](#), [art. 2\(1\)\(2\)\(a\)](#), [Sch. 1](#)

### [<sup>F22</sup>14 Review of earnings trigger and qualifying earnings band

- (1) The Secretary of State must in each tax year consider whether any of the amounts in sections 3(1)(c), 5(1)(c) and 13(1)(a) and (b) should be increased or decreased.
- (2) If the Secretary of State considers that any of those amounts should be increased or decreased, the Secretary of State may make an order substituting in the provisions in question the amounts that the Secretary of State thinks appropriate.
- (3) For the purposes of subsection (1) the Secretary of State may take into account any of the factors specified in subsection (4) (as well as any others that the Secretary of State thinks relevant).
- (4) The factors are—
  - (a) the amounts for the time being specified in Chapter 2 of Part 3 (personal allowances) of the Income Tax Act 2007;
  - (b) the amounts for the time being specified in regulations under section 5 of the Social Security Contributions and Benefits Act 1992 (earnings limits and thresholds for Class 1 national insurance contributions);
  - (c) the amount for the time being specified in section 44(4) of that Act (rate of basic state pension);
  - (d) the general level of prices in Great Britain, and the general level of earnings there, estimated in such manner as the Secretary of State thinks fit.]

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#### Textual Amendments

**F22** S. 14 substituted (3.11.2011 for specified purposes otherwise 3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 8\(1\)](#), [38\(1\)\(4\)](#); [S.I. 2011/3034](#), [art. 3\(a\)](#)

#### Commencement Information

**I13** S. 14 wholly in force at 6.3.2012; s. 14 in force for certain purposes at Royal Assent see [s. 149\(2\)\(k\)](#); [s. 14](#) in force so far as not already in force on 6.3.2012 by [S.I. 2012/683](#), [art. 2\(1\)](#)

### 15 Pay reference period

- (1) In relation to any person a pay reference period is the period prescribed.
- (2) The Secretary of State may by regulations—
  - (a) make provision for determining a person's earnings in any pay reference period;
  - (b) make provision for determining the first date of each pay reference period in relation to a person.
- (3) A reference in any provision to the relevant pay reference period is a reference to the period determined in accordance with regulations under this section, as they apply for the purposes of that provision in the case concerned.

#### Commencement Information

**I14** S. 15 wholly in force at 30.6.2012; s. 15 in force for certain purposes at Royal Assent see [s. 149\(2\)\(k\)](#); [s. 15](#) in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682](#), [art. 2\(1\)\(2\)\(a\)](#), [Sch. 1](#)

### [<sup>F23</sup>15A Power to specify rounded figures

- (1) The Secretary of State may by order specify rounded figures for the purposes of section 3(6B), 5(7B) or 13(2) in the case of pay reference periods of any length specified in the order.
- (2) A rounded figure so specified applies in place of the amount that would otherwise apply (“the exact amount”).
- (3) The Secretary of State must decide in relation to any particular amount whether to specify—
  - (a) a figure that is a whole number of pounds, or
  - (b) a figure that is divisible by 10 pence, or
  - (c) a figure that includes a whole number of pennies.
- (4) It is for the Secretary of State to decide whether to round any particular amount up or down.

Accordingly, a figure specified under this section may be the figure within paragraph (a) or (b) or (c) of subsection (3) that is closest to the exact amount or the one that is next closest to it (or, if two figures are joint closest, it may be either of those).]

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#### **Textual Amendments**

**F23** S. 15A inserted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 9, 38\(1\)\(4\)](#); [S.I. 2012/682](#), [art. 2\(a\)](#)

#### **Commencement Information**

**I15** S. 15A expressed to come into force so far as not already in force on 7.3.2012 by [S.I. 2012/683](#), [art. 2\(2\)\(a\)](#)

### *Qualifying schemes and automatic enrolment schemes*

## **16 Qualifying schemes**

- (1) A pension scheme is a qualifying scheme in relation to a jobholder (J) if—
  - (a) the scheme is an occupational pension scheme or a personal pension scheme,
  - (b) the scheme is registered under Chapter 2 of Part 4 of the Finance Act 2004 (c. 12), and
  - (c) while J is an active member, the scheme satisfies the quality requirement in relation to J.
- (2) The Secretary of State may by regulations provide that subsection (1)(b) does not apply in relation to a scheme to which section 25 or 27 applies, if prescribed requirements are satisfied.
- (3) The Secretary of State may by regulations provide that a scheme is not a qualifying scheme in relation to J if—
  - [<sup>F24</sup>(a) administration charges due from J while J is an active member exceed a prescribed amount,
  - (aa) administration charges due from former active members while J is an active member exceed a prescribed amount,
  - (ab) while J is an active member, the scheme contains provision under which administration charges that will be due from J when J is no longer an active member will exceed a prescribed amount, or will do so in particular circumstances,]
  - (b) while J is an active member, the contributions that must be paid to the scheme by, or on behalf or in respect of, J exceed a prescribed amount, or
  - (c) the scheme provides for average salary benefits to be provided to or in respect of J and contains prescribed features.
- [<sup>F25</sup>(4) For the purposes of subsection (3) administration charges are due from a person to the extent that—
  - (a) any payments made to the scheme by, or on behalf or in respect of, the person,
  - (b) any income or capital gain arising from the investment of such payments, or
  - (c) the value of the person's rights under the scheme,
 may be used to defray the administrative expenses of the scheme, to pay commission or in any other way that does not result in the provision of pension benefits for or in respect of members.

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- (5) In subsection (3)(aa) “former active member” means a person who at some time after the automatic enrolment date was both a jobholder and an active member but is no longer an active member.]

#### Textual Amendments

- F24** S. 16(3)(a)-(ab) substituted for s. 16(3)(a) (3.11.2011 for specified purposes) by [Pensions Act 2011 \(c. 19\)](#), **ss. 10(2)**, 38(1)(4)
- F25** S. 16(4)(5) inserted (3.11.2011 for specified purposes) by [Pensions Act 2011 \(c. 19\)](#), **ss. 10(3)**, 38(1)(4)

#### Modifications etc. (not altering text)

- C9** S. 16(1)(b) excluded (1.7.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations ([S.I. 2010/772](#)), regs. 1(1) (as amended by [S.I. 2012/1257](#), **reg. 3(b)**) and 47

#### Commencement Information

- I16** S. 16 wholly in force at 30.6.2012; s. 16 in force for certain purposes at Royal Assent see [s. 149\(2\)\(k\)](#); s. 16 in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682](#), **art. 2(1)(2)(a)**, Sch. 1

## 17 Automatic enrolment schemes

- (1) A pension scheme is an automatic enrolment scheme in relation to a jobholder (J) if—
- it is a qualifying scheme in relation to J,
  - it satisfies the conditions in subsection (2), and
  - it satisfies any further conditions prescribed.
- (2) The conditions mentioned in subsection (1)(b) are that—
- no provision of the scheme prevents the employer from making arrangements prescribed by regulations under section 3(2), 5(2) or 7(4) for J to become an active member of the scheme;
  - no provision of the scheme requires J to express a choice in relation to any matter, or to provide any information, in order to remain an active member.

#### Commencement Information

- I17** S. 17 wholly in force at 30.6.2012; s. 17 in force for certain purposes at Royal Assent see [s. 149\(2\)\(k\)](#); s. 17 in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682](#), **art. 2(1)(2)(a)**, Sch. 1

## 18 Occupational pension schemes

For the purposes of this Part, each of these is an occupational pension scheme—

- an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993 (c. 48) that has its main administration in the United Kingdom;
- an institution for occupational retirement provision within the meaning of Article 6(a) of the IORP Directive, that has its main administration in an EEA State other than the United Kingdom;
- a pension scheme that is prescribed or is of a prescribed description and that has its main administration elsewhere than in an EEA State.

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#### Commencement Information

**I18** S. 18 wholly in force at 30.6.2012; s. 18 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 18 in force so far as not already in force at 30.6.2012 by S.I. 2012/1682, art. 2(1)(2)(a), Sch. 1

VALID FROM 30/06/2012

### 19 Personal pension schemes

For the purposes of this Part, a personal pension scheme is a pension scheme that is not an occupational pension scheme.

#### *Quality requirements*

### 20 Quality requirement: UK money purchase schemes

- (1) A money purchase scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if under the scheme—
  - (a) the jobholder's employer must pay contributions in respect of the jobholder;
  - (b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period;
  - (c) the total amount of contributions paid by the jobholder and the employer, however calculated, must be equal to or more than 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.
- (2) The Secretary of State may by regulations provide that, where a certificate has been issued under section 7(1) of the Pension Schemes Act 1993 stating that the employment of the jobholder is contracted-out employment by reference to the scheme, paragraphs (b) and (c) of subsection (1) have effect with prescribed modifications.
- (3) A scheme does not fail to satisfy the quality requirement under this section merely because the trustees or managers of the scheme may on any occasion refuse to accept a contribution below an amount prescribed for the purposes of this section on the grounds that it is below that amount.

#### Commencement Information

**I19** S. 20 wholly in force at 30.6.2012; s. 20 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 20 in force so far as not already in force at 30.6.2012 by S.I. 2012/1682, art. 2(1)(2)(a), Sch. 1

### 21 Quality requirement: UK defined benefits schemes

- (1) Subject to subsection (3), a defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if the jobholder is in contracted-out employment.



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- (2) A defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder who is not in contracted-out employment if it satisfies the test scheme standard in relation to that jobholder.
- (3) The Secretary of State may by order provide that a scheme does not satisfy the quality requirement in relation to a jobholder who is in contracted-out employment unless it satisfies the test scheme standard in relation to that jobholder, with the substitution of a higher fraction, not exceeding 1/80th, for the fraction of 1/120th in section 23(4)(a).
- (4) In relation to any scheme, a jobholder is in contracted-out employment for the purposes of this section and section 22 if a certificate has been issued in respect of the jobholder under section 7(1) of the Pension Schemes Act 1993 (c. 48) stating that the employment of the jobholder is contracted-out employment by reference to the scheme.

**Modifications etc. (not altering text)**

**C10** S. 21 modified (1.7.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (S.I. 2010/772), regs. 1(1) (as amended by S.I. 2012/1257, **reg. 3(b)**) and 45(4)

**Commencement Information**

**I20** S. 21 wholly in force at 30.6.2012; s. 21 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 21 in force so far as not already in force at 30.6.2012 by S.I. 2012/1682, **art. 2(1)(2)(a)**, Sch. 1

## 22 Test scheme standard

- (1) A scheme satisfies the test scheme standard in relation to a jobholder (J) if the pensions to be provided for the relevant members of the scheme are broadly equivalent to, or better than, the pensions which would be provided for them under a test scheme.
- (2) Subject to subsection (3), the relevant members are J and—
  - (a) if J is not in contracted-out employment, all active members who are not in contracted-out employment and are jobholders of the same employer as J;
  - (b) if J is in contracted-out employment, all active members who are in contracted-out employment and are jobholders of the same employer as J.
- (3) In applying this section the pensions to be provided for relevant members must be considered as a whole.
- (4) The Secretary of State may by regulations make provision for the manner of, and criteria for, determining whether the pensions to be provided for the relevant members under a scheme are broadly equivalent to, or better than, the pensions which would be provided for them under a test scheme.
- (5) Regulations under subsection (4) may provide for the determination to be made in accordance with guidance issued from time to time by the Secretary of State.
- (6) The Secretary of State may by regulations provide that a scheme only satisfies the test scheme standard if the scheme actuary certifies that it does.
- (7) Except in prescribed circumstances, the scheme actuary is the actuary appointed under section 47(1)(b) of the Pensions Act 1995 (c. 26) (professional advisers) in relation to the scheme.

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[<sup>F26</sup>(8) In the case of a scheme under which a sum of money is made available for the provision of benefits to a relevant member, references in this section to pensions are to be read as references to such sums.]

#### Textual Amendments

**F26** S. 22(8) inserted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 11\(1\)](#), [38\(1\)\(4\)](#); [S.I. 2012/1681](#), [art. 2\(1\)\(c\)](#)

#### Commencement Information

**I21** S. 22 wholly in force at 30.6.2012; s. 22 in force for certain purposes at Royal Assent see [s. 149\(2\)\(k\)](#); s. 22 in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682](#), [art. 2\(1\)\(2\)\(a\)](#), [Sch. 1](#)

### [<sup>F27</sup>23 Test scheme

- (1) A test scheme is an occupational pension scheme which satisfies—
  - (a) the requirement in subsection (2),
  - (b) the requirement in subsection (4) or requirements prescribed under subsection (6) (as appropriate), and
  - (c) any further requirements that are prescribed.
- (2) The scheme must either—
  - (a) provide for a member to be entitled to a pension commencing at the appropriate age and continuing for life, or
  - (b) provide for a sum of money to be made available for the provision of benefits to a member commencing at the appropriate age and continuing for life.
- (3) The appropriate age is 65 or any higher age prescribed.
- (4) In the case of a scheme that provides entitlement to a pension as mentioned in subsection (2)(a), the annual rate of the pension at the appropriate age must be—
  - (a) 1/120th of average qualifying earnings in the last three tax years preceding the end of pensionable service,  
 multiplied by
  - (b) the number of years of pensionable service, up to a maximum of 40.
- (5) Section 13(1) (qualifying earnings) applies for the purposes of subsection (4) as if the reference to a pay reference period were a reference to a tax year.
- (6) In the case of a scheme that provides for a sum of money to be made available as mentioned in subsection (2)(b), regulations must prescribe requirements relating to that sum.]

#### Textual Amendments

**F27** S. 23 substituted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 11\(2\)](#), [38\(1\)\(4\)](#); [S.I. 2012/1681](#), [art. 2\(1\)\(c\)](#)

#### Modifications etc. (not altering text)

**C11** S. 23 modified (1.7.2012) by [The Occupational and Personal Pension Schemes \(Automatic Enrolment\) Regulations \(S.I. 2010/772\)](#), regs. 1(1) (as amended by [S.I. 2012/1257](#), [reg. 3\(b\)](#)) and 41

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**C12** S. 23 modified (1.7.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (S.I. 2010/772), regs. 1(1) (as amended by S.I. 2012/1257, **reg. 3(b)**) and 42

**Commencement Information**

**I22** S. 23 (as originally enacted) in force for certain purposes at Royal Assent see s. 149(2)(k)

**24 Quality requirement: UK hybrid schemes**

- (1) A hybrid scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if it satisfies the requirements mentioned in whichever of these is the appropriate paragraph—
  - (a) the requirements for a money purchase scheme under section 20, subject to any prescribed modifications;
  - (b) the requirements for a defined benefits scheme under sections 21 to 23, subject to any prescribed modifications.
- (2) Which paragraph of subsection (1) is appropriate for any hybrid scheme is to be determined by rules made by the Secretary of State.
- (3) The rules may provide for different paragraphs to be appropriate for different provisions of a scheme.
- (4) The rules may provide for the paragraphs to be appropriate as alternatives, for any scheme or any provisions of a scheme.

**Modifications etc. (not altering text)**

**C13** S. 24 applied (with modifications) (1.7.2012) by The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (S.I. 2010/772), regs. 1(1) (as amended by S.I. 2012/1257, **reg. 3(b)**) and 45(5)(6)

**Commencement Information**

**I23** S. 24 wholly in force at 30.6.2012; s. 24 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 24 in force so far as not already in force at 30.6.2012 by S.I. 2012/1682, **art. 2(1)(2)(a)**, Sch. 1

**25 Quality requirement: non-UK occupational pension schemes**

The Secretary of State may by regulations make provision as to the quality requirement to be satisfied in the case of an occupational pension scheme within section 18(b) or (c).

**Commencement Information**

**I24** S. 25 partly in force; s. 25 in force for certain purposes at Royal Assent see s. 149(2)(k)

**26 Quality requirement: UK personal pension schemes**

- (1) This section applies to a personal pension scheme if the operation of the scheme—
  - (a) is carried on in such a way as to be a regulated activity for the purposes of the Financial Services and Markets Act 2000 (c. 8), and

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- (b) is carried on in the United Kingdom by a person who is in relation to that activity an authorised person or an exempt person under section 19 of that Act.
- (2) The scheme satisfies the quality requirement in relation to a jobholder if the following conditions are satisfied.
- (3) The first condition is that all of the benefits that may be provided to the jobholder under the scheme are money purchase benefits.
- (4) The second condition is that, in relation to the jobholder, there is an agreement between the provider of the scheme and the employer under which—
- (a) the employer must pay contributions in respect of the jobholder;
  - (b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.
- (5) In subsection (6), “shortfall” means the difference (if any) between—
- (a) the employer's contribution in respect of the jobholder under the agreement referred to in subsection (4), and
  - (b) 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.
- (6) The third condition is that if there is a shortfall there is an agreement between the provider of the scheme and the jobholder under which the jobholder must pay contributions which, however calculated, are equal to or more than the shortfall.
- (7) The fourth condition is that, in relation to the jobholder, there are direct payment arrangements (within the meaning of section 111A of the Pension Schemes Act 1993 (c. 48)) between the jobholder and the employer.
- (8) The Secretary of State may by regulations provide that, where the scheme is an appropriate scheme within the meaning of section 7(4) of the Pension Schemes Act 1993, subsections (4)(b) and (5)(b) have effect with prescribed modifications.
- (9) A scheme does not fail to satisfy the quality requirement under this section merely because the provider of the scheme may on any occasion refuse to accept a contribution below an amount prescribed for the purposes of this section on the grounds that it is below that amount.

#### **Commencement Information**

**I25** [S. 26](#) wholly in force at 30.6.2012; [s. 26](#) in force for certain purposes at Royal Assent see [s. 149\(2\)\(k\)](#); [s. 26](#) in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682](#), [art. 2\(1\)\(2\)\(a\)](#), [Sch. 1](#)

## **27 Quality requirement: other personal pension schemes**

The Secretary of State may by regulations make provision as to the quality requirement to be satisfied in the case of a personal pension scheme to which section 26 does not apply.

#### **Commencement Information**

**I26** [S. 27](#) partly in force; [s. 27](#) in force for certain purposes at Royal Assent see [s. 149\(2\)\(k\)](#)

*Status: Point in time view as at 03/11/2011. This version of this chapter contains provisions that are not valid for this point in time.*

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## 28 [F28] Certification that quality requirement or alternative requirement is satisfied

- (1) The Secretary of State may by regulations provide that, subject to provision within subsection (6)(f), a scheme to which this section applies is to be taken to satisfy the relevant quality requirement in relation to [F29]each of an employer's relevant jobholders] if a certificate given in accordance with the regulations is in force in relation to the employer.

[F30](1A) In this section—

- (a) “relevant jobholder” means a jobholder to whom the certificate in question applies;
- (b) a reference to a scheme includes a reference to part of a scheme.]

(2) The certificate must [F31] state—

- (a) that], in relation to [F32]relevant jobholders] of the employer who are active members of the scheme, the scheme is in the opinion of the person giving the certificate able to satisfy the relevant quality requirement throughout the certification period[F33], or
- (b) that, in relation to those jobholders, the scheme is in that person's opinion able to satisfy a prescribed alternative requirement throughout the certification period.]

[F34](2A) Alternative requirements must be such that, assuming all jobholders to be active members of schemes to which this section applies, for at least 90% of jobholders—

- (a) employer contributions, and
- (b) total contributions,

would be likely to be no less if every scheme satisfied an alternative requirement applicable to it than if every scheme satisfied the relevant quality requirement.

(2B) In subsection (2A)—

“alternative requirement” means a requirement prescribed under subsection (2)(b);

“employer contributions”, in relation to an active member of a scheme, means the amount of contributions that have to be paid under the scheme in respect of the member by the employer;

“total contributions”, in relation to an active member of a scheme, means the total amount of contributions that have to be paid under the scheme in respect of the member by the employer and by the member.

(2C) The Secretary of State—

- (a) must apply the test in subsection (2A) when regulations under subsection (2) (b) are first made, and
- (b) must carry out subsequent reviews of whether the test continues to be satisfied.

A review under paragraph (b) must be carried out during 2017, and after that each review must be completed no more than three years after the completion of the previous one.]

(3) This section applies to—

- (a) a money purchase scheme to which section 20 applies;
- (b) a personal pension scheme to which section 26 applies;
- (c) a hybrid scheme, to the extent that requirements within section 24(1)(a) apply.

[F35](3A) This section also applies to—

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- (a) a money purchase scheme that is an occupational pension scheme within section 18(b);
  - (b) a personal pension scheme of a prescribed description for which provision is made under section 27;
  - (c) a hybrid scheme that is an occupational pension scheme within section 18(b), to the extent prescribed.]
- (4) The “relevant quality requirement”—
- (a) for a scheme within subsection (3)(a), means the quality requirement under section 20;
  - (b) for a scheme within subsection (3)(b), means the quality requirement under section 26;
  - (c) for a scheme within paragraph (c) of subsection (3), means the requirements mentioned in that paragraph;
  - [<sup>F36</sup>(d) for a scheme within subsection (3A), means a prescribed requirement.]
- (5) Regulations may make further provision in relation to certification under this section.
- (6) Regulations may in particular make provision—
- (a) as to the period for which a certificate is in force (the “certification period”);
  - (b) as to the persons by whom a certificate may be given;
  - (c) as to procedures in connection with certification or where a certificate has been given;
  - (d) requiring persons to have regard to guidance issued by the Secretary of State;
  - (e) requiring an employer to calculate the amount of contributions that a scheme, and any [<sup>F37</sup>contribution agreements], required to be paid by or in respect of [<sup>F38</sup>any relevant jobholder] in the certification period;
  - (f) as to cases where the requirements of a scheme, and any [<sup>F37</sup>contribution agreements], as to payment of contributions by or in respect of [<sup>F39</sup>relevant jobholders] of an employer did not satisfy prescribed conditions.
- (7) Provision within subsection (6)(f) includes in particular provision for a scheme not to be treated by virtue of regulations under this section as having satisfied the relevant quality requirement unless prescribed steps are taken (which may include the making of prescribed payments).
- (8) In subsection (6)[<sup>F40</sup> “contribution agreements” means—
- (a) the agreement] required, in the case of a scheme within subsection (3)(b), by section 26(4) and any agreement required, in the case of such a scheme, by section 26(6)[<sup>F41</sup>, or
  - (b) any agreement of the same or a similar kind that is required, in the case of a scheme within subsection (3A)(b), by regulations under section 27.]
- (9) The Secretary of State may by order repeal this section.

#### Textual Amendments

**F28** S. 28 heading substituted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\), ss. 12\(2\), 38\(1\)\(4\); S.I. 2012/682, art. 2\(b\)](#)

**F29** Words in s. 28(1) substituted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\), ss. 12\(3\), 38\(1\)\(4\); S.I. 2012/682, art. 2\(b\)](#)

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- F30** S. 28(1A) inserted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 12\(4\)](#), 38(1)(4); S.I. 2012/682, [art. 2\(b\)](#)
- F31** Words in s. 28(2) substituted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 12\(5\)\(a\)](#), 38(1)(4); S.I. 2012/682, [art. 2\(b\)](#)
- F32** Words in s. 28(2) substituted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 12\(5\)\(b\)](#), 38(1)(4); S.I. 2012/682, [art. 2\(b\)](#)
- F33** S. 28(2)(b) and preceding word inserted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 12\(5\)\(c\)](#), 38(1)(4); S.I. 2012/682, [art. 2\(b\)](#)
- F34** S. 28(2A)-(2C) inserted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 12\(6\)](#), 38(1)(4); S.I. 2012/682, [art. 2\(b\)](#)
- F35** S. 28(3A) inserted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 13\(2\)](#), 38(1)(4); S.I. 2012/682, [art. 2\(c\)](#)
- F36** S. 28(4)(d) inserted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 13\(3\)](#), 38(1)(4); S.I. 2012/682, [art. 2\(c\)](#)
- F37** Words in s. 28(6)(e)(f) substituted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 13\(4\)](#), 38(1)(4); S.I. 2012/682, [art. 2\(c\)](#)
- F38** Words in s. 28(6)(e) substituted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 12\(7\)\(a\)](#), 38(1)(4); S.I. 2012/682, [art. 2\(b\)](#)
- F39** Words in s. 28(6)(f) substituted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 12\(7\)\(b\)](#), 38(1)(4); S.I. 2012/682, [art. 2\(b\)](#)
- F40** Words in s. 28(8) substituted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 13\(5\)\(a\)](#), 38(1)(4); S.I. 2012/682, [art. 2\(c\)](#)
- F41** S. 28(8)(b) and preceding word inserted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 13\(5\)\(b\)](#), 38(1)(4); S.I. 2012/682, [art. 2\(c\)](#)

#### Commencement Information

- I27** S. 28 wholly in force at 7.3.2012; s. 28 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 28 in force in so far as not already in force on 7.3.2012 by S.I. 2012/683, [art. 2\(2\)\(b\)](#)

### Transitional

## 29 Transitional periods for money purchase and personal pension schemes

- (1) During the first transitional period for money purchase and personal pension schemes—
  - (a) sections 20(1)(b) and 26(4)(b) have effect as if for “3%” there were substituted “1%”;
  - (b) sections 20(1)(c) and 26(5)(b) have effect as if for “8%” there were substituted “2%”.
- (2) The first transitional period is a prescribed period of at least one year, beginning with the coming into force of section 20.
- (3) During the second transitional period for money purchase and personal pension schemes—
  - (a) sections 20(1)(b) and 26(4)(b) have effect as if for “3%” there were substituted “2%”;
  - (b) sections 20(1)(c) and 26(5)(b) have effect as if for “8%” there were substituted “5%”.
- (4) The second transitional period is a prescribed period of at least one year, beginning with the end of the first transitional period.

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### Commencement Information

**I28** S. 29 wholly in force at 30.6.2012; s. 29 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 29 in force so far as not already in force at 30.6.2012 by S.I. 2012/1682, art. 2(1)(2)(a), Sch. 1

## 30 Transitional period for defined benefits and hybrid schemes

- (1) Subsection (3) applies if, in relation to a person who on the employer's first enrolment date is a jobholder to whom section 3 applies, the conditions in subsection (2) are satisfied, and continue to be satisfied during the transitional period for defined benefits and hybrid schemes.
- (2) The conditions are that—
  - (a) the jobholder has been employed by the employer for a continuous period beginning before the employer's first enrolment date,
  - (b) at a time in that period before the employer's first enrolment date, the jobholder became entitled to become an active member of a defined benefits scheme or a hybrid scheme,
  - (c) the jobholder is, and has always since that time been, entitled to become an active member of a defined benefits scheme or a hybrid scheme, and
  - (d) the scheme to which that entitlement relates is a qualifying scheme, and any scheme to which it has related on or after the employer's first enrolment date has been a qualifying scheme.
- (3) [<sup>F42</sup>If by the end of the prescribed period the employer has given the jobholder notice that the employer intends to defer automatic enrolment until the end of the transitional period for defined benefits and hybrid schemes], section 3 has effect in relation to the jobholder with the substitution for subsection (2) of the following subsection—
 

“(2) The employer must make prescribed arrangements by which the jobholder becomes an active member, with effect from the end of the transitional period for defined benefits and hybrid schemes, of an automatic enrolment scheme which is a defined benefits scheme or a hybrid scheme.”
- (4) If [<sup>F43</sup>a notice is given under subsection (3) and at any later time] in the transitional period for defined benefits and hybrid schemes the condition in subsection (2)(c) or (d) of this section ceases to be satisfied, subsection (5) applies instead of subsection (3) (and the day after the last day on which that condition is satisfied is referred to as “the closure date”).
- (5) Where this subsection applies, section 3 has effect in relation to the jobholder with the substitution for subsection (2) of the following subsection—
 

“(2) The employer must make prescribed arrangements by which the jobholder either—

  - (a) becomes an active member, with effect from the closure date, of an automatic enrolment scheme which is a defined benefits scheme or a hybrid scheme, or
  - (b) becomes an active member, with effect from the automatic enrolment date, of an automatic enrolment scheme which is a money purchase scheme [<sup>F44</sup>or personal pension scheme].”



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- (6) If the jobholder becomes a member of a scheme under arrangements made under subsection (2)(b) of that section (as substituted by subsection (5))—
- (a) the employer's contributions are payable with effect from the automatic enrolment date;
  - (b) any requirement of the scheme<sup>F45</sup> . . . for contributions to be payable by the jobholder does not apply in respect of the period of the jobholder's membership before the closure date;
  - (c) regulations made for the purposes of section 3(2)(b) must secure that the jobholder may pay, within a period prescribed by the regulations, any contributions which would have been payable by the jobholder but for paragraph (b) of this subsection.
- (7) Where subsection (3) or (5) of this section [<sup>F46</sup> applies—
- (a) section] 3(3) and (4) apply as if references to the automatic enrolment date were references to the [<sup>F47</sup> day with effect from which] arrangements would by virtue of this section fall to be made in respect of the jobholder;
  - [<sup>F48</sup>(b) section 4 applies as if—
    - (i) the reference in subsection (1) to the employer's staging date were a reference to the employer's first enrolment date;
    - (ii) in that subsection, for “the workers's automatic enrolment date is the deferral date” there were substituted the day with effect from which arrangements fall to be made by virtue of section 30 in respect of the jobholder is changed to the deferral date;
    - (iii) in subsections (4) to (6), references to the starting day were references to the day with effect from which arrangements would by virtue of this section fall to be made in respect of the jobholder.]
- [<sup>F49</sup>(7A) The Secretary of State may by regulations make provision about the form and content of a notice under subsection (3).]
- (8) The transitional period for defined benefits and hybrid schemes is a prescribed period beginning with the day on which section 3 comes into force.
- (9) In this section, the “employer's first enrolment date” means the first day on which section 3 applies in the case of the employer (where that day falls within the transitional period for defined benefits and hybrid schemes).

#### Textual Amendments

- F42** Words in s. 30(3) substituted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 14\(2\)](#), 38(1)(4); S.I. 2012/1681, [art. 2\(1\)\(d\)](#)
- F43** Words in s. 30(4) substituted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 14\(3\)](#), 38(1)(4); S.I. 2012/1681, [art. 2\(1\)\(d\)](#)
- F44** Words in s. 30(5) inserted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 15\(2\)](#), 38(1)(4); S.I. 2012/1681, [art. 2\(1\)\(e\)](#)
- F45** Words in s. 30(6)(b) omitted (3.11.2011 for specified purposes otherwise 30.6.2012) by virtue of [Pensions Act 2011 \(c. 19\)](#), [ss. 15\(3\)](#), 38(1)(4); S.I. 2012/1681, [art. 2\(1\)\(e\)](#)
- F46** Words in s. 30(7) substituted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 6\(6\)\(a\)](#), 38(1)(4); S.I. 2012/1681, [art. 2\(1\)\(b\)](#)
- F47** Words in s. 30(7) substituted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 6\(6\)\(b\)](#), 38(1)(4); S.I. 2012/1681, [art. 2\(1\)\(b\)](#)

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**F48** S. 30(7)(b) inserted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 6\(6\)\(c\)](#), [38\(1\)\(4\)](#); [S.I. 2012/1681](#), [art. 2\(1\)\(b\)](#)

**F49** S. 30(7A) inserted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\)](#), [ss. 14\(4\)](#), [38\(1\)\(4\)](#); [S.I. 2012/1681](#), [art. 2\(1\)\(d\)](#)

#### Commencement Information

**I29** S. 30 wholly in force at 30.6.2012; s. 30 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 30 in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682](#), [art. 2\(1\)\(2\)\(a\)](#), [Sch. 1](#)

### Miscellaneous

VALID FROM 30/06/2012

#### 31 Effect of freezing order or assessment period

- (1) Where a jobholder is an active member of a qualifying scheme and a freezing event occurs in relation to the scheme, the jobholder does not, for the purposes of this Chapter, cease to be an active member of the scheme, and the scheme does not, for those purposes, cease to be a qualifying scheme, by virtue of any relevant provision.
- (2) Where a worker is an active member of a scheme that satisfies the requirements of section 9 and a freezing event occurs in relation to the scheme, the worker does not, for the purposes of section 9(1)(c), cease to be an active member of the scheme by virtue of any relevant provision.
- (3) In this section—
  - “freezing event” in relation to a scheme means—
    - (a) the making of a freezing order under section 23 of the Pensions Act 2004 (c. 35) in relation to the scheme, or
    - (b) the beginning of an assessment period within the meaning of section 132 of that Act in relation to the scheme;
  - “relevant provision” means—
    - (a) in relation to a freezing order, provision contained in the order, or the provision made with respect to the order by section 23 of the Pensions Act 2004;
    - (b) in relation to an assessment period, the provision made with respect to the period by section 133 of that Act.

#### 32 Power of trustees [<sup>F50</sup>or managers] to modify by resolution

- (1) The trustees [<sup>F50</sup>or managers] of an occupational pension scheme may by resolution modify the scheme—
  - (a) with a view to enabling the scheme to comply with the conditions in section 17(2), or
  - (b) by increasing the amount required to be paid in contributions, in order for the scheme [<sup>F51</sup>to satisfy—
    - (i) the requirements contained in section 20(1),
    - (ii) those requirements as modified under section 24(1)(a), or
    - (iii) a requirement prescribed under section 28(2)(b).]

*Status: Point in time view as at 03/11/2011. This version of this chapter contains provisions that are not valid for this point in time.*

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- (2) An increase under subsection (1)(b) may be made only—
  - (a) by increasing the amount of any contribution, directly or by modifying the basis on which it is calculated, or
  - (b) by increasing the frequency of any contributions.
- (3) No modification may be made by virtue of subsection (1) without the consent of the employer in relation to the scheme.
- (4) In the application of subsection (3) to a scheme in relation to which there is more than one employer, references to the employer have effect as if they were references to a person nominated by the employers, or by the scheme, to act as the employers' representative for the purposes of this section or, if no such nomination is made, to all of the employers.
- (5) Regulations may provide that this section does not apply to occupational pension schemes within a prescribed class or description.

#### Textual Amendments

**F50** Words in s. 32 heading and s. 32(1) inserted (3.11.2011 for specified purposes otherwise 30.6.2012) by [Pensions Act 2011 \(c. 19\), ss. 16, 38\(1\)\(4\); S.I. 2012/1681, art. 2\(2\)\(b\)](#)

**F51** Words in s. 32(1)(b) substituted (3.11.2011 for specified purposes otherwise 6.3.2012) by [Pensions Act 2011 \(c. 19\), ss. 12\(8\), 38\(1\)\(4\); S.I. 2012/682, art. 2\(b\)](#)

#### Commencement Information

**I30** S. 32 wholly in force at 30.6.2012; s. 32 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 32 in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682, art. 2\(1\)\(2\)\(a\), Sch. 1](#)

### 33 Deduction of contributions

- (1) An employer who arranges for a person to become a member of a scheme in accordance with section 3(2), 5(2) or 7(3), or of an occupational pension scheme in accordance with section 9(2), may deduct the person's contributions to the scheme from the person's remuneration and pay them to the trustees or managers of the scheme (in the case of an occupational pension scheme) or the provider of the scheme (in the case of a personal pension scheme).
- (2) Regulations prescribing arrangements for the purposes of section 3(2), 5(2), 7(3) or 9(2), may require the employer to make such a deduction or payment at any time on or after the date with effect from which the jobholder is to become an active member of a scheme under the arrangements.

#### Commencement Information

**I31** S. 33 wholly in force at 30.6.2012; s. 33 in force for certain purposes at Royal Assent see s. 149(2)(k); s. 33 in force so far as not already in force at 30.6.2012 by [S.I. 2012/1682, art. 2\(1\)\(2\)\(a\), Sch. 1](#)

**Status:**

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**Changes to legislation:**

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