Draft Regulations laid before Parliament under section 143(4) and (5) of the Pensions Act 2008, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2012 No.

PENSIONS

The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012

Made - - - -	***
Coming into force - -	***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 111A(15)(b), 181 and 182(2) and (3) of the Pension Schemes Act 1993(**1**), sections 49(8), 124(1) and 174(2) and (3) of the Pensions Act 1995(**2**) and sections 2(3), 3(2), (5) and (6), 5(2), (4) and (6) to (8), 6(1)(b) and (2), 7(4), (5) and (6), 8(2)(b) and (3) to (6), 9(3), 10, 15(1) and (2), 16(2) and (3)(c), 17(1)(c), 18(c), 22(4) to (7), 23(1)(b) and (c), (3) and (6), 24(1)(a) and (b), 25, 27, 28(1), (2)(b), (3A) and (4) to (7), 30(5), (6)(c) and (7A), 33(2), 37(3), 60, 96(2), 98, 99 and 144(2) and (4) of the Pensions Act 2008(**3**):

A draft of these Regulations was laid before Parliament in accordance with section 143(4) and (5)(a) of the Pensions Act 2008 and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012.

(2) These Regulations shall come into force—

(a) except for the purposes of regulation 3(b), on 1st July 2012, immediately after the amendments made by the Automatic Enrolment (Miscellaneous Amendments) Regulations 2012(**4**) to the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(**5**) come into force; and

(**1**) 1993 c.48; section 111A was inserted by the Welfare Reform and Pensions Act 1999 (c.30) and amended by the Pensions Act 2008 (c.30), section 49. Section 181 is cited for the meaning given to "prescribed" and "regulations".

(**2**) 1995 c.26; section 49(8) was substituted by the welfare Reform and Pensions Act 1999 (c. 30), section 10. Section 124(1) is cited for the meaning it gives to "prescribed" and "regulations".

(**3**) 2008 c.30. Sections 2(3) and 5(4) were substituted by the Pensions Act 2011 (c.19), section 4. Section 6(1)(b) was amended by that Act, section 7. Section 23 was substituted by that Act, section 11. Section 28 was amended by that Act, sections 12 and 13. Section 30(5) was amended by that Act, section 15. Section 30(7A) was inserted by that Act, section 14. Section 60 was amended by that Act, section 36(2). Section 99 is cited for the meaning given to "prescribed" and "regulations".

(**4**) S.I. 2012/xxxx

(b) for the purposes of regulation 3(b), on 1st July 2012, immediately after the other provisions of these Regulations come into force as referred to in sub-paragraph (a).

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

2. The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 are amended in accordance with the following regulations.

Amendment of regulation 1

3. In regulation 1 (citation, commencement and interpretation)—

(a) in the heading, after "commencement" insert ", expiry";

(b) in paragraph (1) for "1st October 2012" substitute "1st July 2012, immediately after the time when the amendments made by the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012 come into force"; and

(c) after paragraph (1) insert—

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

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

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

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

(i) in relation to Great Britain, section 5(2)(where section 5 applies by virtue of section 5(1A) or (1B))(**6**), 7(3) or 9(2) of the Act; or

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

Provisions on certification

4. After Part 7 (Automatic enrolment following the transitional period for defined benefit and hybrid schemes) insert—

"PART 7A

Certification that a quality or alternative requirement is satisfied

Effect of a certificate under section 28 of the Act

32A. Subject to regulation 32H, a scheme to which section 28 of the Act applies is to be taken to satisfy the relevant quality requirement(**7**) in relation to each of an

(**5**) S.I. 2010/772.
(**6**) Subsections (1A) and (1B) of section 5 were inserted by the Pensions Act 2011, section 4(2).
(**7**) *see* section 28(4) of the Act for the definition of "relevant quality requirement"; subsection (4) was amended by the Pensions Act 2011 (c.19), section 13(3).

employer's relevant jobholders(**8**) if the certificate in question is given in accordance with regulations 32B to 32D in relation to the employer and those jobholders.

Giving of a certificate, retention and disclosure

32B.—(1) Subject to paragraph (2), a certificate under section 28(1) of the Act must be given by the employer or by a person who is authorised by the employer to give the certificate on its behalf.

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

(3) A certificate may be given for a certification period of eighteen months or any part of such a period.

(4) A certificate must be given no later than the end of a period of one month beginning with the first day of the certification period.

(5) The employer or a person as referred to in paragraph (1) may, at any time before the end of the certification period, amend the certificate so that the certification period ends on a different day, being a day after the day on which the amendment is made and not later than the last day of the period of eighteen months beginning with the first day of the certification period.

(6) Where a certificate has been amended under paragraph (5), it may be amended again under that paragraph and so on with reference to any further amendment that is made under that paragraph.

(7) The employer must retain the certificate for a period of 6 years after the end of the certification period and must provide a copy of the certificate to the Regulator on receiving from the Regulator a notification requesting such a copy.

(8) The employer must, where a request for a copy of the certificate is received within the period of 6 years after the end of the certification period, from—

(a) a relevant jobholder; or

(b) any independent trade union recognised to any extent for the purposes of collective bargaining in relation to any relevant jobholder,

send a copy of the certificate to the person who requested it, within a period of 2 months after the day on which the employer received the request.

(9) For the purpose of paragraph (8), "independent trade union" has the meaning given in section 235(1) of the Employment Rights Act 1996(**9**).

Form of certificate

32C. A certificate under section 28(1) of the Act must be in writing and contain the following information –

(a) whether the certificate relates to part of a scheme and, if so, which part;

(b) the employer pension scheme reference within the meaning of regulation 1 of the Employers' Duties (Registration and Compliance) Regulations 2010(**10**);

(c) whether the certificate relates to all of the jobholders of the employer who are active members of the scheme or part-scheme in question;

(**8**) *see* section 28(1A) of the Act for the definition of "relevant jobholder"; subsection (1A) was inserted by the Pensions Act 2011, section 12(4).
(**9**) 1996 c.18.
(**10**) S.I. 2010/5; regulation 1 was amended by S.I. 2012/xxx.

(d) where the certificate relates to only some of the jobholders of the employer who are active members of the scheme or part-scheme ("the active members") —

(i) the names and roles of the relevant jobholders;

(ii) where one or more of the active members have not been included in the certificate because they have chosen to pay contributions at a level such that the relevant quality requirement or alternative requirement is not met, the names and roles of those active members; and

(iii) where one or more of the active members have not been included in the certificate because, in the opinion of the person who gives the certificate, the contributions made by the employer and the member will clearly meet the relevant quality requirement, the names and roles of those active members;

(e) where the certificate is given with respect to an alternative requirement—

(i) under regulation 32E or 32G, which of the sets of requirements in regulation 32E applies; or

(ii) under regulation 32F, which of the sets of requirements in that regulation applies;

(f) where the certificate relates to a hybrid scheme to which regulation 43 applies, the percentages referred to in regulation 43(4)(a) and (b);

(g) where there is an upper limit to the amount of contributions that may be paid as referred to in regulation 32E(5) or 32F(8), that limit;

(h) the certification period; and

(i) whether that period has been amended and, if so, the previous certification period or periods.

Renewal of Certificate

32D.—(1) Paragraph (2) applies where—

(a) it is proposed to give, by or on behalf of an employer, a certificate under section 28(1) of the Act ("the further certificate"); and

(b) the certification period of one or more reference certificates has ended, or will end, within a period of 2 years before the day on which it is proposed that the certification period of the further certificate will begin.

(2) Where this paragraph applies, before the further certificate is given, the employer must—

(a) assess whether, during the certification period of any reference certificate as referred to in paragraph (1)(b) and in relation to the jobholders to whom that certificate applies, all of the elements of the alternative requirement or relevant quality requirement were, or will be, met;

(b) where an element of the alternative requirement or relevant quality requirement was not, or will not be, met, consider what (if any) action needs to be taken by the employer in order to ensure that the alternative requirement or relevant quality requirement will be met in relation to the jobholders to whom the further certificate will apply, for the proposed period of the further certificate, and take any such action;

(c) compile a record of —

(i) the assessment made under sub-paragraph (a); and

(ii) the action (if any) that the employer takes, as referred to in sub-paragraph (b);

(d) retain that record for a period of 6 years beginning with the day on which the record was compiled; and

(e) provide a copy of that record to the Regulator on receiving a notification from the Regulator requesting such a copy.

(3) Paragraph (2) applies even where, under regulation 32H(2), in relation to a reference certificate and the jobholders to whom it applies, the scheme is not to be treated by virtue of regulation 32A as having satisfied the relevant quality requirement.

(4) For the purposes of paragraphs (1) to (3), a "reference certificate" means a certificate under section 28(1) of the Act that has been given, by or on behalf of the employer, in relation to some or all of the jobholders to whom the further certificate is to apply.

Alternative requirements for a money purchase scheme

32E.—(1) In relation to a money purchase scheme to which section 20 of the Act applies or which is an occupational pension scheme within section 18(b) of the Act, the prescribed alternative requirement is the first, second or third set of requirements below.

(2) The first set of requirements is that under the scheme —

(a) the employer of the relevant jobholder must pay contributions in respect of the jobholder;

(b) the employer's contribution must be equal to or more than 4% of the amount of the relevant jobholder's pensionable earnings in the certification period;

(c) the total amount of the contributions paid by the relevant jobholder and the employer must be equal to or more than 9% of the jobholder's pensionable earnings in the certification period; and

(d) the pensionable earnings of the relevant jobholder must be equal to or more than the basic pay of that jobholder.

(3) The second set of requirements is that—

(a) under the scheme—

(i) the employer of the relevant jobholder must pay contributions in respect of the jobholder;

(ii) the employer's contribution must be equal to or more than 3% of the amount of the relevant jobholder's pensionable earnings in the certification period;

(iii) the total amount of the contributions paid by the relevant jobholder and the employer must be equal to or more than 8% of the amount of the jobholder's pensionable earnings in the certification period; and

(iv) the pensionable earnings of the relevant jobholder must be equal to or more than the basic pay of that jobholder; and

(b) taking all of the relevant jobholders together, the pensionable earnings of those jobholders constitute at least 85% of the earnings of those jobholders in the certification period.

(4) The third set of requirements is that under the scheme—

(a) the employer of the relevant jobholder must pay contributions in respect of the jobholder;