STATUTORY RULES OF NORTHERN IRELAND

2016 No. 142

PENSIONS

The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations (Northern Ireland) 2016

Made - - - -	*10th March 2016*
Coming into operation	*6th April 2016*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 11, 12, 23A(1)(b), 69A(1), (3) and (4) and 113(2) of the Pensions (No. 2) Act (Northern Ireland) 2008 [F1].

F1 2008 c. 13 (N.I.); section 23A was inserted by section 38(2) of the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)) and section 69A was inserted by section 37(2) of that Act

Citation and commencement

1. These Regulations may be cited as the Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 and shall come into operation on 6th April 2016.

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

2.—(1) The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010 [F2] are amended in accordance with paragraphs (2) to (5).

(2) In regulation 5E(1) [F3] (winding-up lump sum) for sub-paragraph (c) substitute—

"(c) during the period of 12 months beginning with the date on which the winding-up lump sum was paid—

(i) the worker has ceased to be employed and been re-employed by that person, and

(ii) after re-employment, either section 3(1) [F4] (automatic enrolment) or 5(1A) or (1B) [F5] (automatic re-enrolment) of the Act applies to the worker." .

(3) After regulation 5E insert—

"**Company directors**

5EA.—(1) This regulation applies to a jobholder who holds office as a director of the company by which that jobholder is employed.

(2) In relation to the jobholder to whom this regulation applies, sections 3(2) (automatic enrolment) and 5(2) (automatic re-enrolment) are to be read as if for "must" there were substituted " may ".

Limited liability partnerships

5EB.—(1) This regulation applies where a person (P) is a jobholder and—

(a) P is a member of a limited liability partnership;

(b) qualifying earnings are payable to P by that limited liability partnership, and

(c) P is not treated for income tax purposes as being employed by that limited liability partnership under section 863A of the Income Tax (Trading and other Income) Act 2005 [F6] (limited liability partnerships: salaried members).

(2) Where this regulation applies, in relation to the jobholder referred to in paragraph (1), sections 3(2) (automatic enrolment) and 5(2) (automatic re-enrolment) are to be read as if for "must" there were substituted " may ".".

(4) In regulation 5F(1)(a) (effect of exercise of discretion) for "or 5E" substitute " , 5E, 5EA or 5EB ".

(5) In regulation 32M [F7] (alternative quality requirements for UK defined benefits schemes)—

(a) in paragraph (3) after "(4)" insert " , (5A) ";

(b) at the beginning of paragraph (4) insert " Subject to paragraph (5A), ";

(c) after paragraph (5) insert—

"(5A) Subject to paragraph (5C), where the conditions in paragraph (5B) are met, the employer of the jobholder may choose, notwithstanding paragraph (4), that the relevant members are the members of the scheme who were active members and in contracted-out employment on the effective date of the most recent written report from an actuary.

(5B) The conditions to be met for the purposes of paragraph (5A) are—

(a) the jobholder was in contracted-out employment on 5th April 2016, and

(b) the rules of the scheme of which the jobholder is a member have not been amended, on or after the coming into operation of these Regulations, in any way which would mean that the rules of the scheme would not satisfy the contracting-out requirements if those requirements were still in operation.

(5C) Paragraph (5A) applies until the earlier of—

(a) the date the first written report determining whether there is, or was, a material difference in the cost of providing the benefits accruing for different groups of relevant members over the relevant period, taking into account the criteria mentioned in paragraph (4), is signed by an actuary after 5th April 2016;

(b) 5th April 2019.

(5D) For the purposes of paragraph (5A), the effective date of the most recent written report is the date by reference to which the information in that report is stated.";

(d) in paragraph (6) for "paragraph (4)" substitute " paragraphs (4) and (5A) ";

(e) in paragraph (9) —

(i) after "they are" insert " equal to or more than ";

(ii) for sub-paragraph (b) substitute—

"(b) basic pay;";

(iii) in sub-paragraph (c) omit the words from "pensionable earnings" to "that member's";

(iv) for sub-paragraph (d) substitute—

"(d) earnings, or";

(f) in paragraph (12) after the definition of "basic pay" insert—

""contracted-out employment" has the meaning given in section 4(1) of the 1993 Act [F8] (meaning of "contracted-out" employment);

"contracting-out requirements" means the requirements set out in section 5 of the 1993 Act [F9] (requirements for certification of schemes: general) as they had effect immediately before 6th April 2016;".

F2 S.R. 2010 No. 122; relevant amending Regulations are S.R. 2015 No. 310

F3 Subsections 5B to 5F were inserted by regulation 5 of S.R. 2015 No. 310

F4 Section 3(1) was substituted by section 6(1) of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)) and amended by Article 2(1) of S.R. 2014 No. 81

F5 Subsections (1A) and (1B) of section 5 were inserted by section 5(2) of the Pensions Act (Northern Ireland) 2012

F6 2005 c. 5; section 863A was inserted by paragraph 1 of Schedule 17 to the Finance Act 2014 (c. 26)

F7 Regulation 32M was inserted by regulation 10 of S.R. 2015 No. 310

F8 Section 4(1) is substituted by paragraph 7(2) of Schedule 13 to the Pensions Act (Northern Ireland) 2015

F9 Section 5 was amended by Article 133(3) of, and paragraph 14 of Schedule 3 to, the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22), **paragraph 38** of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671), **article 8(2)** of S.I. 2006/745, **section 12(4)** of, and paragraph 4 of Schedule 4 to, the Pensions Act (Northern Ireland) 2008 (c. 1 (N.I.)), modified for public service pension schemes by regulation 27 of S.R. 1996 No. 493 and is repealed by paragraph 9 of Schedule 13 to the Pensions Act (Northern Ireland) 2015; *see* S.R. 2016 No. 106 for savings provisions

Amendment of the Employers' Duties (Implementation) Regulations

3.—(1) The Employers' Duties (Implementation) Regulations (Northern Ireland) 2010 [F10] are amended in accordance with paragraphs (2) and (3).

(2) In regulation 3 (early automatic enrolment)—

(a) in paragraph (4)(b) [F11] —

(i) at the beginning insert " where, on the date the employer notifies the Regulator in accordance with sub-paragraph (c), the duty in section 3(2) (automatic enrolment) applies in relation to at least one of that employer's jobholders, ";

(ii) for "was" substitute " is ";

(b) for paragraph (4)(c)(i) [F12] substitute—

"(i) where paragraph (5)(a) or (d) applies, on or before the early automatic enrolment date;";

(c) in paragraph (5) [F13]—

(i) at the end of sub-paragraph (b) omit "or";

(ii) at the end of sub-paragraph (c) insert—