STATUTORY RULES OF NORTHERN IRELAND

2015 No. 310

PENSIONS

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

Made - - - -	*16th July 2015*
Coming into operation	*6th August 2015*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 3(5), 4(1) to (3), 5(2), 9(3), 10, 23A(1)(a) and (b), (2) and (4)(b), 25, 30(7A), 69A(1), (3) and (4) and 113(2) of the Pensions (No. 2) Act (Northern Ireland) 2008(**1**).

Citation and commencement

1. These Regulations may be cited as the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations (Northern Ireland) 2015 and shall come into operation on 6th August 2015.

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

2. The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations (Northern Ireland) 2010(**2**) are amended in accordance with regulations 3 to 13.

Amendment of regulation 2

3. In regulation 2(**3**) (enrolment information) for ", 24 and 25" substitute "and 24".

Amendment of heading to Part 1A

4. In the heading to Part 1A(**4**) (exemption) after "Exemption" add "and exceptions".

(**1**) 2008 c. 13 (N.I.); section 4 was substituted by section 7(2) of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)); section 10 was amended by section 37(1) of the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)); section 23A was inserted by section 38(2) of that Act; section 30(7A) was inserted by section 15(4) of the Pensions Act (Northern Ireland) 2012; section 69A was inserted by section 37(2) of the Pensions Act (Northern Ireland) 2015

(**2**) S.R. 2010 No. 122; relevant amending Regulations are S.R. 2012 Nos.232, 237 and 238 and S.R. 2013 No. 243

(**3**) Regulation 2 was substituted by regulation 2(3) of S.R. 2012 No. 232

(**4**) Part 1A was inserted by regulation 2 of S.R. 2012 No. 238

Insertion of regulations 5B to 5F

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

"**Notice of termination of employment**

5B.—(1) This regulation applies, subject to paragraph (3), where notice of termination of a worker's employment is given before the end of the period of 6 weeks beginning with the automatic enrolment date or automatic re-enrolment date, as the case may be.

(2) Where this regulation applies—

(a) sections 3(2) (automatic enrolment) and 5(2) (automatic re-enrolment) are to be read as if for "must" there were substituted "may";

(b) section 7(3) (jobholder's right to opt in) is to be read as if there were inserted at the end "unless notice of termination of employment of that jobholder has been given (and the jobholder and the employer have not agreed that such notice is withdrawn)";

(c) section 9(2) (workers without qualifying earnings) is to be read as if there were inserted at the end "unless notice of termination of employment of that worker has been given (and the worker and the employer have not agreed that such notice is withdrawn)".

(3) Where a jobholder and employer agree that the notice of termination of the jobholder's employment referred to in this regulation is withdrawn, paragraphs (1) and (2) cease to apply on the date of that agreement and, subject to paragraph (4), for the purposes of sections 3(2) and 5(2), as the case may be—

(a) the automatic enrolment date, or

(b) the automatic re-enrolment date,

is the date of that agreement.

(4) Where, on the date referred to in paragraph (3), section 3 or 5, as the case may be, does not apply to the jobholder, the next date on which one of those sections applies to that jobholder is to be taken as the automatic enrolment date or automatic re-enrolment date, as the case may be, in relation to that jobholder.

Former members

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

(a) P ceased to be an active member of a qualifying scheme because of an action or omission by P or an action by the employer at P's request, or

(b) at a time when P was a worker, but not a jobholder, ceased to be an active member of a scheme which would have been a qualifying scheme in relation to P, had P been a jobholder, because of an action or omission by P or an action by the employer at P's request.

(2) This regulation also applies where a jobholder gives notice under section 8 (jobholder's right to opt out).

(3) Where this regulation applies in relation to the jobholder mentioned in paragraph (1) or (2)—

(a) during the period of 12 months beginning with the date that jobholder ceased to be an active member or gives notice, sections 3(2) (automatic enrolment) and 5(2)

(**5**) Regulation 5A was inserted by regulation 2 of S.R. 2012 No. 238

(automatic re-enrolment) are to be read as if for "must" there were substituted "may", and

(b) after the expiry of that period, section 3(2) does not apply.

Tax protection

5D.—(1) This regulation applies where an employer has reasonable grounds to believe that one of the following provisions applies in relation to a jobholder—

(a) paragraph 7 or 12 of Schedule 36 to the Finance Act 2004(**6**) (pension schemes etc: transitional provisions and savings);

(b) paragraph 14 of Schedule 18 to the Finance Act 2011(**7**) (lifetime allowance charge);

(c) paragraph 1 of Schedule 22 to the Finance Act 2013(**8**) (transitional provision relating to reduction in standard lifetime allowance etc);

(d) paragraph 1 of Schedule 6 to the Finance Act 2014(**9**) (transitional provision relating to new standard lifetime allowance for the tax year 2014-15 etc).

(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".

Winding-up lump sum

5E.—(1) This regulation applies to a worker where—

(a) that worker has received a winding-up lump sum as defined in paragraph 10(**10**) of Schedule 29 to the Finance Act 2004 (registered pension schemes: authorised lump sums - supplementary);

(b) at the time the winding-up lump sum was paid, the worker was employed by the person mentioned in paragraph 10(1)(c) of Schedule 29 to the Finance Act 2004, and

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

(2) In relation to the worker to whom this regulation applies—

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

(i) sections 3(2) (automatic enrolment) and 5(2) (automatic re-enrolment) are to be read as if for "must" there were substituted "may", and

(ii) sections 7 (jobholder's right to opt in) and 9 (workers without qualifying earnings) do not apply, and

(b) after the expiry of that period, section 3(2) does not apply.

(**6**) 2004 c. 12; paragraph 12 was amended by paragraph 53(2) to (6) of Schedule 10 to the Finance Act 2005 (c. 7), paragraph 17 of Schedule 20 to the Finance Act 2007 (c. 11)), paragraph 432(2) of Schedule 1 to the Corporation Tax Act 2010 (c. 4) and paragraph 59 (as inserted by paragraph 5 of Schedule 1 to S.I. 2010/2279) of Schedule 26 to the Equality Act 2010 (c. 15)
(**7**) 2011 c. 11; paragraph 14 was amended by section 47(2) of the Finance Act 2013 (c. 29) and regulation 2 of S.I. 2013/1740
(**8**) 2013 c. 29
(**9**) 2014 c. 26
(**10**) Paragraph 10 was amended by paragraph 12 of Schedule 20 to the Finance Act 2007 and paragraph 30 of Schedule 16, and paragraph 5 of Schedule 18, to the Finance Act 2011

Effect of exercise of discretion

5F.—(1) This regulation applies to an employer who—

(a) exercises a discretion under section 3(2) (automatic enrolment) or 5(2) (automatic re-enrolment), as conferred by regulation 5B, 5C, 5D or 5E, so that the prescribed arrangements are made whereby the jobholder will become an active member of an automatic enrolment scheme;

(b) makes the arrangements referred to in section 7(3) (jobholder's right to opt in) for a jobholder, unless notice of termination of employment of that jobholder has been given (and the jobholder and the employer have not agreed that such notice is withdrawn), or

(c) makes the arrangements referred to in section 9(2) (workers without qualifying earnings) for a worker, unless notice of termination of employment of that worker has been given (and the worker and the employer have not agreed that such notice is withdrawn).

(2) In relation to the employer to whom this regulation applies, the employer is to be treated for all purposes as if the employer were acting under the duty which would apply by virtue of section 3(2) or 5(2) or were required to make the arrangements in section 7(3) or 9(2) but for the provisions of this Part.".

Substitution of regulation 21

6. For regulation 21(**11**) (information) substitute—

"**Information to be given to workers**

21. At any time before the end of the period of 6 weeks beginning with the date on which section 7 (jobholder's right to opt in) or section 9 (workers without qualifying earnings), as the case may be, first applies to a worker, the employer must give in writing—

(a) to the jobholder to whom section 7 applies, the information described in—

(i) paragraphs 16 and 24 of Schedule 2, or

(ii) paragraphs 18 and 24 of Schedule 2, and

(b) to the worker to whom section 9 applies, the information described in—

(i) paragraphs 17 and 24 of Schedule 2, or

(ii) paragraphs 18 and 24 of Schedule 2.".

Amendment of regulation 23

7. In regulation 23(3) for "one month" substitute "6 weeks".

Amendment of regulation 24

8. In regulation 24(**12**) (prescribed requirements for the purposes of section 4(1), (2) and (3))—

(a) for paragraph (1) (including the Table) substitute—

"(1) A notice under section 4(1), (2) or (3) (postponement or disapplication of automatic enrolment) given by an employer to all workers must be in writing and,

(**11**) Regulation 21 was amended by regulation 2(10) of S.R. 2012 No. 232 and regulation 4(4) of S.R. 2013 No. 243
(**12**) Regulation 24 was substituted by regulation 2(12) of S.R. 2012 No. 232 and amended by regulation 4(4) of S.R. 2013 No. 243

subject to paragraphs (1A) and (1B), include the information described in paragraphs 18, 20, 21 and 24 of Schedule 2.

(1A) In the case of workers who are jobholders and who are not active members of a qualifying scheme, the notice referred to in paragraph (1) must include the information described in either paragraph 16 or 18 and in paragraphs 20, 21 and 24.

(1B) In the case of workers who are not jobholders and are not active members of a qualifying scheme, the notice referred to in paragraph (1) must include the information described in either paragraph 17 or 18 and in paragraphs 20, 21 and 24.";

(b) omit paragraph (2).

Amendment of regulation 27

9. In regulation 27(c)(**13**) (notice to be given under section 30(3)) for "paragraphs 16, 22, 24 and 25" substitute "paragraph 16 or 18 and paragraphs 22 and 24".

Alternative quality requirements for UK defined benefits schemes

10. After regulation 32K(**14**) (interpretation) insert—

"PART 7B

Alternative quality requirements: UK defined benefits schemes

Alternative quality requirements for UK defined benefits schemes

32L.—(1) A defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement(**15**) in relation to a jobholder if section 23A(1)(a) (alternative quality requirements for UK defined benefits schemes) is satisfied and for the purpose of that section, the scheme is of a prescribed description if the conditions in paragraph (2) are satisfied.

(2) The conditions referred to in paragraph (1) are—

(a) the benefits provided to the member are calculated by reference to factors which include the contributions made to the scheme by or on behalf of or in respect of the member;

(b) the contributions referred to in sub-paragraph (a) are converted in accordance with the scheme rules, as soon as reasonably practicable and no later than one month after their receipt into the scheme, into a right to an income for life;

(c) the benefits payable to the member under the scheme are payable no later than the member's pensionable age;

(d) following any conversion referred to in sub-paragraph (b), the amount of the member's benefits under the scheme cannot be reduced unless this is at the member's request;

(e) following any valuation of the scheme's assets and determination of its liabilities, the trustees or managers of the scheme have absolute discretion to use any excess assets to increase the benefits of the members in relation to whose contributions the excess assets may be attributed, and

(**13**) Regulation 27 was substituted by regulation 2(13) of S.R. 2012 No. 232 and amended by regulation 4(4) of S.R. 2013 No. 243
(**14**) Regulation 32K was inserted by regulation 2(3) of S.R. 2012 No. 237
(**15**) *See* section 16(1)(c) of the Pensions (No. 2) Act (Northern Ireland) 2008 in relation to the quality requirement