STATUTORY RULES OF NORTHERN IRELAND

2012 No. 237

PENSIONS

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

Made - - - -	*8th June 2012*
Coming into operation	*1st July 2012*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 107A(15)(b) and 177(2) to (4) of the Pension Schemes (Northern Ireland) Act 1993 [F1], Articles 49(8) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995 [F2], and now vested in it [F3], and sections 2(3), 3(2), (5) and (6), 5(2), (4), (6), (7) and (8), 6(1)(b) and (2), 7(4) to (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), 25, 27, 28(1), (2)(b), (3A) and (4) to (7), 30(5), (6)(c) and (7A), 33(2), 37(3), 59 and 113(2) of the Pensions (No. 2) Act (Northern Ireland) 2008 [F4].

F1 1993 c. 49; section 107A was inserted by Article 10 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)); *see also* subsection (18) of that section as added by section 49 of the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.))

F2 S.I. 1995/3213 (N.I. 22); Article 49(8) was substituted by Article 11(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999

F3 *See* Article 8(b) of S.R. 1999 No. 481

F4 2008 c. 13 (N.I.); sections 2(3) and 5(4) were substituted by section 5(1) and (3) of the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.)); section 5(8) was amended by section 5(4) of that Act; section 6(1)(b) was amended by section 8 of that Act; section 23 was substituted by section 12(2) of that Act; section 28 was amended by sections 13 and 14 of that Act; section 30(5) was amended by section 16(2) of that Act; section 30(7A) was inserted by section 15(4) of that Act; section 59 was amended by section 33(2) of that Act

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations (Northern Ireland) 2012 and shall come into operation—

(a) except for the purposes of regulation 2(2), on 1st July 2012 immediately after the coming into operation of regulation 2 of the Automatic Enrolment (Miscellaneous Amendments) Regulations (Northern Ireland) 2012 [F5], and

(b) for the purposes of regulation 2(2), on 1st July 2012 immediately after the coming into operation of the other provisions of these Regulations.

(2) The Interpretation Act (Northern Ireland) 1954 [F6] shall apply to these Regulations as it applies to an Act of the Assembly.

F5 S.R. 2012 No. 232
F6 1954 c. 33 (N.I.)

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 [F7] are amended in accordance with paragraphs (2) to (5).

(2) In regulation 1(1) (commencement) for "1st October 2012" substitute " 1st July 2012 immediately after the coming into operation of regulation 2 of the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations (Northern Ireland) 2012 ".

(3) 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

32A. Subject to regulation 32H, a scheme to which section 28 (certification that quality requirement or alternative requirement is satisfied) applies is to be taken to satisfy the relevant quality requirement [F8] in relation to each of an employer's relevant jobholders [F9] 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) (certification that quality requirement or alternative requirement is satisfied) must be given by the employer or by a person who is authorised by the employer to give the certificate on the employer's behalf.

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

(3) A certificate may be given for a certification period of 18 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 18 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 purposes of paragraph (8), "independent trade union" has the meaning given in Article 2(3) of the Employment Rights (Northern Ireland) Order 1996 [F10].

Form of certificate

32C. A certificate under section 28(1) (certification that quality requirement or alternative requirement is satisfied) 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(2) of the Employers' Duties (Registration and Compliance) Regulations (Northern Ireland) 2010 [F11];

(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;

(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 [F12] 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) (certification that quality requirement or alternative requirement is satisfied) ("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) 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 (quality requirement: UK money purchase schemes) applies or which is an occupational pension scheme within section 18(b) (occupational pension schemes with main administration in an EEA state other than the UK), the prescribed alternative requirement is the first, second or third set of requirements set out in paragraph (2), (3) or (4).

(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;

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

(c) the total amount of the contributions paid by the relevant jobholder and the employer must be equal to or more than 7% of the amount of the jobholder's earnings in that period.

(5) Subject to paragraph (6), for the purposes of paragraphs (1) to (4), a scheme as referred to in paragraph (1) may satisfy the first, second or third set of requirements even though under the scheme there is an upper limit (however expressed) to the amount of contributions that may be paid by the employer or the relevant jobholder or both of those persons.

(6) The upper limit must not result in the payment of contributions by the employer, or by the employer and the relevant jobholder, that are less than those required by the relevant quality requirement.

(7) For the purposes of paragraphs (2) to (6), a reference to "the relevant jobholder" is a reference to each of the relevant jobholders.

Alternative requirements for a personal pension scheme

32F.—(1) In relation to a personal pension scheme to which section 26 (quality requirement: UK personal pension schemes) applies or which is referred to in regulation 32J(1), the prescribed alternative requirement is the first, second or third set of requirements set out in paragraph (2), (4) or (6).