

2015 No.

PENSIONS

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

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 10(1) and (2), 23A(1)(b) and (2), 25, 87A(1), (3) and (4), 99 and 144(2) and (4) of the Pensions Act 2008(a).

Citation and commencement

1. These Regulations may be cited as the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2015 and come into force on xxx.

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

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

Amendment of regulation 2

3. In regulation 2(c) (enrolment information) for “24 and 25” substitute “and 24”.

Amendment of heading to Part 1A

4. In the heading to Part 1A(d), after “Exemption” add “and Exceptions”.

Insertion of regulations 5B to 5F

5. After regulation 5A(e) insert—

(a) 2008 c. 30. Section 10(1) and (2) was amended by section 38(1) of the Pensions Act 2014 (c.19). Section 23A was inserted by section 39(2) of that Act. Section 87A was inserted by section 38(2) of that Act. Section 99 is cited for the meaning given to “employer”, “jobholder”, “prescribed”, “regulations” and “worker”.
(b) S.I. 2010/772.
(c) Regulation 2 was substituted by S.I. 2012/215.
(d) Part 1A was inserted by S.I. 2012/1477.
(e) Regulation 5A was inserted by S.I. 2012/1477.

“Notice of termination of employment

5B.—(1) Sections 3(2) and 5(2) of the Act (automatic enrolment and automatic re-enrolment) are to be read as if there were added at the end, “unless, before the end of the period of 6 weeks beginning with that date, notice of termination of employment has been given”.

(2) Where the notice mentioned in paragraph (1) is given, the following provisions are to be read as if “may” is substituted for “must”—

- (a) sections 3(2) and 5(2) of the Act; and
- (b) section 3(2) as substituted by section 30(3) or (5) of the Act (transitional period for defined benefits and hybrid schemes).

(3) Sections 7(3) and 9(2) of the Act (jobholder’s right to opt in and worker without qualifying earnings) are to be read as if there were inserted at the beginning, “unless notice of termination of employment has been given”.

(4) Where the worker and employer agree that the notice of termination of employment is withdrawn, the date of that agreement is to be taken as the case may be, as—

- (a) the automatic enrolment date for the purposes of section 3(2) of the Act (as enacted or as substituted);
- (b) the automatic re-enrolment date for the purposes of section 5(2) of the Act (as enacted or as substituted);
- (c) the date on which section 7(1) of the Act applies; or
- (d) the date on which section 9(1) of the Act applies.

Former members

5C.—(1) This regulation applies where the jobholder—

- (a) ceased to be an active member of a qualifying scheme because of an action or omission by the jobholder or an action by the employer at the jobholder’s request ;
or
- (b) gave notice under section 8 of the Act (jobholder’s right to opt out).

(2) During the period of 12 months beginning with the occurrence of either of the events mentioned in paragraph (1), sections 3(2) and 5(2) of the Act are to be read as if “may” is substituted for “must”.

(3) After the expiry of the period mentioned in paragraph (2), section 3(2) of the Act does not apply.

Tax protection

5D.—(1) Sections 3(2) and 5(2) of the Act are to be read as if “may” is substituted for “must” where the employer has reasonable grounds to believe that one of the following provisions applies in relation to the jobholder—

- (a) in Schedule 36 to the Finance Act 2004(**a**)—
 - (i) paragraphs 7 to 11 (primary protection);
 - (ii) paragraphs 12 to 17 (enhanced protection);
- (b) paragraph 14 of Schedule 18 to the Finance Act 2011(**b**) (fixed protection 2012);
- (c) paragraph 1 of Schedule 22 to the Finance Act 2013(**c**) (fixed protection 2014);

(a) 2004 c.12.
(b) 2011 c.11.
(c) 2013 c.29.

- (d) paragraph 1 of Schedule 6 to the Finance Act 2014^(a) (individual protection 2014).

Winding-up lump sum

5E.—(1) This regulation applies where—

- (a) the jobholder has received a winding-up lump sum as defined in paragraph 10 of Schedule 29 to the Finance Act 2004 (winding-up lump sums) (“paragraph 10”);
- (b) the payment of that lump sum was made by the person mentioned in sub-paragraph (1)(c) of paragraph 10 who satisfies sub-paragraph (3) of that paragraph; and
- (c) since that payment was made, the jobholder has both ceased to be employed and been re-employed by that person.

(2) For the period of 12 months beginning with the date on which the lump sum was paid—

- (a) sections 3(2) and 5(2) of the Act are to be read as if “may” is substituted for “must”; and
- (b) section 7 of the Act does not apply.

(3) After expiry of the period mentioned in paragraph (2), section 3(2) of the Act does not apply.

Effect of exercise of discretion

5F. Where the employer exercises a discretion conferred by this Part of these Regulations, the following provisions are to be read as if the employer were discharging an employer duty—

- (a) Part 1 of the Act except for Chapter 1; and
- (b) these Regulations except for this Part.”.

Revocation of regulation 14

6. Regulation 14^(b) (jobholders excluded from automatic re-enrolment) is revoked.

Revocation of regulation 17

7. Regulation 17^(c) (information on the right to opt in to pension saving) is revoked.

Substitution of regulation 21

8. For regulation 21^(d) (information) substitute—

“Information to be given to workers

21. At any time before the end of a period of six weeks beginning with the date on which section 7 or section 9 of the Act (jobholder’s right to opt in and workers without qualifying earnings) first applies to the employer in relation to a worker, the employer must give the information described in paragraphs 18 and 24 of Schedule 2 to the worker in writing.”.

(a) 2014 c.26.

(b) Regulation 14 was substituted by S.I. 2012/215.

(c) Regulation 17 was amended by S.I. 2012/215 and S.I. 2013/2556.

(d) Regulation 21 was amended by S.I. 2012/215 and S.I. 2013/2556.

Amendment of regulation 24

9. In regulation 24(a) (prescribed requirements for the purposes of section 4(1), (2) and (3) of the Act)—

(a) for paragraph (1) substitute—

“(1) A notice under section 4(1), (2) or (3) of the Act (postponement or disapplication of automatic enrolment) given by an employer to all workers must be in writing and include the information described in paragraphs 18, 20, 21 and 24 of Schedule 2.”; and

(b) omit paragraph (2).

Amendment of regulation 27

10. In regulation 27(c)(b) (notice to be given under section 30(3) of the Act), for “paragraphs 16, 22, 24 and 25” substitute “paragraphs 18, 22 and 24”.

Alternative quality requirements for UK defined benefits schemes

11. After regulation 32K(c) (definitions for Part 7A) insert—

“PART 7B

Alternative quality requirements: UK defined benefits schemes

Alternative quality requirements for UK defined benefits schemes

32L.—(1) This regulation applies for the purposes of section 23A(1)(b) of the Act (alternative quality requirements for UK defined benefits schemes) and terms defined for the purpose of that section have the meanings prescribed in the following paragraphs.

(2) Subject to paragraph (3), the relevant members are the active members of the defined benefits scheme.

(3) In the case of a defined benefits scheme that has parts where different benefits are calculated by different methods, the reference in paragraph (2) to “the defined benefits scheme” is to be read as a reference to a part of such a scheme.

(4) The relevant period is—

(a) in the case of a defined benefits scheme within the meaning of “a scheme” given by Direction 3 of the Public Service Pensions (Valuations and Employer Cost Cap) Directions 2014(d), to be determined by reference to those Directions;

(b) in any other case—

(i) to be determined by reference to the most recent written report, prepared and signed by an actuary, valuing the scheme’s assets and determining its liabilities; or

(ii) the period of 12 months.

(5) Relevant earnings are—

(a) qualifying earnings;

(b) the relevant member’s pensionable earnings where those earnings are equal to or more than that member’s basic pay;

(a) Regulation 24 was substituted by S.I. 2012/215.

(b) Regulation 27 was substituted by S.I. 2012/215.

(c) Regulation 32K was inserted by S.I. 2012/1257.

(d) The Directions are available from the government’s website at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/357130/HMT_valuations_and_cost_cap_directions_reconsolidated_Sept_2014.pdf.

- (c) the relevant member’s pensionable earnings where those earnings are equal to or more than that member’s basic pay and, taking all the relevant members together, the pensionable earnings of those members constitute at least 85 per cent of the earnings of those members in the relevant period; or
 - (d) the relevant member’s earnings where that member’s pensionable earnings are equal to the whole of that member’s earnings.
- (6) Subject to paragraph (7) the prescribed percentage is—
- (a) in relation to paragraph (5)(a) and (c), 10 per cent;
 - (b) in relation to paragraph (5)(b), 11 per cent; and
 - (c) in relation to paragraph (5)(d), 9 per cent.
- (7) Where the defined benefits scheme does not provide pension benefits payable on the death of the relevant member, the respective percentages mentioned in paragraph (6) are to be reduced by 1 per cent.
- (8) In this regulation—
- “basic pay” means the gross earnings of the relevant member from their employment by the employer, disregarding the gross amount of—
- (a) any commission, bonuses, overtime or similar payments;
 - (b) any shift premium pay; and
 - (c) any reasonable allowance with respect to—
 - (i) any duty of the relevant member, such as a duty in connection with the fire or bomb warden, that is ancillary to the main duties of the relevant member’s employment;
 - (ii) the cost of relocation of the relevant member to a different place of work;
 - (iii) in a case not covered by sub-paragraph (ii), the purchase, lease or maintenance of a vehicle;
 - (iv) in a case not covered by sub-paragraph (ii) or (iii), the purchase lease or maintenance of an item;
 - (v) in a case not covered by sub-paragraph (ii), (iii) or (iv), the delivery of a service to the relevant member;
- “pensionable earnings” means the gross earnings of the relevant member on which contributions are payable to the pension scheme in question by the employer or the relevant member;
- “shift premium pay” means, where the employer applies different rates of pay to different periods of time for which the relevant member works, the difference between the earnings that results from the different application of the different rates of pay to the period to which each of them respectively apply and the earnings that would result from the application of the lowest of the different rates of pay to the total time worked.”

Revocation of regulation 33

12. Regulation 33(a) (information) is revoked.

Amendment of regulation 45

13. In regulation 45 (quality requirements: non-UK occupational pension schemes)—
- (a) in paragraph (3)(a) for “23 (qualifying requirement: UK defined benefits schemes)” substitute “23A”; and

(a) Regulation 33 was substituted by S.I. 2012/215.

- (b) in paragraph (4) for “section 21 of the Act is” substitute “sections 21 and 23A of the Act are”.

Amendment of Schedule 2

14. In Schedule 2(a) (information)—

- (a) omit paragraphs 2, 3, 7, 16, 17, 19, 23 and 25;
(b) for paragraph 1 substitute—

“1. A statement that the jobholder has been, or will be, enrolled into a pension scheme.”;

- (c) for paragraph 6 for “in accordance with section 192 (relief at source) or 193 (relief under net pay arrangements) of the Finance Act 2004” substitute “on employee contributions.”; and

- (d) for paragraph 18 substitute—

“18. A statement that by giving written notice to the employer, the worker who is aged at least 16 and under 75 and—

- (a) who earns more than the amount specified in section 13(1)(a) of the Act and is not an active member of a qualifying scheme, may opt in to an automatic enrolment scheme and will be entitled to employer’s contributions; or
(b) who earns no more than the amount specified in section 13(1)(a) of the Act and is not a member of a pension scheme that satisfies the requirements of section 9 of the Act, may require the employer to arrange for the worker to become an active member of such a pension scheme.”.

Signed by authority of the Secretary of State for Work and Pensions

Date

Name
Minister of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (S.I. 2010/772) (“the 2010 Regulations”).

Regulation 5 makes provision under section 87A of the Pensions Act 2008 (“the 2008 Act”) introducing further exceptions to the employer duties contained in that Act.

Where notice of termination of employment has been given, the employer duty to automatically enrol or re-enrol is turned into a power and the duty to enrol on being required by the jobholder or worker does not apply. Where it is agreed that notice is withdrawn, the duties are imposed from the date of that agreement.

The employer duty to automatically enrol or re-enrol the jobholder is also turned into a power where the jobholder has decided, in the last 12 months, to leave a qualifying scheme; where the jobholder benefits from certain tax protection; and where the jobholder has received a winding-up lump sum in the last 12 months. Regulation 5 also provides that where the employer exercises the power to enrol the jobholder, the employer is subject to the other provisions of Part 1 of the 2008

(a) Schedule 2 was inserted by S.I. 2012/215.

Act and the 2010 Regulations as if the employer were discharging a duty. Regulation 6 makes a consequential revocation.

Regulation 11 introduces alternative quality requirements for UK defined benefits schemes under section 23A of the 2008 Act. The requirement is that the cost of accrual of benefits for or in respect of an active member of the scheme must be at least a specified percentage of the member's qualifying earnings or earnings as defined in the regulation. Regulation 13 makes similar changes in respect of non-UK schemes to reflect the new alternative requirements.

Regulations 3, 7 to 10, 12 and 14 amend the requirements imposed on employers under the 2010 Regulations with regard to the provision of information to employees, with the aim of reducing the burden to give several different pieces of information to different kinds of workers at different times.

Regulation 3 amends the enrolment information to be given to all jobholders upon automatic enrolment and re-enrolment. Regulations 7 and 8 revoke regulation 17 of those Regulations and substitute a new regulation 21 so that the information to be given to jobholders and workers about opting in or joining pension saving is combined. The amendments made by regulations 9 and 10 reduce the information to be given to employees in the cases of transition and postponement. The amendment made by regulation 12 removes the requirement to give any information to jobholders who are already active members of a qualifying scheme. Regulation 14 amends Schedule 2 by removing a number of paragraphs and simplifying the statements of information to be given.