



# Pensions Act 2008

## 2008 CHAPTER 30

### PART 1

#### PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

#### CHAPTER 1

#### EMPLOYERS' DUTIES

#### *Jobholders*

### **1 Jobholders**

- (1) For the purposes of this Part a jobholder is a worker—
  - (a) who is working or ordinarily works in Great Britain under the worker's contract,
  - (b) who is aged at least 16 and under 75, and
  - (c) to whom qualifying earnings are payable by the employer in the relevant pay reference period (see sections 13 and 15).
- (2) Where a jobholder has more than one employer, or a succession of employers, this Chapter applies separately in relation to each employment.
- (3) Accordingly—
  - (a) references to the employer are references to the employer concerned;
  - (b) references to membership of a pension scheme are references to membership in relation to the employment concerned.

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### *Employers' duties*

## **2 Continuity of scheme membership**

- (1) If a jobholder is an active member of a qualifying scheme, the employer must not take any action, or make any omission, by which (without the jobholder ceasing to be employed by the employer)—
  - (a) the jobholder ceases to be an active member of the scheme, or
  - (b) the scheme ceases to be a qualifying scheme.
- (2) Subsection (1) is not contravened if the jobholder remains an active member of another qualifying scheme.
- (3) Subsection (1) is not contravened if the jobholder becomes an active member of another qualifying scheme within the prescribed period.
- (4) Subsection (1) is not contravened if the action or omission is at the jobholder's request.
- (5) In this Part as it applies in the case of any jobholder, references to a qualifying scheme are references to a pension scheme which is a qualifying scheme in relation to that jobholder (see section 16).

## **3 Automatic enrolment**

- (1) This section applies to a jobholder who—
  - (a) is aged at least 22, and
  - (b) has not reached pensionable age.
- (2) The employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date.
- (3) Subsection (2) does not apply if the jobholder was an active member of a qualifying scheme on the automatic enrolment date.
- (4) Subsection (2) does not apply if, within the prescribed period before the automatic enrolment date, the jobholder ceased to be an active member of a qualifying scheme because of any action or omission by the jobholder.
- (5) For the purposes of arrangements under subsection (2) regulations may require information to be provided to any person by the employer or—
  - (a) where the arrangements relate to an occupational pension scheme, the trustees or managers of the scheme;
  - (b) where the arrangements relate to a personal pension scheme, the provider of the scheme.
- (6) For the purposes of arrangements made under subsection (2) in relation to a personal pension scheme, regulations may deem an agreement to exist (subject to section 8) between the jobholder and the provider of the scheme for the jobholder to be an active member of the scheme on terms and conditions determined in accordance with the regulations.
- (7) The automatic enrolment date, in relation to any person, is the first day on which this section applies to the person as a jobholder of the employer.

- (8) In this Part as it applies in the case of any jobholder, references to an automatic enrolment scheme are references to a pension scheme which is an automatic enrolment scheme in relation to that jobholder (see section 17).

#### **4 Postponement of automatic enrolment**

- (1) The Secretary of State may by regulations provide that in prescribed cases the automatic enrolment date is a date, determined in accordance with regulations under this section, which is later than the date specified in section 3(7).
- (2) Where a person becomes an active member of a scheme in accordance with regulations under this section, the employer must not take any action, or make any omission, by which within the minimum period—
- (a) the person ceases to be an active member of the scheme, or
  - (b) the scheme ceases to be a scheme of the relevant kind.
- (3) The minimum period is so much of a prescribed period as the person remains a jobholder of the employer.
- (4) A scheme ceases to be a scheme of the relevant kind, in the case of any person, if it ceases to have a feature by reference to which regulations under this section operated so as to postpone the automatic enrolment date in that person's case.
- (5) Subsection (2) does not apply to any action or omission at the member's request.

#### **5 Automatic re-enrolment**

- (1) This section applies to a jobholder who—
- (a) is aged at least 22, and
  - (b) has not reached pensionable age.
- (2) The employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic re-enrolment date.
- (3) Subsection (2) does not apply if the jobholder was an active member of a qualifying scheme on the automatic re-enrolment date.
- (4) Subsection (2) does not apply if, within the prescribed period before the automatic re-enrolment date, the jobholder—
- (a) ceased to be an active member of a qualifying scheme because of any action or omission by the jobholder, or
  - (b) gave notice under section 8.
- (5) Subsection (2) is subject to section 6(6).
- (6) For the purposes of arrangements under subsection (2) regulations may require information to be provided to any person by the employer or—
- (a) where the arrangements relate to an occupational pension scheme, the trustees or managers of the scheme;
  - (b) where the arrangements relate to a personal pension scheme, the provider of the scheme.

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- (7) For the purposes of arrangements made under subsection (2) in relation to a personal pension scheme, regulations may deem an agreement to exist (subject to section 8) between the jobholder and the provider of the scheme for the jobholder to be an active member of the scheme on terms and conditions determined in accordance with the regulations.
- (8) Automatic re-enrolment dates are dates, after the automatic enrolment date, that are to be determined in accordance with regulations.

## **6 Timing of automatic re-enrolment**

- (1) Regulations under section 5(8) must either—
  - (a) secure that for any jobholder there is no automatic re-enrolment date less than three years after the jobholder's automatic enrolment date, and that there is not more than one automatic re-enrolment date in any period of three years, or
  - (b) secure that for any employer there is not more than one automatic re-enrolment date in any period of three years.
- (2) Subsection (1) does not restrict the provision that regulations may make about the timing of a jobholder's automatic re-enrolment date ("the relevant date") in the following cases.
- (3) The first case is where the jobholder became an active member of a scheme in accordance with regulations under section 4 and—
  - (a) at any time before the end of the minimum period under that section, the jobholder ceases to be an active member of the scheme or the scheme ceases to be a scheme of the relevant kind for the purposes of that section,
  - (b) that event is not the effect of any action or omission by the jobholder or the employer, and
  - (c) the relevant date is the jobholder's first automatic re-enrolment date after that time.
- (4) The second case is where—
  - (a) at any time after the jobholder's automatic enrolment date, the jobholder ceases to be an active member of a qualifying scheme or a qualifying scheme of which the jobholder is an active member ceases to be such a scheme,
  - (b) that event is not the effect of any action or omission by the jobholder or the employer, and
  - (c) the relevant date is the jobholder's first automatic re-enrolment date after that time.
- (5) The third case is where—
  - (a) there is a period beginning at any time after the jobholder's automatic enrolment date during which the requirements of section 1(1)(a) or (c) are not met (so that the person is not a jobholder for that period), and
  - (b) the relevant date is the jobholder's first automatic re-enrolment date after that period.
- (6) Where subsection (3) applies—
  - (a) section 5(2) has effect as if the reference to an automatic enrolment scheme were, in relation to the relevant date, a reference to a scheme ("the new scheme") of the kind referred to in subsection (3)(a), and

- (b) section 4(2) to (5) apply in relation to the new scheme as they applied in relation to the scheme referred to in subsection (3).

## **7 Jobholder's right to opt in**

- (1) This section applies to a jobholder who is not an active member of a qualifying scheme.
- (2) But it does not apply at a time when—
  - (a) arrangements are required to be made under section 3 or 5 in respect of the jobholder, or
  - (b) the jobholder's automatic enrolment date is postponed under section 4.
- (3) The jobholder may by notice require the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme.
- (4) The Secretary of State may by regulations make provision—
  - (a) about the form and content of the notice;
  - (b) about the arrangements that the employer is required to make;
  - (c) for determining the date with effect from which the jobholder is to become an active member under the arrangements.
- (5) For the purposes of arrangements under subsection (3) regulations may require information to be provided to any person by the employer or—
  - (a) where the arrangements relate to an occupational pension scheme, the trustees or managers of the scheme;
  - (b) where the arrangements relate to a personal pension scheme, the provider of the scheme.
- (6) For the purposes of arrangements made under subsection (3) in relation to a personal pension scheme, regulations may deem an agreement to exist (subject to section 8) between the jobholder and the provider of the scheme for the jobholder to be an active member of the scheme on terms and conditions determined in accordance with the regulations.
- (7) Subsections (8) and (9) apply where a jobholder becomes an active member of an automatic enrolment scheme in pursuance of a notice under this section and, within the period of 12 months beginning with the day on which that notice was given—
  - (a) ceases to be an active member of that scheme, and
  - (b) gives the employer a further notice under this section.
- (8) The further notice does not have effect to require the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme.
- (9) But any arrangements the employer makes for the jobholder to become, within that period, an active member of such a scheme must be made in accordance with regulations under this section.

## **8 Jobholder's right to opt out**

- (1) This section applies on any occasion when arrangements under section 3(2), 5(2) or 7(3) apply to a jobholder (arrangements for the jobholder to become an active member of an automatic enrolment scheme).
- (2) If the jobholder gives notice under this section—

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- (a) the jobholder is to be treated for all purposes as not having become an active member of the scheme on that occasion;
  - (b) any contributions paid by the jobholder, or by the employer on behalf or in respect of the jobholder, on the basis that the jobholder has become an active member of the scheme on that occasion must be refunded in accordance with prescribed requirements.
- (3) Regulations under subsection (2)(b) may, in particular, make provision about—
- (a) the time within which contributions must be refunded;
  - (b) how the amount to be refunded is calculated;
  - (c) the procedure for refunding contributions.
- (4) The Secretary of State may by regulations make further provision in relation to notices under this section.
- (5) The regulations may in particular make provision—
- (a) as to the form and content of a notice;
  - (b) as to the period within which a notice must be given;
  - (c) as to the person to whom a notice must be given;
  - (d) requiring any person to make prescribed arrangements for enabling notices to be given;
  - (e) requiring any person to take prescribed action in consequence of a notice (in addition to any action prescribed under subsection (2)(b)).
- (6) The regulations must provide for the notice—
- (a) to include information about the effect in relation to jobholders of giving notice under this section, and
  - (b) to be signed or otherwise authorised by the jobholder.

*Duty in relation to workers without qualifying earnings*

**9 Workers without qualifying earnings**

- (1) This section applies to a worker—
- (a) to whom paragraphs (a) and (b) of section 1(1) apply (working in Great Britain and aged between 16 and 75),
  - (b) to whom paragraph (c) of section 1(1) does not apply (qualifying earnings), and
  - (c) who is not an active member of a pension scheme that satisfies the requirements of this section.
- (2) The worker may by notice require the employer to arrange for the worker to become an active member of a pension scheme that satisfies the requirements of this section.
- (3) The Secretary of State may by regulations make provision—
- (a) about the form and content of the notice;
  - (b) about the arrangements that the employer is required to make;
  - (c) for determining the date with effect from which the worker is (subject to compliance with any requirements of the scheme) to become an active member under the arrangements.

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- (4) Subsections (5) and (6) apply where a worker becomes an active member of a pension scheme in pursuance of a notice under this section and, within the period of 12 months beginning with the day on which that notice was given—
  - (a) ceases to be an active member of that scheme because of any action or omission by the worker, and
  - (b) gives the employer a further notice under this section.
- (5) The further notice does not have effect to require the employer to arrange for the worker to become an active member of a pension scheme.
- (6) But any arrangements the employer makes for the worker to become, within that period, an active member of a pension scheme that satisfies the requirements of this section must be made in accordance with regulations under this section.
- (7) A pension scheme satisfies the requirements of this section if—
  - (a) it is registered under Chapter 2 of Part 4 of the Finance Act 2004 (c. 12), and
  - (b) in the case of a personal pension scheme, there are, in relation to the worker concerned, direct payment arrangements (within the meaning of section 111A of the Pension Schemes Act 1993 (c. 48)) between the worker and the employer.

*Supplementary provision about the duties*

**10 Information to be given to workers**

- (1) The Secretary of State must make provision by regulations—
  - (a) for all jobholders to be given information about the effect of sections 2 to 8 in relation to them;
  - (b) for all workers to whom section 9 applies to be given information about the effect of that section in relation to them;
  - (c) for a prescribed person to be required to provide the information.
- (2) Regulations under this section must state—
  - (a) what information must be given;
  - (b) in what circumstances it must be given;
  - (c) how and when it must be given.

**11 Information to be given to the Pensions Regulator**

- (1) The Secretary of State may make regulations requiring employers to provide the Pensions Regulator (“the Regulator”) with information about action they have taken or intend to take for the purposes of any provision of, or of regulations under, sections 2 to 10.
- (2) The regulations may in particular—
  - (a) require an employer to provide information about pension schemes to which any action relates;
  - (b) require an employer to identify which of any prescribed descriptions a scheme falls within;

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- (c) require an employer to provide information that appears to the Secretary of State to be required for the performance by the Regulator of its functions under Chapter 2 of this Part;
- (d) make provision about how and in what form any information is to be provided.

## **12 Introduction of employers' duties**

The Secretary of State may by regulations provide that sections 2 to 9 do not apply in the case of an employer of any description until such date after the commencement of those sections as is prescribed in relation to employers of that description.

### *Qualifying earnings*

## **13 Qualifying earnings**

- (1) A person's qualifying earnings in a pay reference period of 12 months are the part (if any) of the gross earnings payable to that person in that period that is—
  - (a) more than £5,035, and
  - (b) not more than £33,540.
- (2) In the case of a pay reference period of less or more than 12 months, subsection (1) applies as if the amounts in paragraphs (a) and (b) were proportionately less or more.
- (3) In this section, “earnings”, in relation to a person, means sums of any of the following descriptions that are payable to the person in connection with the person's employment—
  - (a) salary, wages, commission, bonuses and overtime;
  - (b) statutory sick pay under Part 11 of the Social Security Contributions and Benefits Act 1992 (c. 4);
  - (c) statutory maternity pay under Part 12 of that Act;
  - (d) ordinary statutory paternity pay or additional statutory paternity pay under Part 12ZA of that Act;
  - (e) statutory adoption pay under Part 12ZB of that Act;
  - (f) sums prescribed for the purposes of this section.

## **14 Review of qualifying earnings band**

- (1) The Secretary of State must in each tax year determine whether the amounts in section 13(1)(a) and (b) have maintained their value.
- (2) The Secretary of State must in particular make a determination under subsection (1) by reference to a review under section 148 of the Social Security Administration Act 1992 (c. 5) (review of general level of earnings for revaluation of earnings factors).
- (3) If the Secretary of State determines under this section that the amounts in section 13(1) (a) and (b) have not maintained their value, the Secretary of State must make an order substituting in those provisions the amounts that the Secretary of State considers appropriate for maintaining their value.



## **15 Pay reference period**

- (1) In relation to any person a pay reference period is the period prescribed.
- (2) The Secretary of State may by regulations—
  - (a) make provision for determining a person's earnings in any pay reference period;
  - (b) make provision for determining the first date of each pay reference period in relation to a person.
- (3) A reference in any provision to the relevant pay reference period is a reference to the period determined in accordance with regulations under this section, as they apply for the purposes of that provision in the case concerned.

### *Qualifying schemes and automatic enrolment schemes*

## **16 Qualifying schemes**

- (1) A pension scheme is a qualifying scheme in relation to a jobholder (J) if—
  - (a) the scheme is an occupational pension scheme or a personal pension scheme,
  - (b) the scheme is registered under Chapter 2 of Part 4 of the Finance Act 2004 (c. 12), and
  - (c) while J is an active member, the scheme satisfies the quality requirement in relation to J.
- (2) The Secretary of State may by regulations provide that subsection (1)(b) does not apply in relation to a scheme to which section 25 or 27 applies, if prescribed requirements are satisfied.
- (3) The Secretary of State may by regulations provide that a scheme is not a qualifying scheme in relation to J if—
  - (a) while J is an active member, the payments that must be made to the scheme by, or on behalf or in respect of, J for purposes other than the provision of benefits exceed a prescribed amount,
  - (b) while J is an active member, the contributions that must be paid to the scheme by, or on behalf or in respect of, J exceed a prescribed amount, or
  - (c) the scheme provides for average salary benefits to be provided to or in respect of J and contains prescribed features.

## **17 Automatic enrolment schemes**

- (1) A pension scheme is an automatic enrolment scheme in relation to a jobholder (J) if—
  - (a) it is a qualifying scheme in relation to J,
  - (b) it satisfies the conditions in subsection (2), and
  - (c) it satisfies any further conditions prescribed.
- (2) The conditions mentioned in subsection (1)(b) are that—
  - (a) no provision of the scheme prevents the employer from making arrangements prescribed by regulations under section 3(2), 5(2) or 7(4) for J to become an active member of the scheme;
  - (b) no provision of the scheme requires J to express a choice in relation to any matter, or to provide any information, in order to remain an active member.

## 18 Occupational pension schemes

For the purposes of this Part, each of these is an occupational pension scheme—

- (a) an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993 (c. 48) that has its main administration in the United Kingdom;
- (b) an institution for occupational retirement provision within the meaning of Article 6(a) of the IORP Directive, that has its main administration in an EEA State other than the United Kingdom;
- (c) a pension scheme that is prescribed or is of a prescribed description and that has its main administration elsewhere than in an EEA State.

## 19 Personal pension schemes

For the purposes of this Part, a personal pension scheme is a pension scheme that is not an occupational pension scheme.

### *Quality requirements*

## 20 Quality requirement: UK money purchase schemes

- (1) A money purchase scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if under the scheme—
  - (a) the jobholder's employer must pay contributions in respect of the jobholder;
  - (b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period;
  - (c) the total amount of contributions paid by the jobholder and the employer, however calculated, must be equal to or more than 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.
- (2) The Secretary of State may by regulations provide that, where a certificate has been issued under section 7(1) of the Pension Schemes Act 1993 stating that the employment of the jobholder is contracted-out employment by reference to the scheme, paragraphs (b) and (c) of subsection (1) have effect with prescribed modifications.
- (3) A scheme does not fail to satisfy the quality requirement under this section merely because the trustees or managers of the scheme may on any occasion refuse to accept a contribution below an amount prescribed for the purposes of this section on the grounds that it is below that amount.

## 21 Quality requirement: UK defined benefits schemes

- (1) Subject to subsection (3), a defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if the jobholder is in contracted-out employment.
- (2) A defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder who is not in contracted-out employment if it satisfies the test scheme standard in relation to that jobholder.

- (3) The Secretary of State may by order provide that a scheme does not satisfy the quality requirement in relation to a jobholder who is in contracted-out employment unless it satisfies the test scheme standard in relation to that jobholder, with the substitution of a higher fraction, not exceeding 1/80th, for the fraction of 1/120th in section 23(4)(a).
- (4) In relation to any scheme, a jobholder is in contracted-out employment for the purposes of this section and section 22 if a certificate has been issued in respect of the jobholder under section 7(1) of the Pension Schemes Act 1993 (c. 48) stating that the employment of the jobholder is contracted-out employment by reference to the scheme.

## **22 Test scheme standard**

- (1) A scheme satisfies the test scheme standard in relation to a jobholder (J) if the pensions to be provided for the relevant members of the scheme are broadly equivalent to, or better than, the pensions which would be provided for them under a test scheme.
- (2) Subject to subsection (3), the relevant members are J and—
  - (a) if J is not in contracted-out employment, all active members who are not in contracted-out employment and are jobholders of the same employer as J;
  - (b) if J is in contracted-out employment, all active members who are in contracted-out employment and are jobholders of the same employer as J.
- (3) In applying this section the pensions to be provided for relevant members must be considered as a whole.
- (4) The Secretary of State may by regulations make provision for the manner of, and criteria for, determining whether the pensions to be provided for the relevant members under a scheme are broadly equivalent to, or better than, the pensions which would be provided for them under a test scheme.
- (5) Regulations under subsection (4) may provide for the determination to be made in accordance with guidance issued from time to time by the Secretary of State.
- (6) The Secretary of State may by regulations provide that a scheme only satisfies the test scheme standard if the scheme actuary certifies that it does.
- (7) Except in prescribed circumstances, the scheme actuary is the actuary appointed under section 47(1)(b) of the Pensions Act 1995 (c. 26) (professional advisers) in relation to the scheme.

## **23 Test scheme**

- (1) A test scheme is an occupational pension scheme which satisfies—
  - (a) the requirements of subsections (2) and (4), and
  - (b) any prescribed requirements.
- (2) The scheme must provide for a member to be entitled to a pension commencing at the appropriate age and continuing for life.
- (3) The appropriate age is 65 or any higher age prescribed.
- (4) The annual rate of the pension at that age must be—

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- (a) 1/120th of average qualifying earnings in the last three tax years preceding the end of pensionable service,  
multiplied by
- (b) the number of years of pensionable service, up to a maximum of 40.

(5) Section 13(1) (qualifying earnings) applies for the purposes of this section as if the reference to a pay reference period were a reference to a tax year.

#### **24 Quality requirement: UK hybrid schemes**

- (1) A hybrid scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if it satisfies the requirements mentioned in whichever of these is the appropriate paragraph—
  - (a) the requirements for a money purchase scheme under section 20, subject to any prescribed modifications;
  - (b) the requirements for a defined benefits scheme under sections 21 to 23, subject to any prescribed modifications.
- (2) Which paragraph of subsection (1) is appropriate for any hybrid scheme is to be determined by rules made by the Secretary of State.
- (3) The rules may provide for different paragraphs to be appropriate for different provisions of a scheme.
- (4) The rules may provide for the paragraphs to be appropriate as alternatives, for any scheme or any provisions of a scheme.

#### **25 Quality requirement: non-UK occupational pension schemes**

The Secretary of State may by regulations make provision as to the quality requirement to be satisfied in the case of an occupational pension scheme within section 18(b) or (c).

#### **26 Quality requirement: UK personal pension schemes**

- (1) This section applies to a personal pension scheme if the operation of the scheme—
  - (a) is carried on in such a way as to be a regulated activity for the purposes of the Financial Services and Markets Act 2000 (c. 8), and
  - (b) is carried on in the United Kingdom by a person who is in relation to that activity an authorised person or an exempt person under section 19 of that Act.
- (2) The scheme satisfies the quality requirement in relation to a jobholder if the following conditions are satisfied.
- (3) The first condition is that all of the benefits that may be provided to the jobholder under the scheme are money purchase benefits.
- (4) The second condition is that, in relation to the jobholder, there is an agreement between the provider of the scheme and the employer under which—
  - (a) the employer must pay contributions in respect of the jobholder;
  - (b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.

- (5) In subsection (6), “shortfall” means the difference (if any) between—
  - (a) the employer’s contribution in respect of the jobholder under the agreement referred to in subsection (4), and
  - (b) 8% of the amount of the jobholder’s qualifying earnings in the relevant pay reference period.
- (6) The third condition is that if there is a shortfall there is an agreement between the provider of the scheme and the jobholder under which the jobholder must pay contributions which, however calculated, are equal to or more than the shortfall.
- (7) The fourth condition is that, in relation to the jobholder, there are direct payment arrangements (within the meaning of section 111A of the Pension Schemes Act 1993 (c. 48)) between the jobholder and the employer.
- (8) The Secretary of State may by regulations provide that, where the scheme is an appropriate scheme within the meaning of section 7(4) of the Pension Schemes Act 1993, subsections (4)(b) and (5)(b) have effect with prescribed modifications.
- (9) A scheme does not fail to satisfy the quality requirement under this section merely because the provider of the scheme may on any occasion refuse to accept a contribution below an amount prescribed for the purposes of this section on the grounds that it is below that amount.

## **27 Quality requirement: other personal pension schemes**

The Secretary of State may by regulations make provision as to the quality requirement to be satisfied in the case of a personal pension scheme to which section 26 does not apply.

## **28 Sections 20, 24 and 26: certification that quality requirement is satisfied**

- (1) The Secretary of State may by regulations provide that, subject to provision within subsection (6)(f), a scheme to which this section applies is to be taken to satisfy the relevant quality requirement in relation to any jobholder of an employer if a certificate given in accordance with the regulations is in force in relation to the employer.
- (2) The certificate must state that, in relation to the jobholders of the employer who are active members of the scheme, the scheme is in the opinion of the person giving the certificate able to satisfy the relevant quality requirement throughout the certification period.
- (3) This section applies to—
  - (a) a money purchase scheme to which section 20 applies;
  - (b) a personal pension scheme to which section 26 applies;
  - (c) a hybrid scheme, to the extent that requirements within section 24(1)(a) apply.
- (4) The “relevant quality requirement”—
  - (a) for a scheme within subsection (3)(a), means the quality requirement under section 20;
  - (b) for a scheme within subsection (3)(b), means the quality requirement under section 26;
  - (c) for a scheme within paragraph (c) of subsection (3), means the requirements mentioned in that paragraph.

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- (5) Regulations may make further provision in relation to certification under this section.
- (6) Regulations may in particular make provision—
  - (a) as to the period for which a certificate is in force (the “certification period”);
  - (b) as to the persons by whom a certificate may be given;
  - (c) as to procedures in connection with certification or where a certificate has been given;
  - (d) requiring persons to have regard to guidance issued by the Secretary of State;
  - (e) requiring an employer to calculate the amount of contributions that a scheme, and any section 26 agreements, required to be paid by or in respect of any jobholder in the certification period;
  - (f) as to cases where the requirements of a scheme, and any section 26 agreements, as to payment of contributions by or in respect of jobholders of an employer did not satisfy prescribed conditions.
- (7) Provision within subsection (6)(f) includes in particular provision for a scheme not to be treated by virtue of regulations under this section as having satisfied the relevant quality requirement unless prescribed steps are taken (which may include the making of prescribed payments).
- (8) In subsection (6) “section 26 agreements” means the agreement required, in the case of a scheme within subsection (3)(b), by section 26(4) and any agreement required, in the case of such a scheme, by section 26(6).
- (9) The Secretary of State may by order repeal this section.

### *Transitional*

## **29 Transitional periods for money purchase and personal pension schemes**

- (1) During the first transitional period for money purchase and personal pension schemes—
  - (a) sections 20(1)(b) and 26(4)(b) have effect as if for “3%” there were substituted “1%”;
  - (b) sections 20(1)(c) and 26(5)(b) have effect as if for “8%” there were substituted “2%”.
- (2) The first transitional period is a prescribed period of at least one year, beginning with the coming into force of section 20.
- (3) During the second transitional period for money purchase and personal pension schemes—
  - (a) sections 20(1)(b) and 26(4)(b) have effect as if for “3%” there were substituted “2%”;
  - (b) sections 20(1)(c) and 26(5)(b) have effect as if for “8%” there were substituted “5%”.
- (4) The second transitional period is a prescribed period of at least one year, beginning with the end of the first transitional period.

### **30 Transitional period for defined benefits and hybrid schemes**

- (1) Subsection (3) applies if, in relation to a person who on the employer's first enrolment date is a jobholder to whom section 3 applies, the conditions in subsection (2) are satisfied, and continue to be satisfied during the transitional period for defined benefits and hybrid schemes.
- (2) The conditions are that—
  - (a) the jobholder has been employed by the employer for a continuous period beginning before the employer's first enrolment date,
  - (b) at a time in that period before the employer's first enrolment date, the jobholder became entitled to become an active member of a defined benefits scheme or a hybrid scheme,
  - (c) the jobholder is, and has always since that time been, entitled to become an active member of a defined benefits scheme or a hybrid scheme, and
  - (d) the scheme to which that entitlement relates is a qualifying scheme, and any scheme to which it has related on or after the employer's first enrolment date has been a qualifying scheme.
- (3) Where this subsection applies, section 3 has effect in relation to the jobholder with the substitution for subsection (2) of the following subsection—

“(2) The employer must make prescribed arrangements by which the jobholder becomes an active member, with effect from the end of the transitional period for defined benefits and hybrid schemes, of an automatic enrolment scheme which is a defined benefits scheme or a hybrid scheme.”
- (4) If at any time in the transitional period for defined benefits and hybrid schemes the condition in subsection (2)(c) or (d) of this section ceases to be satisfied, subsection (5) applies instead of subsection (3) (and the day after the last day on which that condition is satisfied is referred to as “the closure date”).
- (5) Where this subsection applies, section 3 has effect in relation to the jobholder with the substitution for subsection (2) of the following subsection—

“(2) The employer must make prescribed arrangements by which the jobholder either—

  - (a) becomes an active member, with effect from the closure date, of an automatic enrolment scheme which is a defined benefits scheme or a hybrid scheme, or
  - (b) becomes an active member, with effect from the automatic enrolment date, of an automatic enrolment scheme which is a money purchase scheme.”
  - (6) If the jobholder becomes a member of a scheme under arrangements made under subsection (2)(b) of that section (as substituted by subsection (5))—
    - (a) the employer's contributions are payable with effect from the automatic enrolment date;
    - (b) any requirement of the scheme (in accordance with section 20(1)) for contributions to be payable by the jobholder does not apply in respect of the period of the jobholder's membership before the closure date;
    - (c) regulations made for the purposes of section 3(2)(b) must secure that the jobholder may pay, within a period prescribed by the regulations, any

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contributions which would have been payable by the jobholder but for paragraph (b) of this subsection.

- (7) Where subsection (3) or (5) of this section applies, section 3(3) and (4) apply as if references to the automatic enrolment date were references to the day on which arrangements would by virtue of this section fall to be made in respect of the jobholder.
- (8) The transitional period for defined benefits and hybrid schemes is a prescribed period beginning with the day on which section 3 comes into force.
- (9) In this section, the “employer’s first enrolment date” means the first day on which section 3 applies in the case of the employer (where that day falls within the transitional period for defined benefits and hybrid schemes).

### *Miscellaneous*

## **31 Effect of freezing order or assessment period**

- (1) Where a jobholder is an active member of a qualifying scheme and a freezing event occurs in relation to the scheme, the jobholder does not, for the purposes of this Chapter, cease to be an active member of the scheme, and the scheme does not, for those purposes, cease to be a qualifying scheme, by virtue of any relevant provision.
- (2) Where a worker is an active member of a scheme that satisfies the requirements of section 9 and a freezing event occurs in relation to the scheme, the worker does not, for the purposes of section 9(1)(c), cease to be an active member of the scheme by virtue of any relevant provision.
- (3) In this section—
  - “freezing event” in relation to a scheme means—
    - (a) the making of a freezing order under section 23 of the Pensions Act 2004 (c. 35) in relation to the scheme, or
    - (b) the beginning of an assessment period within the meaning of section 132 of that Act in relation to the scheme;
  - “relevant provision” means—
    - (a) in relation to a freezing order, provision contained in the order, or the provision made with respect to the order by section 23 of the Pensions Act 2004;
    - (b) in relation to an assessment period, the provision made with respect to the period by section 133 of that Act.

## **32 Power of trustees to modify by resolution**

- (1) The trustees of an occupational pension scheme may by resolution modify the scheme—
  - (a) with a view to enabling the scheme to comply with the conditions in section 17(2), or
  - (b) by increasing the amount required to be paid in contributions, in order for the scheme to satisfy the requirements contained in section 20(1) or those requirements as modified under section 24(1)(a).
- (2) An increase under subsection (1)(b) may be made only—



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- (a) by increasing the amount of any contribution, directly or by modifying the basis on which it is calculated, or
  - (b) by increasing the frequency of any contributions.
- (3) No modification may be made by virtue of subsection (1) without the consent of the employer in relation to the scheme.
- (4) In the application of subsection (3) to a scheme in relation to which there is more than one employer, references to the employer have effect as if they were references to a person nominated by the employers, or by the scheme, to act as the employers' representative for the purposes of this section or, if no such nomination is made, to all of the employers.
- (5) Regulations may provide that this section does not apply to occupational pension schemes within a prescribed class or description.

### **33 Deduction of contributions**

- (1) An employer who arranges for a person to become a member of a scheme in accordance with section 3(2), 5(2) or 7(3), or of an occupational pension scheme in accordance with section 9(2), may deduct the person's contributions to the scheme from the person's remuneration and pay them to the trustees or managers of the scheme (in the case of an occupational pension scheme) or the provider of the scheme (in the case of a personal pension scheme).
- (2) Regulations prescribing arrangements for the purposes of section 3(2), 5(2), 7(3) or 9(2), may require the employer to make such a deduction or payment at any time on or after the date with effect from which the jobholder is to become an active member of a scheme under the arrangements.