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STATUTORY INSTRUMENTS

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**2012 No. 215**

**PENSIONS**

**The Automatic Enrolment (Miscellaneous  
Amendments) Regulations 2012**

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| <i>Made</i>                   | - - - - | <i>31st January 2012</i> |
| <i>Laid before Parliament</i> |         | <i>1st February 2012</i> |
| <i>Coming into force</i>      | - -     | <i>1st June 2012</i>     |

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 111A(15)(b), 181, 182(2) and (3) of the Pension Schemes Act 1993<sup>(1)</sup>, sections 49(8), 124(1) and 174(2) and (3) of the Pensions Act 1995<sup>(2)</sup> and sections 2(3), 3(2), (5) and (6), 4(1) to (3) and (5), 5(4), (6) and (8), 6(1)(b) and (2), 7(5), 10, 11, 12, 15(1) and (2), 16(2), 22(4), 23(1)(b) and (c), (3) and (6), 24(1)(a) and (b), 29(2) and (4), 30(5), (7A) and (8), 37(3), 38(2), (3) and (4), 40(4), 41(4) and (5), 43(3), 52(3), 54(3), 60, 99 and 144(2) and (4) of the Pensions Act 2008<sup>(3)</sup>:

In accordance with section 185(1) of the Pension Schemes Act 1993 and section 120(1) of the Pensions Act 1995, the Secretary of State has consulted with such persons as the Secretary of State considers appropriate.

**PART 1**

**Introduction**

**Citation and commencement**

1.—(1) These Regulations may be cited as the Automatic Enrolment (Miscellaneous Amendments) Regulations 2012.

(2) These Regulations come into force as follows—

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- (1) [1993 c.48](#); Section 111A was inserted by the Welfare Reform and Pensions Act [1999 \(c.30\)](#) section 9 and subsection (18) was inserted by the Pensions Act [2008 \(c.30\)](#) section 49. Section 181 is cited for the meaning given to “prescribed” and “regulations”.
- (2) [1995 c.26](#); Section 49(8) was substituted by the Welfare Reform and Pensions Act [1999 \(c.30\)](#) section 10. Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”.
- (3) [2008 c.30](#). Sections 2(3) and 5(4) were substituted by the Pensions Act [2011 \(c.19\)](#), section 4. Section 4 was substituted that Act, section 6. Section 6(1)(b) was amended by that Act, section 7. Section 23 was substituted by that Act, section 11. In section 30 subsections (3) and (5) were amended and subsection (7A) was inserted by that Act, sections 14 and 15. Section 60 was amended by that Act, section 36(2).

- (a) this regulation and regulations 2, 3(b) 4, 5, 6, and 7 at the beginning of 1st June 2012;
- (b) regulation 3(a) on 1st June 2012 immediately after the time mentioned in sub-paragraph (a);
- (c) regulations 8, 9(b) and 10 to 43 at the beginning of 1st July 2012; and
- (d) regulation 9(a) on 1st July immediately after the time mentioned in sub-paragraph (c).

## PART 2

### Amendment of the Employers' Duties (Implementation) Regulations 2010

#### **Amendment of the Employers' Duties (Implementation) Regulations 2010**

2. The Employers' Duties (Implementation) Regulations 2010(4) are amended in accordance with this Part.

#### **Amendment of regulation 1**

3. In regulation 1 (citation, commencement and interpretation)—
- (a) in paragraph (1) for “1st September 2012” substitute “1st June 2012, immediately after the time when the amendments to these Regulations made by the Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 come into force”; and
  - (b) in paragraph (2) in the definition of “PAYE scheme” for “allocated” substitute “applicable”.

#### **Amendment of regulation 2**

4. In regulation 2(2)(a) (application of the employers' duties to employers) after “has” insert “, or is part of,”.

#### **Amendment of regulation 3**

5. In regulation 3 (early automatic enrolment)—
- (a) for paragraph (1) substitute—

“(1) Where the conditions in paragraphs (3) and (4) are both satisfied, the employers' duties apply to an employer from the early automatic enrolment date referred to in paragraph (5).”;
  - (b) in paragraph (2) omit “, as prescribed in the final column of the table in regulation 4”;
  - (c) in paragraph (4)—
    - (i) for “within the meaning of paragraph (1)” substitute “referred to in paragraph (5)”;
    - (ii) omit sub-paragraph (a);
    - (iii) in sub-paragraph (b) for “trustee or manager” substitute “trustees or managers”; and
    - (iv) for sub-paragraph (c) substitute—

“(c) notified the Regulator accordingly in writing, at any time—

- (i) where paragraph (5)(a) applies, before the date specified in the second column of the table in regulation 4 corresponding to that earlier date;
  - (ii) where paragraph (5)(b) applies, before 1st November 2012; or
  - (iii) where paragraph (5)(c) applies, no later than the first day of the period of one month before the date specified in that sub-paragraph.”; and
- (d) after paragraph (4) insert—
- “(5) The early automatic enrolment date is—
- (a) any date in the final column of the table in regulation 4 which is earlier than the staging date corresponding to that employers’ description;
  - (b) 1st December 2012; or
  - (c) in the case of an employer of 50,000 or more persons by PAYE scheme size or any other description, one of the following dates to be chosen by the employer—
    - (i) 1st July 2012;
    - (ii) 1st August 2012; or
    - (iii) 1st September 2012.”.

#### **Amendment of regulation 5**

6. In regulation 5(a) (transitional periods for money purchase and personal pension schemes) after “four years” insert “and four months”.

#### **Amendment of regulation 6**

7. In regulation 6 (transitional period for defined benefits and hybrid schemes) after “four years” insert “and four months”.

## **PART 3**

### **Amendment of the Employers’ Duties (Registration and Compliance) Regulations 2010**

#### **Amendment of the Employers’ Duties (Registration and Compliance) Regulations 2010**

8. The Employers’ Duties (Registration and Compliance) Regulations 2010(5) are amended in accordance with this Part.

#### **Amendment of regulation 1**

9. In regulation 1 (citation, commencement and interpretation)—
- (a) in paragraph (1) for “1st October 2012” substitute “1st July 2012, immediately after the time when the amendments to these Regulations made by the Automatic Enrolment (Miscellaneous Amendments) Regulations 2012 come into force”; and
  - (b) in paragraph (2)—

- (i) in the definition of “employer pension scheme reference” for sub-paragraph (a) substitute—
  - “(a) in relation to an occupational pension scheme (except a scheme established under section 67 of the Act)—
    - (i) a reference given by the Regulator (R) to the trustees or managers of the scheme (T) following the provision of registrable information to R by T; and
    - (ii) any reference provided to the employer by T evidencing the relationship between the employer and the scheme;”;
- (ii) in the definition of “PAYE scheme”, for “allocated” substitute “applicable”.

### **Amendment of regulation 2**

**10.** In regulation 2(2) (registration: general) for the words from “regulations 3” to “regulations 3(1)” substitute “regulation 3 or 4 but the final day of the period in regulation 3(1)”.

### **Amendment of regulation 3**

**11.—**(1) Regulation 3 (registration: after staging date and new PAYE schemes) is amended as follows.

- (2) In paragraph (1)—
  - (a) in sub-paragraph (a) for “2 months” substitute “4 months”; and
  - (b) in sub-paragraph (b) for “3 months” substitute “4 months”.
- (3) In paragraph (2)—
  - (a) in sub-paragraph (a)—
    - (i) in paragraph (i) before “address” insert “name;”;
    - (ii) for paragraph (ii) substitute—
      - “(ii) registered companies house number where one exists or, where such a number does not exist—
        - (aa) the employer’s industrial and provident society number;
        - (bb) but if the number mentioned in sub-paragraph (aa) does not exist, the employer’s registered charity number;
        - (cc) but if the number mentioned in sub-paragraph (bb) does not exist, the employer’s VAT registration number, if one exists;”;
  - (b) in sub-paragraph (d)—
    - (i) for paragraph (i) substitute—
      - “(i) subject to paragraph (iii) the number of jobholders automatically enrolled with effect from—
        - (aa) the employer’s staging date;
        - (bb) where sub-paragraph (aa) does not apply and the employer has not used a deferral date<sup>(6)</sup> the date the employer’s duties first apply to the employer;”;
    - (ii) after paragraph (i) omit “and”; and

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<sup>(6)</sup> See section 4 of the Pensions Act 2008 for the meaning of “deferral date”. Section 4 was substituted by the Pensions Act 2011, section 6.

(iii) after paragraph (ii) insert—

“and

(iii) on the deferral date—

(aa) the deferral date or the last such date where the employer uses more than one; and

(bb) the number of jobholders automatically enrolled with effect from that date;”;

(c) for sub-paragraph (e) substitute—

“(e) where an employer is subject to transitional arrangements under section 30 of the Act (transitional period for defined benefits and hybrid schemes) the number of jobholders to whom that section applies;”;

(d) for sub-paragraph (f) substitute—

“(f) the number of workers in an employer’s PAYE scheme who, immediately before whichever is applicable of—

(i) the staging date; or

(ii) the day on which the employers’ duties first apply to the employer, were active members of a qualifying scheme or, if the employer uses more than one qualifying scheme to comply with the employers’ duties, each of those schemes;”.

#### **Amendment of regulation 4**

**12.** In regulation 4 (registration: re-registration)—

(a) in paragraph (1)(a) for “2 months” substitute “1 month”; and

(b) in paragraph (3)—

(i) in sub-paragraph (c)—

(aa) in paragraphs (i) and (ii) for “enrolled” in both places where it appears, substitute “re-enrolled”.

(bb) after paragraph (i) omit “and”; and

(cc) after paragraph (ii) insert—

“and

(iii) the automatic re-enrolment date;”;

(ii) in sub-paragraph (d) for “sections 4 or 30” substitute “section 30”; and

(iii) for sub-paragraph (e) substitute—

“(e) the number of workers in an employer’s PAYE scheme who, immediately before whichever is applicable of—

(i) the automatic re-enrolment date; or

(ii) the point of re-registration,

were active members of a qualifying scheme or, if the employer uses more than one qualifying scheme to comply with the employers’ duties, each of those schemes;”.

### **Amendment of regulation 6**

13. After regulation 6(2) (records: employers) insert—

“(2A) Where an employer (E) gives to a person (P) employed by E a notice under section 4 of the Act (postponement or disapplication of automatic enrolment) that meets the requirements prescribed in Part 6 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(7) E must keep a record of—

- (a) P’s full name;
- (b) P’s national insurance number (where available); and
- (c) the date E gave the notice to P.”.

### **Amendment of regulation 7**

14. In regulation 7(1)(b)(i) (records: trustees, managers and providers) after “section 3” insert “or 7”.

### **Amendment of regulation 13**

15.—(1) Regulation 13 (escalating penalty notices) is amended as follows.

(2) In paragraph (4) after “(5)” insert “, (5A)”.

(3) In paragraph (5)—

(a) for sub-paragraph (a) substitute—

“(a) paragraph (2)(a) or (b) applies, it is the relevant number except that—

- (i) in the circumstances set out in paragraph (5A) the number of persons is the number of persons in the employer’s PAYE scheme or schemes that are employed by the employer; or
- (ii) where the circumstances set out in paragraph (5A) do not apply and, in the Regulator’s opinion the relevant number is not known, paragraph (7) applies;”;

(b) in sub-paragraph (b) for the words after “or” substitute—

“(ii) where in the Regulator’s opinion the number in paragraph (i) is not known, the relevant number except that—

- (aa) where paragraph (5A) applies the number of persons is the number of persons in the employer’s PAYE scheme or schemes that are employed by the employer; or
- (bb) where paragraph (5A) does not apply and, in the Regulator’s opinion, the relevant number is not known, paragraph (7) applies.”.

(4) After paragraph (5) insert—

“(5A) This paragraph applies where—

- (a) the Regulator is of the opinion that an employer’s PAYE scheme (or where the Regulator is of the opinion that the employer has more than one PAYE scheme, the schemes) includes persons who are not employed by the employer; and
- (b) the number of persons in the employer’s PAYE scheme (or where the Regulator is of the opinion that the employer has more than one PAYE scheme, the schemes) who are employed by the employer is known to the Regulator.”.

- (5) In paragraph (6)—
  - (a) after “notice” insert “, including”;
  - (b) in sub-paragraph (a) after “apply,” insert “information”; and
  - (c) in sub-paragraph (b) after “applies” insert “, information”.
- (6) After paragraph (7) insert—
  - “(8) In this regulation, “relevant number” means the number of persons within an employer’s PAYE scheme or, where the Regulator is of the opinion that the employer has more than one PAYE scheme, the total number of persons within those schemes.”.

#### **Amendment of regulation 14**

- 16.—(1) Regulation 14 (penalty notices: prohibited recruitment conduct) is amended as follows.
- (2) In paragraph (3) after “(4)” insert “, (4A)”.
  - (3) For paragraph (4) substitute—
    - “(4) It is the relevant number except that—
      - (a) where paragraph (4A) applies the number of persons is the number of persons in the employer’s PAYE scheme or schemes that are employed by the employer;
      - (b) where paragraph (4A) does not apply and, in the Regulator’s opinion the relevant number is not known, paragraph (6) applies.
    - (4A) This paragraph applies where—
      - (a) the Regulator is of the opinion that an employer’s PAYE scheme includes (or where the Regulator is of the opinion that the employer has more than one PAYE scheme, the schemes include) persons who are not employed by the employer; and
      - (b) the number of persons in the employer’s PAYE scheme (or where the Regulator is of the opinion that the employer has more than one PAYE scheme, the schemes) who are employed by the employer is known to the Regulator.”.
  - (4) In paragraph (5)(b) at the beginning insert “including information”.
  - (5) After paragraph (6) insert—
    - “(7) In this regulation, “relevant number” means the number of persons within an employer’s PAYE scheme or, where the Regulator is of the opinion that the employer has more than one PAYE scheme, the total number of persons within those schemes.”.

## **PART 4**

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

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

17. The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(8) are amended in accordance with this Part.

## **Substitution of regulation 2**

18. For regulation 2 (enrolment information) substitute—

### **“Enrolment information**

2. In these Regulations “enrolment information” means the information described in paragraphs 1-15, 24 and 25 of Schedule 2.”.

## **Amendment of regulation 4**

19. In regulation 4 (pay reference periods for the purposes of section 1(1)(c) of the Act)—

- (a) in the heading, for “section 1(1)(c)” substitute “sections 1(1)(c), 3(1)(c) and 5(1)(c)(9)”;
- (b) in paragraph (1) for “section 1(1)(c) of the Act (jobholders), except in the case of person A,” substitute “sections 1(1)(c), 3(1)(c) and 5(1)(c) of the Act (jobholders, automatic enrolment and automatic re-enrolment)”;
- (c) omit paragraphs (2) to (7).

## **Substitution of regulation 5**

20. For regulation 5 substitute—

### **“Pay reference periods for the purposes of section 20(1)(b) and (c) and section 26(4)(b) and (5)(b) of the Act**

5.—(1) The pay reference periods for the purposes of section 20(1)(b) and (c) (quality requirement: UK money purchase schemes) and section 26(4)(b) and (5)(b) (quality requirement: UK personal pension schemes) of the Act are as follows.

(2) In relation to any person—

(a) the person’s first pay reference period is to begin—

- (i) on the first day, on or after the staging date, that a person is both a jobholder and an active member of a qualifying scheme; or
- (ii) where there has been a period beginning after that first day, during which the requirements of section 1(1)(a) or (c) of the Act were not met but the person remained an active member of a qualifying scheme, on the day following the last day of that period; and

(b) the person’s subsequent pay reference periods begin on the anniversary of the employer’s staging date.

(3) The pay reference period in relation to any person ends on the day on which the person ceases to be a jobholder of the employer or ceases to be an active member of a qualifying scheme.”.

## **Amendment of regulation 12**

21. In regulation 12 (automatic re-enrolment dates)—

- (a) in paragraph (1) omit “(2),”;
- (b) in sub-paragraphs (1)(a) and (b) for “of one month beginning with” in both places where it appears substitute “beginning 3 months before, and ending at the end of the period of 3 months beginning with,”;

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(9) Sections 3(1) and 5(1) were substituted by the Pensions Act 2011, section 5.



- (c) omit paragraph (2); and
- (d) in paragraph (3), for the words from “—“ to “qualifying scheme” substitute “the jobholder ceases to be an active member of the scheme”.

#### **Substitution of regulation 14**

**22.** For regulation 14 substitute—

##### **“Jobholders excluded from automatic re-enrolment**

**14.—(1)** Section 5(2) of the Act does not apply in the cases to which paragraphs (2) and (3) apply.

(2) This paragraph applies where, in relation to re-enrolment in a case under section 5(1) of the Act, within the period of 12 months before the automatic re-enrolment date referred to in regulation 12(1)—

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

(3) This paragraph applies where, in relation to re-enrolment in a case under section 5(1B) of the Act<sup>(10)</sup>, the jobholder has ceased to be an active member of the qualifying scheme in question because of any action or omission by the employer and the action or omission was at the jobholder’s request.”.

#### **Amendment of regulation 17**

**23.** In regulation 17 (information on the right to opt in to pension saving)—

- (a) in paragraph (1) for “the information specified in paragraph (2)” substitute “, in writing, the information described in paragraphs 16, 24 and 25 of Schedule 2”; and
- (b) omit paragraphs (2) and (4).

#### **Amendment of regulation 21**

**24.** In regulation 21 (information)—

- (a) in paragraph (1) for “the information specified in paragraph (2)” substitute “, in writing, the information described in paragraphs 17, 24 and 25 of Schedule 2”; and
- (b) omit paragraph (2).

#### **Amendment of Part 6**

**25.** In the heading to Part 6 after “postponement” insert “or disapplication of automatic enrolment”.

#### **Substitution of regulation 24**

**26.** For regulation 24 (information) substitute—

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<sup>(10)</sup> Section 5(1B) was inserted by the Pensions Act 2011, section 4(2).

**“Prescribed requirements for the purposes of section 4(1), (2) and (3) of the Act**

**24.**—(1) A notice under section 4(1) or (2) of the Act (postponement or disapplication of automatic enrolment) given by an employer (E) to the category of E’s workers that appears in column 1 of the table must be in writing and include the information described in the paragraphs of Schedule 2 that appear in column 2 of the table against that category.

**Table**

| <i>Category of worker</i>  | <i>Paragraphs of Schedule 2</i> |
|--|---------------------------------|
| all workers  | 18, 19, 20, 21, 24, 25          |
| all workers who are not active members of a qualifying scheme                        | 18, 20, 21, 24, 25              |
| all workers who are jobholders and who are not active members of a qualifying scheme | 16, 20, 21, 24, 25              |
| all workers who are not jobholders and are not active members of a qualifying scheme | 17, 20, 21, 24, 25              |

(2) A notice given by E under section 4(3) of the Act to a worker who is a jobholder must be in writing and include the information described in the paragraphs of Schedule 2 that appear in column 2 of the Table against that category of worker.

(3) For the purposes of section 4(5) of the Act, the prescribed period is the period of 1 month beginning with the day after the starting day.”.

**Revocation of regulations 25 and 26**

**27.** Regulation 25 (postponement of the automatic enrolment date) and regulation 26 (cases in which automatic enrolment may be postponed) are revoked.

**Substitution of regulation 27**

**28.** For regulation 27 (information) substitute—

**“Notice to be given under section 30(3) of the Act**

**27.** Where the employer gives the jobholder the notice mentioned in section 30(3)(11) of the Act (transitional period for defined benefits and hybrid schemes), that notice must—

- (a) be in writing;
- (b) be given at any time before the end of the period of 1 month beginning with the employer’s first enrolment date(12); and
- (c) include the information described in paragraphs 16, 22, 24 and 25 of Schedule 2.”.

**Amendment of regulation 29**

**29.** In regulation 29—

- (a) in sub-paragraph (a) for “regulation 6” substitute “regulation 6(1)”; and
- (b) in the substituted text for “6” substitute “(1)”; and

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(11) Section 30(3) was amended by the Pensions Act 2011 (c.19) sections 6 and 14.

(12) “employer’s first enrolment date” is defined in section 30(9) of the Pensions Act 2008.

- (c) after the substituted sub-paragraph (a) omit “or”;
- (d) after the substituted sub-paragraph (b) add—
  - “or
  - (c) the provider of an automatic enrolment scheme which is a personal pension scheme so that before the end of the period of 1 month beginning with the closure date the jobholder to whom section 3 of the Act applies receives information about the terms and conditions mentioned in paragraph (4).”; and
- (e) after sub-paragraph (a) insert—
  - “(aa) in regulation 6(2) and (4) for “paragraph (1)(b)” each time it occurs substitute “paragraph (1)(c)”.

### **Substitution of regulation 33**

**30.** For regulation 33 (information) substitute —

#### **“Information**

**33.—**(1) Subject to paragraph (3) the employer of a worker who is—

- (a) on the staging date both a jobholder and an active member of a qualifying scheme;  
or
- (b) becomes both a jobholder and an active member of a qualifying scheme on a day after the staging date,

must, in accordance with paragraph (2), give the worker, in writing, the information described in paragraphs 7, 23 and 25 of Schedule 2.

(2) The information must be provided at any time before the end of the period of 2 months beginning with the date or day referred to in paragraph (1).

(3) Paragraph (1) does not apply where the worker becomes an active member of a qualifying scheme under section 3(2), 5(2) or 7(3) of the Act with effect from the date or day referred to in that paragraph.”.

### **Revocation of regulation 34**

**31.** Regulation 34 (continuity of scheme membership) is revoked.

### **Amendment of regulation 37**

**32.** In regulation 37 (test scheme: requirements to revalue accrued benefits and increase pensions in payment)—

- (a) in paragraph (1) for the words “section 23(1)(b)” substitute “section 23(1)(c)”**(13)**; and
- (b) at the end of paragraph (2)(b) add the words “in relation to a scheme which provides for a member to be entitled to a pension commencing at the appropriate age**(14)** and continuing for life”.

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**(13)** Section 23 was substituted by the Pensions Act 2011, section 11(2).

**(14)** “appropriate age” is defined in section 23(3) of the Pensions Act 2008.

### **Amendment of regulation 38**

**33.** In regulation 38(2)(15) (staged increase in appropriate age) in the first row of the table, for the date “6 April 2024” substitute “6 April 2020”.

### **Amendment of regulation 39**

**34.** In regulation 39(4)(b)(v) (requirements for meeting the test scheme standard) omit “(but this is subject to regulations 41 and 42)”.

### **Insertion of regulation 39A**

**35.** After regulation 39 (requirements for meeting the test scheme standard) insert—

**“Requirement for satisfying the test scheme under section 23(2)(b) of the Act**

**39A.**—(1) The requirement relating to a sum of money which a scheme referred to in section 23(2)(b) of the Act (test schemes) must satisfy if it is to be a test scheme is specified in—

- (a) paragraph (4) in the case of a scheme described in paragraph (2); or
- (b) paragraph (5) in the case of any other scheme to which section 23(2)(b) applies.

(2) A scheme referred to in paragraph (1)(a) is a scheme under which the sum of money to be made available for the provision of benefits is determined by reference to final pensionable pay.

(3) For the purposes of paragraph (2) “final pensionable pay” has the same meaning as in the rules of the scheme in question.

(4) Where this paragraph applies, the requirement in question is that the sum of money to be made available for the provision of benefits to a member must—

- (a) accrue at an annual rate of at least 16% of average qualifying earnings in the last three tax years preceding the end of pensionable service; and
- (b) be multiplied by the number of years of pensionable service up to a maximum of 40 years.

(5) Where this paragraph applies, the requirement in question is the requirement specified in paragraph (6) or (7).

(6) The requirement is that the sum of money must accrue at an annual rate of at least 16% of average qualifying earnings multiplied by the number of years of pensionable service up to a maximum of 40 years.

(7) The requirement is that the sum of money must—

- (a) accrue at an annual rate of at least 8% of average qualifying earnings; and
- (b) until the date on which the member attains the appropriate age, be increased as a minimum by 3.5% per annum, in addition to any increase that is required by virtue of regulation 37(2)(a).

(8) Where the employer makes a choice under paragraph (5) as to the requirement to be satisfied for the purposes of this regulation, that requirement must be satisfied in relation to all persons who are relevant members as defined by section 22(2) of the Act (test scheme standard).”.

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(15) State pension age is specified in section 126 of, and Schedule 4 to, the Pensions Act 1995 (c.26). Relevant amending provisions are section 13(1) and (3) of, and paragraphs 1 to 4(6) of Schedule 3 to, the Pensions Act 2007 (c.22) and section 1(5) and (6) of, and paragraphs 6, 9 and 10 of Schedule 1 to, the Pensions Act 2011 (c.19).

## **Revocation of regulations 41 and 42**

36. Regulations 41 and 42 (modifications of test schemes) are revoked.

## **Amendment of regulation 43**

37. In regulation 43 (modification allowing different quality requirements to be satisfied in aggregate)—

- (a) in paragraph (1) for “Paragraphs (2) to (5)” substitute “Paragraphs (2) to (4)”;
- (b) for paragraph (3)(b) substitute—
  - “(b) all of the paragraph (b) quality requirements are met apart from the relevant benefit requirement (“requirement Y”); and”;
- (c) for paragraph (4)(b) substitute—
  - “(b) the extent to which requirement Y is met as a proportion of—
    - (i) where the requirement in subsection (4) of section 23 of the Act applies, the annual rate of pension specified in that subsection; or
    - (ii) where a requirement in paragraph (4), (6) or (7) of regulation 39A applies, the sum of money to be made available for the provision of benefits as specified in the relevant paragraph.”; and
- (d) for paragraphs (5) and (6) substitute—
  - “(5) Where paragraphs (2) to (4) have effect in relation to a hybrid scheme of the relevant description, regulation 39 is to be read as if, for paragraph (5), there were substituted—
    - “(5) A scheme actuary or employer may not certify that a scheme satisfies the test scheme standard if the aggregate percentage referred to in regulation 43(3)(c) is less than 100 in relation to more than 10% of relevant members.”.
  - (6) In this regulation, “the relevant benefit requirement” means—
    - (a) the requirements in subsection (4) of section 23 of the Act where that subsection applies; or
    - (b) one of the requirements specified in regulation 39A where that regulation applies.”.

## **Amendment of regulation 47**

38. In regulation 47 (prescribed conditions for non-UK qualifying schemes)—

- (a) in paragraphs (1) and (3) for “a money purchase scheme” substitute “an occupational pension scheme”; and
- (b) in paragraph (7) for “money purchase schemes”, substitute “any money purchase benefits applicable to the jobholder”.

## **Insertion of regulation 47A**

39. After regulation 47 (prescribed requirements for non-UK qualifying schemes) insert—

### **“Meaning of “provider”**

**47A.** For the purposes of the definition of “provider” in section 99 of the Act (interpretation of Part) a provider of a personal pension scheme to which section 26 of the

Act (quality requirement: UK personal pension schemes) does not apply is a person whose normal business includes the provision of personal pensions.”.

#### **Amendment of regulation 48**

**40.** In regulation 16 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996<sup>(16)</sup> (prescribed time in which an employer must make payments to trustees or managers) as substituted by regulation 48 (amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996)—

- (a) in paragraph (1) for the words “is 19 days” to the end, substitute—
    - “is—
      - (a) where the contribution payable on behalf of an active member is paid to the trustees or managers of the scheme by means of an electronic communication, 22 days; or
      - (b) in any other case, 19 days,
- commencing on the day following the last day of the month in which the amount is deducted from the earnings in question.”; and
- (b) in paragraph (3)—
    - (i) after the definition of “automatic re-enrolment date”, insert—
      - ““electronic communication” has the meaning given in section 15 of the Electronic Communications Act 2000<sup>(17)</sup>”; and
    - (ii) in the definition of “opt out period” after “section 3(2)” insert “, 5(2) or 7(3)”.

#### **Amendment of regulation 49**

**41.** In regulation 5 of the Personal Pension Schemes (Payments by Employers) Regulations 2000<sup>(18)</sup> (prescribed period for the purpose of calculating the due date for the payment of any contributions on behalf of an employee) as substituted by regulation 49 (amendment of the Personal Pension Schemes (Payments by Employers) Regulations 2000)—

- (a) in paragraph (1) for the words “is the period” to the end, substitute—
    - “is the period of—
      - (a) where the contribution payable under the direct payment arrangements is paid to the trustees or managers of the scheme by means of an electronic communication, 22 days; or
      - (b) in any other case, 19 days,
- commencing on the day following the last day of the month in which the deduction was made from the employee’s earnings.”; and
- (b) in paragraph (2) for “a jobholder” substitute “an employee”; and
  - (c) in paragraph (3)—
    - (i) after the definition of “automatic re-enrolment date”, insert—
      - ““electronic communication” has the meaning given in section 15 of the Electronic Communications Act 2000;”; and
    - (ii) in the definition of “opt out period” after “section 3(2)” insert “, 5(2) or 7(3)”.

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<sup>(16)</sup> S.I. 1996/1715. Regulation 16 was amended by S.I. 1997/786, 2000/679 and 2010/772.

<sup>(17)</sup> 2000 c.7.

<sup>(18)</sup> S.I. 2000/2692. Regulation 5 was substituted by S.I. 2010/772, regulation 49.

**Amendment of regulation 50**

**42.** In regulation 50(2) (due date for the purposes of section 37(3) of the Act) for “19th” substitute “22nd”.

**Insertion of Schedule 2**

**43.—**(1) In regulation 1 (citation, commencement and interpretation) in the definition of “opt out notice” and in regulation 9(6)(a) (opting out) for “the Schedule” substitute “Schedule 1”.

- (2) For the heading to the Schedule substitute “Schedule 1”;
- (3) After that Schedule insert the Schedule set out in the Schedule to these Regulations.

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

31st January 2012

*Steve Webb*  
Minister of State,  
Department for Work and Pensions

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## SCHEDULE

Regulation 43

### Information

## “SCHEDULE 2

Regulation 2, 17, 21, 24, 27 and 33

### Information

**1.** A statement that the jobholder has been or will be automatically enrolled, automatically re-enrolled or enrolled, as the case may be, into a pension scheme to help save for the jobholder’s retirement.

**2.** The jobholder’s automatic enrolment date, automatic re-enrolment date or enrolment date, as the case may be or, for a jobholder to whom regulation 28 or 29 applies, the day or date mentioned in regulation 6 as modified by regulation 28 or 29, as the case may be.

**3.** The name, address, telephone number and electronic contact details of the scheme in respect of which the jobholder is or will be an active member.

**4.—(1)** The value of any contributions payable to the scheme by the employer and the jobholder in any applicable pay reference period.

(2) The information to be given to the jobholder under sub-paragraph (1) includes information on any change in the value of any contributions payable to the scheme by the employer or jobholder in any applicable pay reference period which will occur as the result of any changes to contributions brought about by the transitional periods for money purchase and personal pension schemes under section 29 of the Act (transitional periods for money purchase and personal pension schemes).

(3) The “value” of contributions may be expressed as a fixed amount or a percentage of any qualifying earnings or pensionable pay due to the jobholder in any applicable pay reference period.

**5.** A statement that any contributions payable to the scheme by the jobholder have been or will be deducted from any qualifying earnings or pensionable pay due to the jobholder.

**6.** Confirmation as to whether tax relief is or will be given in accordance with section 192 (relief at source) or 193 (relief under net pay arrangements) of the Finance Act 2004.

**7.** A statement that if the jobholder, on a date, ceases to be an active member of a qualifying scheme (without the jobholder ceasing to be employed by the employer) by reason of something other than an action or omission by the jobholder, the employer must make arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the day following that date.

**8.** A statement that the jobholder has the right to opt out of the scheme during the opt out period.

**9.** A statement indicating the start and end dates of the opt out period applicable to the jobholder if that information is known to the employer but if not, a statement that the opt out period is the period determined in accordance with regulation 9(2) or (3) of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.

**10.** Where the opt out notice may be obtained.

**11.** A statement that opting out means that the jobholder will be treated for all purposes as not having become an active member of the scheme on that occasion.

**12.** A statement that after a valid opt out notice is given to the employer in accordance with regulation 9(2) or (3) any contributions paid by the jobholder will be refunded to the jobholder by the employer.



**13.** A statement that where the jobholder opts out the jobholder may opt in, in which case the employer will be required to arrange for that jobholder to become an active member of an automatic enrolment scheme once in any 12 month period.

**14.** A statement that, after the opt out period, the jobholder may cease to make contributions in accordance with scheme rules.

**15.** A statement that a jobholder who opts out or who ceases active membership of the scheme will normally be automatically re-enrolled into an automatic enrolment scheme by the employer in accordance with regulations made under section 5 of the Act (automatic re-enrolment).

**16.** A statement that the jobholder may, by giving written notice to the employer, require the employer to make arrangements for the jobholder to become an active member of an automatic enrolment scheme and that the jobholder will be entitled to employer's contributions.

**17.** A statement that the worker may, where they are working or ordinarily work in Great Britain and are aged at least 16 and under 75 and are not a member of a pension scheme that satisfies the requirements of section 9 of the Act, by giving written notice to the employer, require the employer to make arrangements for the worker to become an active member of such a pension scheme.

**18.** A statement that, by giving a written notice to the employer, the worker may –

(a) where they earn more than the amount specified in section 13(1)(a) of the Act (and the amount must be given) and are a jobholder and not an active member of a qualifying scheme, opt in to an automatic enrolment scheme and that the jobholder will be entitled to employer's contributions;

(b) where they are not a jobholder, for the sole reason that they earn no more than the amount specified in section 13(1)(a) of the Act (and the amount must be given), and are not a member of a pension scheme that satisfies the requirements of section 9 of the Act, require the employer to make arrangements for the worker to become an active member of such a pension scheme.

**19.** A statement where the worker is a jobholder and an active member of a qualifying scheme and, on a date, ceases to be such a member (without the jobholder ceasing to be employed by the employer) by reason of something other than an action or omission by the jobholder, the employer must make arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the day following that date.

**20.** A statement that the employer has deferred automatic enrolment until the deferral date (and the date must be given).

**21.** A statement that the employer will automatically enrol the worker into an automatic enrolment scheme if, on the deferral date, the worker is aged 22 or more but less than state pension age, is working or ordinarily works in Great Britain, earnings of more than the amount specified in section 3(1)(c) of the Act (and the amount must be given) are payable to the worker and the worker is not already an active member of a qualifying scheme.

**22.** A statement that the employer intends to defer automatic enrolment in respect of that jobholder until the end of the transitional period for defined benefit and hybrid schemes.

**23.** Confirmation that the jobholder is an active member of a qualifying scheme.

**24.** A statement that a written notice from the worker must be signed by the worker or, if it is given by means of an electronic communication, must include a statement that the worker personally submitted the notice.

**25.** Where to obtain further information about pensions and saving for retirement.”

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Employers' Duties (Implementation) Regulations 2010 (S.I. 2010/4), the Employers' Duties (Registration and Compliance) Regulations 2010 (S.I. 2010/5) and the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (S.I. 2010/772).

Part 2 amends the Employers' Duties (Implementation) Regulations 2010. Regulation 3 changes the date when the regulations come into force and amends a definition. Regulation 4 clarifies the meaning of "employer" for the purposes of regulation 2(2). Regulation 5 amends the provisions relating to early automatic enrolment. Regulation 6 extends the transitional period for the purposes of section 29 of the Pensions Act 2008 (c. 30) ("the Act"). Regulation 7 extends the transitional period for the purposes of section 30(3) of the Act.

Part 3 amends the Employers' Duties (Registration and Compliance) Regulations 2010. Regulation 9 changes the date the regulations come into force and amends two definitions. Regulation 10 clarifies the meaning of regulation 2(2). Regulation 11 amends the information requirements imposed on employers. Regulation 12 amends the time limit for registration during re-enrolment and makes technical amendments. Regulation 13 adds to the record-keeping duties of employers. Regulations 15 and 16 make changes in relation to penalties and penalty notices.

Part 4 amends the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010. Regulations 18, 23, 24, 28, 30 and 43 make amendments to the requirements imposed on employers with regard to the provision of information. Regulation 19 makes changes to the meaning of "pay reference period" for the purposes of sections 1(1)(c), 3(1)(1c) and 5(1)(c) of the Act. Regulation 20 substitutes a new regulation 5 with respect to the pay reference period for the purposes of sections 20 and 26 of the Act.

Regulation 21 widens the period within which an employer's cyclical re-enrolment date must fall. Regulation 22 substitutes regulation 14, to exclude certain jobholders from automatic re-enrolment.

Regulations 25, 26 and 27 amend Part 6, consequential on the substitution of section 4 of the Act by section 6 of the Pensions Act 2011 ("the 2011 Act") and make provision with regard to the information an employer must provide to workers where the employer defers automatic enrolment. Regulations 28 and 29 make provision with regard to the notices that must be served with respect to deferral of automatic enrolment under section 30 of the Act.

Regulations 32 and 35 make changes consequential on the amendment to section 23 of the Act by section 11 of the 2011 Act, with regard to the requirements to be satisfied by a test scheme. Regulation 33 amends regulation 38 consequential to changes to state pension age. Regulation 34 omits references to regulations 41 and 42 which are revoked by regulation 36.

Regulation 37 makes amendments to the modified quality requirements to be met by hybrid schemes. Regulation 38 makes amendments in relation to non-UK pension schemes to which section 25 or 27 of the Act applies. Regulation 39 inserts a new provision for the purposes of the definition of "provider". Regulations 40 and 41 make amendments relating to the time within which contributions may be paid by electronic communication. Regulation 42 amends regulation 50 with regard to the due date for the payment of contributions for the purposes of section 37(3) of the Act. Regulation 43 re-numbers the Schedule and inserts Schedule 2.

An assessment of the impact of this legislation on the private sector and civil society organisations has been made. A copy of this impact assessment is available in the libraries of both Houses

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of Parliament, and is annexed to the Explanatory Memorandum which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk). Copies may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.