
DRAFT STATUTORY INSTRUMENTS

2011 No.

PENSIONS

**The Automatic Enrolment (Miscellaneous Amendments) (No. 2)
Regulations 2011**

Made - - - - - ***
Coming into force - - - - - ***

The Secretary of State for Work and Pensions, in exercise of the power conferred by sections 16(3)(c), 17(1)(c), 28(1), (2), (5) and (6), 60, 96(2), 98 and 144(2) of the Pensions Act 2008^(a), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Automatic Enrolment (Miscellaneous Amendments) (No. 2) Regulations 2011 and come into force on xx.

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

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

Provisions on certification

3. After Part 7 of the principal regulations insert—

“

(a) 2008 c.30. Section 28 was amended by section xx of the Pensions Act 2011 (c.30). Section 99 is cited for the meaning given to “prescribed” and “regulations”.
(b) S.I. 2010/772.

PART 7A

Certification that a quality requirement is satisfied

Effect of a certificate under section 28 of the Act

32A. Subject to regulation 32H, a scheme to which section 28 of the Act applies is to be taken to satisfy the relevant quality requirement in relation to each of an employer's relevant jobholders if a certificate given in accordance with regulations 32E to G is in force in relation to the employer and those jobholders (referred to in regulations 32B to H as "a certificate").

Alternative requirements for a money purchase scheme

32B.—(1) In relation to a money purchase scheme to which section 20 of the Act applies or which is an occupational pension scheme within section 18(b) of the Act, the prescribed alternative requirement is the first, second or third set of requirements below.

- (2) The first set of requirements is that the scheme provides that —
- (a) the employer of the relevant jobholder must pay contributions in respect of the jobholder;
 - (b) the employer's contribution must be equal to or more than 4% of the amount of the relevant jobholder's pensionable earnings in the certification period;
 - (c) the total amount of the contributions paid by the jobholder and the employer must be equal to or more than 9% of the jobholder's pensionable earnings in the certification period; and
 - (d) the pensionable earnings of the relevant jobholder must be equal to or more than the basic pay of that jobholder.
- (3) The second set of requirements is that—
- (a) the scheme provides that—
 - (i) the employer of the relevant jobholder must pay contributions in respect of the jobholder;
 - (ii) the employer's contribution must be equal to or more than 3% of the amount of the jobholder's pensionable earnings in the certification period;
 - (iii) the total amount of the contributions paid by the jobholder and the employer must be equal to or more than 8% of the amount of the jobholder's pensionable earnings in the certification period; and
 - (iv) the pensionable earnings of the relevant jobholder must be equal to or more than the basic pay of that jobholder; and
 - (b) taking all of the relevant jobholders together, the pensionable earnings of those jobholders constitute at least 85% of the earnings of those jobholders in the certification period.
- (4) The third set of requirements is that the scheme provides that—
- (a) the employer of the relevant jobholder must pay contributions in respect of the jobholder;
 - (b) the employer's contribution must be equal to or more than 3% of the amount of the jobholder's earnings in the certification period; and
 - (c) the total amount of the contributions paid by the jobholder and the employer must be equal to or more than 7% of the amount of the jobholder's earnings in that period.

Alternative requirements for a personal pension scheme

32C.—(1) In relation to a personal pension scheme to which section 26 of the Act applies or which is referred to in regulation 32J(1), the prescribed alternative requirement is the first, second or third set of requirements as set out in paragraphs (2), (4) and (6) respectively.

(2) The first set of requirements is that —

- (a) all of the benefits that may be provided to the relevant jobholders under the scheme are money purchase benefits;
- (b) there is, in relation to each relevant jobholder, an agreement between the provider of the scheme and the employer which provides that—
 - (i) the employer must pay contributions in respect of the jobholder;
 - (ii) the employer's contribution must be equal to or more than 4% of the amount of the jobholder's pensionable earnings in the certification period; and
 - (iii) the pensionable earnings of the relevant jobholder must be equal to or more than the basic pay of that jobholder;
- (c) if there is a shortfall, there is an agreement between the provider of the scheme and the jobholder which provides that the jobholder must pay contributions which are equal to or more than the shortfall; and
- (d) there are direct payment arrangements between the jobholder and the employer as referred to in section 26(7) of the Act.

(3) In paragraph (2), “shortfall” means the difference (if any) between—

- (a) the employer's contributions in respect of the jobholder under the agreement referred to in paragraph (3)(b); and
- (b) 9% of the amount of the jobholder's pensionable earnings in the certification period being earnings which are equal to or more than the basic pay of that jobholder.

(4) The second set of requirements is that—

- (a) all of the benefits that may be provided to the relevant jobholders under the scheme are money purchase benefits;
- (b) there is, in relation to each relevant jobholder, an agreement between the provider of the scheme and the employer which provides that—
 - (i) the employer must pay contributions in respect of the jobholder;
 - (ii) the employer's contribution must be equal to or more than 3% of the amount of the jobholder's pensionable earnings in the certification period; and
 - (iii) the pensionable earnings of the relevant jobholder must be equal to or more than the basic pay of that jobholder;
- (c) if there is a shortfall, there is an agreement between the provider of the scheme and the jobholder which provides that the jobholder must pay contributions which are equal to or more than the shortfall;
- (d) taking all of the relevant jobholders together, the pensionable earnings of the jobholders constitute at least 85% of the earnings of the jobholders in the certification period; and
- (e) there are direct payment arrangements between the jobholder and the employer as referred to in section 26(7) of the Act.

(5) In paragraph (4), “shortfall” means the difference (if any) between—

- (a) The employer's contributions in respect of the jobholder under the agreement referred to in paragraph (3)(b); and

- (b) 8% of the amount of the jobholder’s pensionable earnings in the certification period being earnings which are equal to or more than the basic pay of that jobholder .
- (6) The third set of requirements is that—
- (a) all of the benefits that may be provided to the relevant jobholders under the scheme are money purchase benefits;
 - (b) there is, in relation to each relevant jobholder, an agreement between the provider of the scheme and the employer which provides that—
 - (i) the employer must pay contributions in respect of the jobholder; and
 - (ii) the employer’s contribution must be equal to or more than 3% of the amount of the jobholder’s earnings in the certification period;
 - (c) if there is a shortfall, there is an agreement between the provider of the scheme and the jobholder which provides that the jobholder must pay contributions which are equal to or more than the shortfall; and
 - (d) there are direct payment arrangements between the jobholder and the employer as referred to in section 26(7) of the Act.
- (7) In paragraph (6), “shortfall” means the difference (if any) between—
- (a) the employer’s contributions in respect of the jobholder under the agreement referred to in paragraph (3)(b); and
 - (b) 7% of the amount of the jobholder’s earnings in the certification period.

Alternative requirements for a hybrid scheme

32D.—(1) Subject to paragraph (2), in relation to a hybrid scheme to the extent to which requirements within section 24(1)(a) of the Act apply or which is referred to in regulation 32J(2) , the prescribed alternative requirement is any of the sets of requirements set out in regulation 32B in relation to a money purchase scheme (a).

(2) In relation to the money purchase benefit provisions of a hybrid scheme to which paragraphs (2) to (5) of regulation 43 apply, those paragraphs shall apply as if—

- (a) in paragraph (2), for “paragraph (a) quality requirements” there were substituted “elements of the alternative requirement”;
- (b) for paragraph (3)(a) there were substituted—
 - “(a) all of the elements of the alternative requirement are met apart from either or both of the employer’s contribution requirement (“requirement X”) and the total contributions requirement;”;
- (c) for paragraph (4)(a) there were substituted—
 - “(a) the extent to which requirement X is met as a proportion of the minimum rate of employer’s contribution specified in 32B(2)(b), (3)(a)(ii) or (4)(b), as the case may be”;
- (d) after paragraph (6) of regulation 43 there were added—
 - “(7) For the purposes of paragraphs (2) and (3)—
 - “the alternative requirement” means any of the sets of requirements set out in regulation 32B in relation to a money purchase scheme ;
 - “the employer’s contribution requirement” means the requirement set out in regulation 32B(2)(b), (3)(a)(ii) or (4)(b), as the case may be; and

(a) Rule [9] of the Hybrid Schemes Quality Requirements Rules 2011, made under section 24(2) of the Act, provides that the requirements under section 24(1)(a) of the Act apply to the provisions of a scheme relating to money purchase benefits. A copy of the Rules is available on the Department of Work and Pensions website.

“the total contribution requirement” means the requirement set out in regulation 32B(2)(c), (3)(a) (iii) or (4)(c), as the case may be.”.

Persons who may give a certificate, period of validity and retention

32E.—(1) Subject to paragraph (2), a certificate must be given by the employer or by a person who is authorised to give the certificate on behalf of the employer.

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

(3) A certificate may be given for a period of one year or any part of a year.

(4) For the purposes of paragraph (3), a “year” means a period of 12 months beginning with any date.

(5) A certificate must be given no later than one month after the first day of the year or part-year to which it relates.

(6) A person as referred to in paragraph (1) may at any time before the end of the year or part-year to which a certificate relates amend the certificate so that the period for which the certificate is given ends on a different date, being a date after the date on which the amendment is made.

(7) The employer must, on request by—

(a) a relevant jobholder; or

(b) any independent trade union recognised to any extent for the purposes of collective bargaining in relation to any relevant jobholder,

send a copy of the certificate to the person who requested it, within a period of 2 months following the date on which the employer received the request.

(8) For the purpose of paragraph (7), “independent trade union” has the meaning given in section 235(1) of the Employment Rights Act 1996(a).

Form of certificate

32F.—(1) A certificate must be in writing and contain the following information –

(a) whether the certificate relates to part of a scheme and, if so, which part;

(b) the employer pension scheme reference within the meaning of regulation 1 of the Employer’s Duties (Registration and Compliance) Regulations 2010(b);

(c) whether the certificate relates to all of the jobholders of the employer who are active members of the scheme or part-scheme in question;

(d) if the certificate relates to some only of the jobholders of the employer who are active members of the scheme or part-scheme, a description of the relevant jobholders;

(e) where the certificate is given with respect to an alternative requirement—

(i) under regulation 32B or D, which of the sets of requirements in regulation 32B apply; or

(ii) under regulation 32C, which of the sets of requirements in that regulation apply;

(f) the period of time for which the certificate is given; and

(g) whether that period of time has been amended and, if so, the period or periods of time for which it had previously been given.

(a) 1996 c.18.
(b) S.I. 2010/5.

Renewal of Certificate

32G.—(1) Where a certificate (“the reference certificate”) is given in relation to an employer and its relevant jobholders (whether or not that certificate is the first certificate given by the employer or a subsequent one), before a further certificate is given in relation to that employer and to all or some of the relevant jobholders (“the jobholders concerned”), the employer must—

- (a) assess whether, during the period for which the reference certificate was given and in relation to the jobholders to whom the certificate relates, all of the elements of the relevant quality requirement or prescribed alternative requirement were, or will be, met;
- (b) where an element of the relevant quality requirement or prescribed alternative requirement was not, or will not be, met, consider what (if any) action needs to be taken by the employer in order to ensure that the relevant quality requirement or a prescribed alternative requirement will be met in relation to the jobholders concerned and any other jobholders to whom the further certificate will relate, for the proposed period of the further certificate, and take any such action;
- (c) compile a record of the —
 - (i) assessment made under sub-paragraph (a); and
 - (ii) the action (if any) that the employer takes, as referred to in sub-paragraph (b);
- (d) retain that record for a period of 6 years from the end of the period of the reference certificate; and
- (e) provide that record to the Regulator on request.

(2) Paragraph (1) applies even where, under regulation 32H(2), in relation to the relevant jobholders and the certification period covered by the reference certificate, the scheme is not to be treated by virtue of regulation 32A as having satisfied the relevant quality requirement.

Scheme not to be treated as satisfying the relevant quality requirement in certain circumstances

32H.—(1) Where—

- (a) a certificate has been given in relation to an employer and its relevant jobholders with respect to a relevant quality requirement or an alternative requirement under regulation 32B, C or D;
- (b) the Regulator is of the view referred to in paragraph (3); and
- (c) one of the conditions referred to in paragraph (4), or both of them, are not satisfied, the Regulator may serve a notice on the employer as referred to in paragraph (5) with respect to the jobholders in question.

(2) Where the Regulator serves a notice as referred to in paragraph (5) and the contributions that are payable under the notice are not paid to the trustee, manager or provider of the relevant scheme within the time specified in the notice, the scheme is not to be treated by virtue of regulation 32A as having satisfied the relevant quality requirement.

(3) The view referred to is that, when the certificate was given, there were not reasonable grounds for a person to be of the opinion that the scheme was able to satisfy the relevant quality requirement or the applicable alternative requirement, as the case may be, with respect to the relevant jobholders throughout the certification period.

(4) The conditions referred to are—

- (a) in respect of one or more of the relevant jobholders and the certification period, the requirements of the scheme or section 26 agreements, as the case may be, for the payment of contributions did not, or will not, result in those jobholders receiving

the contributions that were payable for the purpose of satisfying the relevant quality requirement or the applicable alternative requirement as the case may be;

- (b) where the alternative requirement in regulation 32B(3) (including as applied by 32D) or 32C(4) applied, the condition referred to regulation 32B(3)(b) or 32C(4)(d) was not, or will not be, satisfied.

(5) The notice referred to is a notice with respect to one or more of the relevant jobholders and the certification period, requiring the employer to pay to the trustee, manager or provider of the scheme, within the period of time specified in the notice—

- (a) subject to paragraph (b), where paragraph (4)(a) applies, the shortfall between the contributions that were payable under the requirements of the scheme or the section 26 agreements, as the case may be, and the contributions that were payable for the purpose of satisfying the relevant quality requirement or the applicable alternative requirement as the case may be; or
- (b) where paragraph (4)(b) applies (whether or not paragraph (4)(a) also applies), the shortfall between the contributions that were payable under the requirements of the scheme or the section 26 agreements, as the case may be, and the contributions that were payable for the purpose of satisfying the relevant quality requirement.

(6) A notice as referred to in paragraph (5) must be copied to—

- (a) in the case of a money purchase or hybrid scheme, the trustee or manager of the scheme; or
- (b) in the case of a personal pension scheme, the provider of the scheme.

Contributions under alternative requirements during transitional periods

32I.—(1) During the first transitional period referred to in section 29(1) and the second transitional period referred to in section 29(3) of the Act, there are substituted for the percentages referred to in the provisions in the first column of the table below the percentages shown in the corresponding entry for the transitional period in question.

<i>Provision of Regulations</i>	<i>1st Transitional Period</i>	<i>2nd Transitional Period</i>
Regulations 32B(2)(b) and 32C(2)(b)(ii) (first set of requirements – employer)	2%	3%
Regulations 32B(2)(c) and 32C(3)(b) (first set of requirements – total contributions)	3%	6%
Regulations 32B(3)(b) and 32C(4)(b)(ii) (second set of requirements – employer)	1%	2%
Regulations 32B(3)(c) and 32C(5)(b) (second set of requirements – total contributions)	2%	5%
Regulations 32B(4)(b) and 32C(6)(b)(ii) (third set of requirements – employer)	1%	2%
Regulations 32B(4)(c) and 32C(7)(b)	2%	5%

(third set of requirements
– total contributions)

Pension schemes based in an EEA State other than the UK

32J.—(1) Section 28 of the Act applies to a personal pension scheme as referred to in regulation 46(a) where the operation of the scheme is carried on in an EEA State other than the United Kingdom.

(2) Section 28 of the Act applies to a hybrid scheme that is an occupational pension scheme within section 18(b) of the Act to the extent that the requirements under section 24(1)(a) of the Act as modified by regulation 45(5) and (6) apply.

(3) A scheme as referred to in section 28(3A) of the Act^(a) satisfies the relevant quality requirement where—

- (a) in the case of a money purchase scheme that is an occupational pension scheme within section 18(b), it satisfies the requirement referred to in regulation 45(1)(a);
- (b) in the case of a personal pension scheme as referred to in paragraph (1), it satisfies the requirement referred to in regulation 46(a);
- (c) in the case of a hybrid scheme as referred to in paragraph (2), it satisfies the requirements referred to in that paragraph.

Definitions

32K.—(1) In regulations 32B (including regulation 32B as applied by regulation 32D), 32C and this regulation (with respect to the meaning of “earnings”)—

“alternative requirement” means an alternative requirement prescribed under regulation 32B, C or D;

“basic pay” means the earnings of the jobholder, disregarding any commission, bonuses, overtime or similar payments;

“earnings” has the same meaning as in section 13(3) of the Act;

“pensionable earnings” means the earnings of the jobholder on which contributions are payable to the pension scheme in question by the employer and the jobholder.”.

Amendment of regulation 35

4. In regulation 35 (further conditions applicable to automatic enrolment schemes)—

- (a) for paragraph (1)(b)(i), substitute—
 - “(i) at least 70% of the relevant benefits must be designated for the purpose of providing the jobholder with an income for life; and”;
- (b) after paragraph (1) insert—
 - “(1A) For the purposes of paragraph (1)(b)(i), “relevant benefits” means—
 - (a) any money purchase benefits applicable to the jobholder; and
 - (b) in relation to a defined benefits scheme or the defined benefits element of a hybrid scheme that provides a sum of money to be available for the provision of a pension, that sum.”; and
- (b) after paragraph (2) insert—

(a) Section 28(3A) was inserted by section xxx of the Pensions Act 2011 (c.xxx).

“(3) For the purposes of this regulation, ‘regulatory requirements’ includes provisions of tax legislation.”.

Amendment of regulation 36 of the Automatic Enrolment Regulations

5. In regulation 36 (certain schemes providing average salary benefits excluded from being qualifying schemes) —

- (a) after paragraph (4)(a), omit “or” and insert—
 - “(b) the percentage increase in the general level of prices for the year by reference to which the revaluation is made; or”;
- (b) paragraph (4)(b) is re-named “(4)(c)”;
- (c) for paragraph (5), substitute—
 - “(5) In paragraph 4 —
 - (a) “retail prices index” means—
 - (i) the general level of retail prices (for all items) published by the Statistics Board; or
 - (ii) where that index is not published for any month, any substituted index or figures published by the Board;
 - (b) “general level of prices” means the general level of prices in Great Britain determined in such manner as the Secretary of State thinks fit.”; and
- (d) after paragraph (5), add—
 - “(6) The Secretary of State shall publish from time to time the manner in which the general level of prices is to be determined.”.

Special occupations

6. After regulation 50 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (due date for the purposes of section 37(3) of the Act, insert—

“PART 15

Special occupations

Police members appointed other than under a contract of employment

51.—(1) For the purposes of Part 1 of the 2008 Act a police member who does not hold an appointment under a worker’s contract is to be treated as if they were a worker employed by the SPSA under a worker’s contract.

(2) In this regulation—

“police member” means a person—

- (a) referred to in paragraph 7(2)(c) of schedule 2 to the Police, Public Order and Criminal Justice (Scotland) Act 2006^(a) who is appointed as a police member of the Scottish Crime and Drug Enforcement Agency in accordance with paragraph 7(1) of that schedule to that Act; or
- (b) serving as a member of staff of the SPSA by virtue of paragraph 10(2) of schedule 1 to that Act; and

“the SPSA” means the Scottish Police Services Authority.

(a) 2006 asp 10

Persons working on vessels

52. The relevant provisions apply, without modification, in relation to a person employed or engaged in any capacity on board a ship and such person is, by virtue of that employment or engagement, a worker for the purposes of those provisions.”.

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

Steve Webb
Minister of State,
Department for Work and Pensions

2010

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations amend the Occupational Pension Schemes (Automatic Enrolment) Regulations 2010 (“ the Regulations”) and is made under the Pensions Act 2008 (“the Act”).

Regulation 3 inserts Part 7A into the Regulations making detailed provision with regard to certification under section 28 of the Act.

Regulation 4 amends regulation 35 to make provision in relation to the use of pension scheme funds.

Regulation 5 amends regulation 36 of the Regulations relating to the method of revaluation.

Regulation 6 inserts a new Part 15 into the Regulations so that Part 1 of the Act applies to workers in special occupations.

An impact assessment