

2013 No. []

PENSIONS

**The Automatic Enrolment (Miscellaneous Amendments)
Regulations 2013**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	2013

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 111A(15)(b), 181 and 182(2) of The Pension Schemes Act 1993(a), sections 49(8), 124(1) and 174(2) of the Pensions Act 1995 and sections 3(2) and (4), 5(2), 7(4)(b), 8(4), 15, 22(4) and (6), 23(3) and (6), 99 and 144(2) and (4) of the Pensions Act 2008(b).

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.

Citation and commencement

1. These Regulations may be cited as the Automatic Enrolment (Miscellaneous Amendments) Regulations and come into force on xx 2013.

Amendment of the Occupational Pension Schemes (Scheme Administration) Regulations 1996(c)

2.—(1) Regulation 16 of the Occupational Pensions Schemes (Scheme Administration) Regulations 1996 is amended in accordance with paragraph (2).

(2) for paragraphs (2) and (3) substitute—

“(2) Where a person becomes an active member of a relevant scheme, in relation to contributions deducted in the relevant period, the prescribed period for the purposes of section 49(8) of the 1995 Act is the period commencing on the relevant date and ending on the last day of the second month after the month in which the relevant date falls.

(3) For the purposes of this regulation—

“the 2008 Act means the Pensions Act 2008;

“electronic communication” has the meaning given in section 15 of the Electronic Communications Act 2000;

“relevant date” means the date from which active membership is effective;

(a) c. 48
(b) c. 26
(c) S.I. 1996/1715

“relevant period” means a period of two months commencing on the relevant date; and
“relevant scheme” means—

- (a) a scheme which is a qualifying scheme in relation to the person under section 16 of the 2008 Act; or
- (b) where the person is enrolled in the scheme pursuant to section 9 of the 2008 Act, a scheme which meets the requirements of section 9.”.

Amendment of the Personal Pension Schemes (Payments by Employers) Regulations 2000

3.—(1) Regulation 5 of the Personal Pension Schemes (Payments by Employers) Regulations 2000(a) is amended in accordance with paragraph (2).

(2) For paragraphs (2) and (3) substitute—

“(2) Where an employee becomes an active member of a relevant scheme, in relation to contributions deducted in the relevant period, the prescribed period for the purposes of section 111A(15)(b) of the 1993 Act is the period commencing on the relevant date and ending on the last day of the second month after the month in which the relevant date falls.

(3) For the purposes of this regulation—

“the 2008 Act” means the Pensions Act 2008;

“electronic communication” has the meaning given in section 15 of the Electronic Communications Act 2000;

“relevant date” means the date from which active membership is effective;

“relevant period” means a period of two months commencing on the relevant date; and

“relevant scheme” means—

- (a) a scheme which is a qualifying scheme in relation to the person under section 16 of the 2008 Act; or
- (b) where the person is enrolled in the scheme pursuant to section 9 of the 2008 Act, a scheme which meets the requirements of section 9.”.

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

4.—(1) The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(b) are amended as follows.

(2) For regulation 4, substitute—

“**4.**—(1) Subject to paragraph (4), this regulation applies for the purposes of sections 1(1)(c), 3(1)(c), 5(1)(c), 20(1)(b) and (c) and 26(4)(b) and (5)(b) (jobholders, automatic enrolment, automatic re-enrolment, quality requirement: UK money purchase schemes, and quality requirement: UK personal pension schemes).

(2) The pay reference period in respect of a particular person is a period equal in length to the period by reference to which that person is paid their regular wage or salary.

(3) Subject to paragraph (4)(a), the pay reference period in relation to a person commences on either—

- (a) the first day of the period by reference to which the person is paid their regular wage or salary; or
- (b) the first day of—
 - (i) the tax month in which the earnings payable to that person fall to be paid, where the person is paid by reference to a period of a month or months; or

(a) S.I. 2000/2692

(b) S.I. 2010/772

(ii) the tax week in which the earnings payable to that person fall to be paid, where the person is paid by reference to any other period, whichever the employer may decide.

(4) For the purposes of sections 20(1)(b) and (c) and 26(4)(b) and (5)(b)—

- (a) the first pay reference period in relation to a person begins on the automatic enrolment date and ends on the last day of the pay reference period in which the automatic enrolment date falls;
- (b) while the person remains an active member of the scheme, subsequent pay reference periods in relation to that person commence immediately upon the expiry of the previous pay reference period; and
- (c) where a person ceases to be employed by the employer or ceases to be an active member of the scheme, the pay reference period ends on the day on which employment or active membership, as the case may be, ceases.

(3) Omit regulation 5.

(4) In regulation 6(1) (arrangements to achieve active membership) for “one month” in both places where it occurs substitute “six weeks”.

(5) After regulation 6 insert—

“Prescribed period for the purposes of section 3(4) of the Act

6A. The prescribed period for the purposes of section 3(4) of the Act (automatic enrolment) is 12 months.”.

(6) In regulation 7—

- (a) in paragraph (1) for “one month” substitute “six weeks”; and
- (b) in paragraph (3) for “one month” substitute “six weeks”.

(7) In regulation 9—

- (a) for paragraph (6)(a) substitute—

“(a) it is in substantially the same form as the form set out in Schedule 1;”; and

- (b) after paragraph (7) insert—

“(8) Where an employer has accepted as valid an opt out notice prior to the coming into force of the 2013 Regulations and that opt out notice complies with paragraph (6), the notice is deemed valid on the coming into force of the 2013 Regulations.

(9) In this regulation the “2013 Regulations” means the Automatic Enrolment (Miscellaneous Amendments) Regulations 2013.”

(8) In regulation 13(2)(a) (arrangements to achieve active membership) for “one month” substitute “six weeks”.

(9) In regulation 18(4)(a) (opt in notices and arrangements to achieve active membership) for “one month” substitute “six weeks”.

(10) In regulation 28(a) (arrangements to achieve active membership) in the substituted paragraph (3) for “one month” substitute “six weeks”.

(11) In regulation 29(a)—

- (a) in the substituted paragraphs (1)(a) and (b) for “one month” substitute “six weeks”; and
- (b) in the substituted paragraph (1)(c) for “1 month” substitute “six weeks”.

(12) For regulation 38 (staged increases in appropriate age) substitute—

“Staged increase in appropriate age

38.—(1) Where a member will not attain the age of 65 before 6 April 2020, the appropriate age prescribed for the purposes of making a relevant determination is—

- (a) 66, in the case of a member who will attain (or who has attained) the age of 66 prior to 6 April 2034;
- (b) 67, in the case of a member to whom sub-paragraph (a) does not apply but who will attain (or who has attained) the age of 67 prior to 6 April 2044; and
- (c) 68, in the case of a member who will attain (or who has attained) the age of 67 on or after 6 April 2044.

(2) In this regulation, “relevant determination” means a determination under section 22 (test scheme standard) of the Act as to whether a scheme satisfies the test scheme standard in relation to a jobholder.”.

(13) In regulation 39A—

(a) for paragraph (4) substitute—

“(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 amounts to 16% of average annual qualifying earnings in the last three tax years preceding the end of pensionable service, multiplied by the number of years of pensionable service up to a maximum of 40 years.”;

(b) for paragraph (6) substitute—

“(6) The requirement is that the sum of money to be made available for the provision of benefits to a member amounts to 16% of average annual qualifying earnings during pensionable service multiplied by the number of years of pensionable service up to a maximum of 40 years.”;

(c) for paragraph (7) substitute—

“(7) The requirement is that the sum of money to be made available for the provision of benefits to a member amounts to the sum of—

- (a) 8% of average annual qualifying earnings during pensionable service multiplied by the number of years of pensionable service up to a maximum of 40 years; plus
- (b) an amount representing an increase on accrued rights in deferment at 3.5% per year in addition to any increase that is required by virtue of regulation 37(2)(a).”; and

(d) after paragraph (8) insert—

“(9) For the purposes of paragraphs (6) and (7), average annual qualifying earnings are to be calculated on the basis that each year’s qualifying earnings are revalued during service at—

- (a) the minimum rate specified in regulation 36(4), where paragraph (6) applies; and
- (b) 3.5% above the minimum rate specified in regulation 36(4), where paragraph (7) applies.”.

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

Name
Minister of State
Department for Work and Pensions

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational Pensions Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715), the Personal Pension Schemes (Payments by Employers) Regulations 2000 (S.I. 2000/2692) and the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (S.I. 2010/772) (“the 2010 Regulations”).

Regulation 2 amends regulation 16 of the Occupational Pensions Schemes (Scheme Administration) Regulations 1996 which specifies the time limit within which an employer must pay contributions deducted from the earnings into a scheme. The amendment applies a different time limit in respect of contributions deducted in the first 2 months of membership where these are paid into a scheme being used to fulfil automatic enrolment duties. Regulation 3 makes similar changes to regulation 5 of the Personal Pension Schemes (Payments by Employers) Regulations in relation to personal pension schemes.

Regulation 4 amends the 2010 Regulations.

- Paragraph (2) amends regulation 4 of the 2010 Regulations, inserting a new definition of pay reference period for the purposes of the Pensions Act 2008. This incorporates the previous definition so that pay reference periods are the same length of time as the period by reference to which a person is paid, but includes an alternative start date. The pay reference period may start on either the first day of the period by reference to which the person is paid (as previously) or on the first day of the tax month (where a person is paid monthly or in multiples of months) or tax week (in other cases). Paragraph (2) also makes provision in relation to the start of the first pay reference period for the purpose of calculating contributions due on qualifying earnings, where the automatic enrolment date falls after the start of a pay reference period and in relation to the end of the last pay reference period where a person leaves their employment or the scheme.
- Paragraph (3) revokes regulation 5 which had previously made provision in relation to pay reference periods for the purposes of calculating contributions due on qualifying earnings.
- Paragraphs (4), (6) and (8) to (11) of Regulation 4 extends from one month to six weeks the period within which an employer under a duty to enrol a person into a scheme (pursuant to obligations in the Pensions Act 2008) must achieve active membership for that person.
- Paragraph (5) prescribes a period of 12 months for the purposes of section 3(4) of the Pensions Act 2008. This means that the employer is not under a duty to automatically enrol a jobholder into a scheme if the jobholder ceased to be an active member of a qualifying scheme within 12 months before the automatic enrolment date as a result of the jobholder's own act or omission.
- Paragraph (7) makes a clarificatory amendment to regulation 9(6)(a) providing that an opt out notice is valid if it is in substantially the same form as that set out in Schedule 1. In case the amendment casts doubt on the validity of an opt out notice served prior to this amendment, paragraph (7)(b) inserts a deeming provision into regulation 9 whereby opt out notices served prior to the coming into force of these Regulations and accepted as valid by the employer are deemed to be valid if they meet this criterion.
- Paragraph (12) makes correcting amendments to regulation 38 to ensure that increases in the appropriate age in a test scheme can be taken into account in determinations made under section 22 of the Act before the dates set out in the regulation.
- Paragraph (13) amends regulation 39A, clarifying the requirements to be met in relation to the lump sum for the provision of benefits to a member under a test scheme. The amendments ensure that there is consistency across the test schemes and that the lump sum test schemes not linked to final salary include revaluation in service and deferment at a consistent level.