
STATUTORY INSTRUMENTS

2016 No. 311

PENSIONS

The Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016

<i>Made</i>	- - - -	<i>7th March 2016</i>
<i>Laid before Parliament</i>		<i>10th March 2016</i>
<i>Coming into force</i>	- -	<i>6th April 2016</i>

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 11, 12, 23A(1)(b), 87A(1), (3) and (4), 99 and 144(2) and (4) of the Pensions Act 2008 **(1)**, makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Automatic Enrolment) (Miscellaneous Amendments) Regulations 2016 and come into force on 6th April 2016.

(2) In these Regulations, “the Automatic Enrolment Regulations” means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010**(2)**.

Amendment of the Employers’ Duties (Implementation) Regulations 2010

2.—(1) The Employers’ Duties (Implementation) Regulations 2010**(3)** are amended as follows.

(2) In regulation 3 (early automatic enrolment)**(4)**—

(a) in paragraph (4)—

(i) at the beginning of sub-paragraph (b) insert—

“where, on the date the employer notifies the Regulator in accordance with sub-paragraph (c), the duty in section 3(2) of the Act (automatic enrolment) applies in relation to at least one of that employer’s jobholders;”;

(ii) in sub-paragraph (b) for “was” substitute “is”; and

(1) 2008 c. 30. Section 23A was inserted by section 39 of, and section 87A was inserted by section 38(2) of, the Pensions Act 2014 (c.19). Section 99 is cited for the meaning given to “prescribed”.

(2) S.I. 2010/772.

(3) S.I. 2010/4.

(4) Regulation 3 has been amended by S.I. 2012/215 and 1813.

- (iii) for head (i) of sub-paragraph (c) substitute—
 - “(i) where paragraph (5)(a) or (d) applies, on or before the early automatic enrolment date;”; and
- (b) in paragraph (5)—
 - (i) in sub-paragraph (b), omit “or”; and
 - (ii) at the end of sub-paragraph (c), insert—
 - “or
 - (d) in the case of an employer who has no jobholder to whom the duty in section 3(2) of the Act applies on the date the employer notifies the Regulator in accordance with paragraph (4)(c)(i), any date which is earlier than the staging date corresponding to that employer’s description.”.
- (3) In regulation 4 (staging of the employers’ duties)(5)—
 - (a) omit paragraphs (2) and (3); and
 - (b) omit the second column of the table (date before which notification to automatically enrol early must be sent).

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

3.—(1) The Employers’ Duties (Registration and Compliance) Regulations 2010(6) are amended as follows.

- (2) In paragraph (1) of regulation 2 (registration: general)(7)—
 - (a) at the beginning of sub-paragraph (a), insert “on or”;
 - (b) at the end of sub-paragraph (b), for “or” substitute “and”; and
 - (c) for sub-paragraph (c) substitute—
 - “(c) on or after an automatic re-enrolment date for that employer.”.
- (3) After paragraph (3) of regulation 2, insert—
 - “(4) In this Part, “automatic re-enrolment date” means an automatic re-enrolment date occurring by virtue of section 6(1)(b) of the Act (timing of automatic re-enrolment).”.
- (4) For paragraph (1) of regulation 4 (registration: re-registration)(8) substitute—
 - “(1) Where paragraph (1)(c) of regulation 2 applies, an employer must provide the information specified in paragraph (3) of this regulation in relation to each of its PAYE schemes—
 - (a) where it is the employer’s first automatic re-enrolment date, within the period of 5 months beginning with the third anniversary of the employer’s staging date; and
 - (b) in any other case, within the period of 5 months beginning with the third anniversary of the employer’s previous automatic re-enrolment date,
 and the time at which an employer provides that information is referred to in this regulation as the “point of re-registration”.”.
- (5) Omit paragraph (2) of regulation 4.
- (6) In paragraph (3) of regulation 4—

(5) Regulation 4 has been amended by [S.I. 2012/1813](#).

(6) [S.I. 2010/5](#).

(7) Regulation 2 was amended by [S.I. 2012/215](#).

(8) Regulation 4 was amended by [S.I. 2012/215](#) and [2013/2556](#).

- (a) omit head (iii) in sub-paragraph (c) and the preceding “and”;
- (b) after sub-paragraph (c) insert—
 - “(ca) the automatic re-enrolment date;”;
- (c) for paragraph (e) substitute—
 - “(e) the number of workers in the employer’s PAYE scheme who, immediately before 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, the number of workers in each of those schemes;”.

Amendment of Part 1A of the Automatic Enrolment Regulations

4.—(1) Part 1A of the Automatic Enrolment Regulations⁽⁹⁾ (exemptions and exceptions) is amended as follows.

- (2) In paragraph (1) of regulation 5E (winding-up lump sum), for sub-paragraph (c) substitute—
 - “(c) during the period of 12 months beginning with the date on which the winding-up lump sum was paid—
 - (i) the worker has ceased to be employed and been re-employed by that person; and
 - (ii) after re-employment, either section 3(1) (automatic enrolment) or 5(1A) or (1B) (automatic re-enrolment) of the Act applies to the worker.”.
- (3) After regulation 5E, insert—

“Company directors

5EA.—(1) This regulation applies to a jobholder who holds office as a director of the company by which that jobholder is employed.

(2) In relation to the jobholder to whom this regulation applies, sections 3(2) (automatic enrolment) and 5(2) (automatic re-enrolment) of the Act are to be read as if for “must” there were substituted “may”.

Limited liability partnerships

5EB.—(1) This regulation applies where a person (P) is a jobholder and—

- (a) P is a member of a limited liability partnership;
- (b) qualifying earnings are payable to P by that limited liability partnership; and
- (c) P is not treated for income tax purposes as being employed by that limited liability partnership under section 863A of the Income Tax (Trading and other Income) Act 2005 (limited liability partnerships: salaried members)⁽¹⁰⁾.

(2) Where this regulation applies, in relation to the jobholder referred to in paragraph (1), sections 3(2) and 5(2) of the Act are to be read as if for “must” there were substituted “may”.

(4) In sub-paragraph (a) of paragraph (1) of regulation 5F (effect of exercise of discretion) for “or 5E” substitute “, 5E, 5EA or 5EB”.

⁽⁹⁾ Part 1A was inserted by S.I. 2012/1477 and amended by S.I. 2015/501.

⁽¹⁰⁾ 2005 c. 5. Section 863A was inserted by section 74 of, and paragraph 1 of Schedule 17 to, the Finance Act 2014 (c. 26).

Amendment of regulation 32M of the Automatic Enrolment Regulations

5.—(1) Regulation 32M (alternative quality requirements: UK defined benefits schemes)(11) of the Automatic Enrolment Regulations is amended as follows.

(2) In paragraph (3), after “(4)” insert “, (5A)”.

(3) At the beginning of paragraph (4), insert “Subject to paragraph (5A),”.

(4) After paragraph (5), insert—

“(5A) Subject to paragraph (5C), where the conditions in paragraph (5B) are met, the employer of the jobholder may choose, notwithstanding paragraph (4), that the relevant members are the members of the scheme who were active members and in contracted-out employment on the effective date of the most recent written report from an actuary.

(5B) The conditions to be met for the purposes of paragraph (5A) are—

- (a) the jobholder was in contracted-out employment on 5th April 2016; and
- (b) the rules of the scheme of which the jobholder is a member have not been amended, on or after the coming into force of these Regulations, in any way which would mean that the rules of the scheme would not satisfy the contracting-out requirements if those requirements were still in force.

(5C) Paragraph (5A) applies until the earliest of—

- (a) the date the first written report determining whether there is, or was, a material difference in the cost of providing the benefits accruing for different groups of relevant members over the relevant period, taking into account the criteria mentioned in paragraph (4), is signed by an actuary after 5th April 2016;
- (b) 5th April 2019.

(5D) For the purposes of paragraph (5A), the effective date of the most recent written report is the date by reference to which the information in that report is stated.”.

(5) In paragraph (6), for “paragraph (4)” substitute “paragraphs (4) and (5A)”.

(6) In paragraph (9)—

- (a) after “they are” insert “equal to or more than”;
- (b) for sub-paragraph (b) substitute—
 - “(b) basic pay;”;
- (c) in sub-paragraph (c), omit the words from the beginning to “that member’s”; and
- (d) for sub-paragraph (d) substitute—
 - “(d) earnings; or”.

(7) In paragraph (12), after the definition of “basic pay” insert—

““contracted-out employment” has the meaning given in section 8(1) of the 1993 Act (meaning of “contracted-out employment”)(12);

“contracting-out requirements” means the requirements set out in section 9 of the 1993 Act (requirements for certification of schemes: general)(13) as they had effect immediately before 6th April 2016;”.

(11) Regulation 32M was inserted by [S.I. 2015/501](#).

(12) Section 8(1) was substituted by section 24(1) of, and paragraph 7 of Schedule 13 to, the Pensions Act [2014 \(c. 19\)](#).

(13) Section 9 was amended by section 136(3) of, and paragraph 21 of Schedule 5 to, the Pensions Act [1995 \(c. 26\)](#), paragraph 35 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc) Act [1999 \(c. 2\)](#), section 283 of the Pensions Act [2004 \(c. 35\)](#), section 14(4) of, and paragraph 4 of Schedule 4 and Part 6 of Schedule 7 to, the Pensions Act [2007 \(c.22\)](#) and [S.I. 2006/745](#). It has been repealed by paragraph 9 of Schedule 13 to the Pensions Act [2014 \(c. 19\)](#) from 6th April 2016.

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

7th March 2016

Altmann
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make miscellaneous amendments to three sets of Regulations relating to automatic enrolment.

Regulation 2 amends regulations 3 and 4 of the Employers' Duties (Implementation) Regulations 2010 (S.I. 2010/4). The amendments remove the requirement on an employer to secure the agreement of the trustees or managers of a pension scheme that it can be used from an early automatic enrolment date where, on the date the employer notifies the Regulator of the early automatic enrolment date, that employer has no jobholder who qualifies for automatic enrolment. They also allow an employer to notify the Pensions Regulator of the early automatic enrolment date at any time on or before that early automatic enrolment date and allow an employer to choose any date prior to that employer's staging date as the early automatic enrolment date where the employer has no jobholder to automatically enrol on the date he notifies the Regulator of the early automatic enrolment date.

Regulation 3 amends the Employers' Duties (Registration and Compliance) Regulations 2010 (S.I. 2010/5) so that information can be provided to the Regulator on the staging date, as well as after, and the time at which an employer sends the information required to the Regulator is the same whether or not an employer has any jobholders to re-enrol on the automatic re-enrolment date.

Regulations 4 and 5 amend the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (S.I. 2010/772) ("the Automatic Enrolment Regulations").

Regulation 4(2) amends regulation 5E of the Automatic Enrolment Regulations whereby the employer duty to automatically enrol or re-enrol a worker or jobholder is turned into a discretion where a worker has received a winding-up lump sum in the previous 12 months. The amendment clarifies that the duty is lifted where a worker receives a winding-up lump sum, ceases to be employed and is re-employed by the same employer but becomes eligible for auto enrolment or re-enrolment during the 12 month period.

Regulation 4(3) inserts new regulations 5EA and 5EB, which turn the employer's duty to automatically enrol or re-enrol a jobholder into a discretion where the jobholder is a director of the company by which that jobholder is employed, or a member of a limited liability partnership and not treated for income tax purposes as being employed by the partnership. Paragraph (4) amends regulation 5F so that anything done by the employer when exercising the discretion under the new regulations 5EA and 5EB is treated as being done in exercise of the duty to automatically enrol or re-enrol a jobholder.

Regulation 5 amends regulation 32M, which provides employers with an alternative quality requirement for UK defined benefit schemes based on the cost of accruals, to provide an alternative test for a limited period on the ending of contracting out.

An Impact Assessment on the effect this instrument will have on the cost of business and the voluntary sector is published with the Explanatory Memorandum alongside this instrument at <http://www.legislation.gov.uk>.