

*Draft Regulations laid before Parliament under section 143(4) and (5) of the Pensions Act 2008, for approval by resolution of each House of Parliament.*

*This Draft Statutory Instrument has been printed in substitution of the Draft Statutory Instrument of the same title, published on 1st February 2012, and is being issued free of charge to all known recipients of that Draft Statutory Instrument.*

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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**2012 No.**

**PENSIONS**

**The Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012**

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 111A(15)(b), 181 and 182(2) and (3) of the Pension Schemes Act 1993(1), sections 49(8), 124(1) and 174(2) and (3) of the Pensions Act 1995(2) and sections 2(3), 3(2), (5) and (6), 5(2), (4) and (6) to (8), 6(1)(b) and (2), 7(4), (5) and (6), 8(2)(b) and (3) to (6), 9(3), 10, 15(1) and (2), 16(2) and (3)(c), 17(1)(c), 18(c), 22(4) to (7), 23(1)(b) and (c), (3) and (6), 24(1)(a) and (b), 25, 27, 28(1), (2)(b), (3A) and (4) to (7), 30(5), (6)(c) and (7A), 33(2), 37(3), 60, 96(2), 98, 99 and 144(2) and (4) of the Pensions Act 2008(3):

A draft of these Regulations was laid before Parliament in accordance with section 143(4) and (5)(a) of the Pensions Act 2008 and approved by a resolution of each House of Parliament.

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(1) 1993 c.48; section 111A was inserted by the Welfare Reform and Pensions Act 1999 (c.30) and amended 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 6(1)(b) was amended by that Act, section 7. Section 23 was substituted by that Act, section 11. Section 28 was amended by that Act, sections 12 and 13. Section 30(5) was amended by that Act, section 15. Section 30(7A) was inserted by that Act, section 14. Section 60 was amended by that Act, section 36(2). Section 99 is cited for the meaning given to “prescribed” and “regulations”.

## **Citation and commencement**

1.—a) These Regulations may be cited as the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012.

(1) These Regulations shall come into force—

- (a) except for the purposes of regulation 3(b), on 1st July 2012, immediately after the amendments made by the Automatic Enrolment (Miscellaneous Amendments) Regulations 2012(4) to the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(5) come into force; and
- (b) for the purposes of regulation 3(b), on 1st July 2012, immediately after the other provisions of these Regulations come into force as referred to in sub-paragraph (a).

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

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

### **Amendment of regulation 1**

3. In regulation 1 (citation, commencement and interpretation)—

- (a) in the heading, after “commencement” insert “, expiry”;
- (b) in paragraph (1) for “1st October 2012” substitute “1st July 2012, immediately after the time when the amendments made by the Occupational and Personal Pension Schemes (Automatic Enrolment) (Amendment) Regulations 2012 come into force”; and

(c) after paragraph (1) insert—

“(1A) Subject to paragraph (1B), regulation 52 ceases to have effect on 1st July 2020.

(1B) Regulation 52 does not cease to have effect in relation to an employer and a person employed or engaged by it in any capacity on board a ship where, immediately before 1st July 2020—

- (a) the person is a jobholder and an active member of a qualifying scheme; or
- (b) the employer is required to make arrangements in respect of the person under—
  - (i) in relation to Great Britain, section 5(2) (where section 5 applies by virtue of section 5(1A) or (1B))(6), 7(3) or 9(2) of the Act; or
  - (ii) in relation to Northern Ireland, any corresponding provisions in force there.”.

### **Provisions on certification**

4. After Part 7 (Automatic enrolment following the transitional period for defined benefit and hybrid schemes) insert—

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(4) S.I. 2012/xxxx

(5) S.I. 2010/772.

(6) Subsections (1A) and (1B) of section 5 were inserted by the Pensions Act 2011, section 4(2).

## “PART 7A

### Certification that a quality or alternative 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<sup>(7)</sup> in relation to each of an employer’s relevant jobholders<sup>(8)</sup> if the certificate in question is given in accordance with regulations 32B to 32D in relation to the employer and those jobholders.

#### Giving of a certificate, retention and disclosure

**32B.**—(1) Subject to paragraph (2), a certificate under section 28(1) of the Act must be given by the employer or by a person who is authorised by the employer to give the certificate on its behalf.

(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 certification period of eighteen months or any part of such a period.

(4) A certificate must be given no later than the end of a period of one month beginning with the first day of the certification period.

(5) The employer or a person as referred to in paragraph (1) may, at any time before the end of the certification period, amend the certificate so that the certification period ends on a different day, being a day after the day on which the amendment is made and not later than the last day of the period of eighteen months beginning with the first day of the certification period.

(6) Where a certificate has been amended under paragraph (5), it may be amended again under that paragraph and so on with reference to any further amendment that is made under that paragraph.

(7) The employer must retain the certificate for a period of 6 years after the end of the certification period and must provide a copy of the certificate to the Regulator on receiving from the Regulator a notification requesting such a copy.

(8) The employer must, where a request for a copy of the certificate is received within the period of 6 years after the end of the certification period, from—

- (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 after the day on which the employer received the request.

(9) For the purpose of paragraph (8), “independent trade union” has the meaning given in section 235(1) of the Employment Rights Act 1996<sup>(9)</sup>.

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(7) see section 28(4) of the Act for the definition of “relevant quality requirement”; subsection (4) was amended by the Pensions Act 2011 (c.19), section 13(3).

(8) see section 28(1A) of the Act for the definition of “relevant jobholder”; subsection (1A) was inserted by the Pensions Act 2011, section 12(4).

(9) 1996 c.18.

### **Form of certificate**

**32C.** A certificate under section 28(1) of the Act 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 Employers' Duties (Registration and Compliance) Regulations 2010<sup>(10)</sup>;
- (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) where the certificate relates to only some of the jobholders of the employer who are active members of the scheme or part-scheme (“the active members”) —
  - (i) the names and roles of the relevant jobholders;
  - (ii) where one or more of the active members have not been included in the certificate because they have chosen to pay contributions at a level such that the relevant quality requirement or alternative requirement is not met, the names and roles of those active members; and
  - (iii) where one or more of the active members have not been included in the certificate because, in the opinion of the person who gives the certificate, the contributions made by the employer and the member will clearly meet the relevant quality requirement, the names and roles of those active members;
- (e) where the certificate is given with respect to an alternative requirement—
  - (i) under regulation 32E or 32G, which of the sets of requirements in regulation 32E applies; or
  - (ii) under regulation 32F, which of the sets of requirements in that regulation applies;
- (f) where the certificate relates to a hybrid scheme to which regulation 43 applies, the percentages referred to in regulation 43(4)(a) and (b);
- (g) where there is an upper limit to the amount of contributions that may be paid as referred to in regulation 32E(5) or 32F(8), that limit;
- (h) the certification period; and
- (i) whether that period has been amended and, if so, the previous certification period or periods.

### **Renewal of Certificate**

**32D.**—(1) Paragraph (2) applies where—

- (a) it is proposed to give, by or on behalf of an employer, a certificate under section 28(1) of the Act (“the further certificate”); and
- (b) the certification period of one or more reference certificates has ended, or will end, within a period of 2 years before the day on which it is proposed that the certification period of the further certificate will begin.

(2) Where this paragraph applies, before the further certificate is given, the employer must—

- (a) assess whether, during the certification period of any reference certificate as referred to in paragraph (1)(b) and in relation to the jobholders to whom that certificate applies, all of the elements of the alternative requirement or relevant quality requirement were, or will be, met;

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<sup>(10)</sup> S.I. 2010/5; regulation 1 was amended by S.I. 2012/xxx.

- (b) where an element of the alternative requirement or relevant quality 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 alternative requirement or relevant quality requirement will be met in relation to the jobholders to whom the further certificate will apply, for the proposed period of the further certificate, and take any such action;
- (c) compile a record of —
  - (i) the 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 beginning with the day on which the record was compiled; and
- (e) provide a copy of that record to the Regulator on receiving a notification from the Regulator requesting such a copy.

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

(4) For the purposes of paragraphs (1) to (3), a “reference certificate” means a certificate under section 28(1) of the Act that has been given, by or on behalf of the employer, in relation to some or all of the jobholders to whom the further certificate is to apply.

#### **Alternative requirements for a money purchase scheme**

**32E.**—(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 under the scheme —
  - (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 relevant 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) under the scheme—
    - (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 relevant jobholder’s pensionable earnings in the certification period;
    - (iii) the total amount of the contributions paid by the relevant 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 under the scheme—

- (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 relevant jobholder's earnings in the certification period; and
- (c) the total amount of the contributions paid by the relevant jobholder and the employer must be equal to or more than 7% of the amount of the jobholder's earnings in that period.

(5) Subject to the proviso in paragraph (6), for the purposes of paragraphs (1) to (4), a scheme as referred to in paragraph (1) may satisfy the first, second or third set of requirements even though under the scheme there is an upper limit (however expressed) to the amount of contributions that may be paid by the employer or the relevant jobholder or both of those persons.

(6) The proviso referred to is that the upper limit must not result in the payment of contributions by the employer, or by the employer and the relevant jobholder, that are less than those required by the relevant quality requirement.

(7) For the purposes of paragraphs (2) to (6), a reference to "the relevant jobholder" is a reference to each of the relevant jobholders.

### **Alternative requirements for a personal pension scheme**

**32F.**—(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 below.

(2) The first set of requirements is that —

- (a) all of the benefits that may be provided to the relevant jobholder under the scheme are money purchase benefits<sup>(11)</sup>;
- (b) there is, in relation to the relevant jobholder, an agreement between the provider of the scheme and the employer under which—
  - (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 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 relevant 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 relevant jobholder and the employer within the meaning of section 111A of the Pension Schemes Act 1993<sup>(12)</sup>.

(3) In paragraph (2)(c), "shortfall" means the difference (if any) between—

- (a) the employer's contributions in respect of the relevant jobholder under the agreement referred to in paragraph (2)(b); and

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(11) see section 99 of the Act for the definition of "money purchase benefits"; the definition was amended by the Pensions Act 2011, section 29(3).

(12) 1993 c.48. The section was inserted by the Welfare Reform and Pensions Act 1999 (c.24), section 9; there are other amendments to the section that do not affect the meaning of the expression.

- (b) 9% of the amount of the relevant 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 jobholder under the scheme are money purchase benefits;
- (b) there is, in relation to the relevant jobholder, an agreement between the provider of the scheme and the employer under which—
  - (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 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 relevant 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 relevant jobholder and the employer within the meaning of section 111A of the Pension Schemes Act 1993.

(5) In paragraph (4)(c), "shortfall" means the difference (if any) between—

- (a) the employer's contributions in respect of the relevant jobholder under the agreement referred to in paragraph (4)(b); and
- (b) 8% of the amount of the relevant 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 jobholder under the scheme are money purchase benefits;
- (b) there is, in relation to the relevant jobholder, an agreement between the provider of the scheme and the employer under which—
  - (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 relevant 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 relevant jobholder and the employer within the meaning of section 111A of the Pension Schemes Act 1993.

(7) In paragraph (6)(c), "shortfall" means the difference (if any) between—

- (a) the employer's contributions in respect of the relevant jobholder under the agreement referred to in paragraph (6)(b); and
- (b) 7% of the amount of the relevant jobholder's earnings in the certification period.

(8) Subject to the proviso in paragraph (9), for the purposes of paragraphs (1) to (7), a scheme as referred to in paragraph (1) may satisfy the first, second or third set of requirements even though under the agreements referred to above there is an upper limit (however expressed) to the amount of contributions that may be paid by the employer or the relevant jobholder or both of those persons.

(9) The proviso referred to is that the upper limit must not result in the payment of contributions by the employer, or by the employer and the relevant jobholder, that are less than those required by the relevant quality requirement.

(10) For the purposes of paragraphs (2) to (9), a reference to “the relevant jobholder” is a reference to each of the relevant jobholders.

### **Alternative requirements for a hybrid scheme**

**32G.**—(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 32E in relation to a money purchase scheme.

(2) Where, by virtue of a rule made under section 24(2) to (4) of the Act, regulation 43(2) to (4)(13) applies in relation to a hybrid scheme as referred to in paragraph (1), the prescribed alternative requirement is any of the sets of requirements set out in regulation 32E in relation to a money purchase scheme, as modified by regulation 43 but as if regulation 43 were modified as follows—

- (a) in paragraph (2), for “paragraph (a) quality requirements” substitute “elements of the alternative requirement”;
- (b) for paragraph (3)(a), substitute—
  - “(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 contribution requirement;”;
- (c) for paragraph (4)(a), substitute—
  - “(a) the extent to which requirement X is met as a proportion of the minimum rate of employer’s contribution specified in 32E(2)(b), (3)(a)(ii) or (4)(b), as the case may be”; and
- (d) after paragraph (6) of regulation 43, add—
  - “(7) For the purposes of paragraphs (2) to (4)—
    - “the alternative requirement” means any of the sets of requirements set out in regulation 32E in relation to a money purchase scheme;
    - “the employer’s contribution requirement” means the requirement set out in regulation 32E(2)(b), (3)(a)(ii) or (4)(b), as the case may be; and
    - “the total contribution requirement” means the requirement set out in regulation 32E(2)(c), (3)(a)(iii) or (4)(c), as the case may be.”.

### **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 32E, 32F or 32G;
- (b) the Regulator is of the view referred to in paragraph (3); and
- (c) one of the conditions referred to in paragraph (4) is, or both of them are, satisfied,

the Regulator may give to the employer a notice as referred to in paragraph (5).

(2) Subject to paragraphs (9) and (10), where the Regulator gives a notice as referred to in paragraph (5) and a requirement of the notice is not complied with within the time specified

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(13) Regulation 43 was amended by S.I. 2012/xxx.



in the notice, the scheme is not to be treated by virtue of regulation 32A as having satisfied the relevant quality requirement in relation to the relevant jobholders.

(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 one or more of the relevant jobholders throughout the certification period.

(4) The conditions referred to are that, in relation to all or any part of the certification period and one or more of the relevant jobholders—

- (a) a scheme shortfall has occurred;
- (b) where the alternative requirement in regulation 32E(3) (including as applied by 32G) or 32F(4) applied, the condition referred to regulation 32E(3)(b) or 32F(4)(d) was not met.

(5) The notice referred to is a notice with respect to one or more of the relevant jobholders (not necessarily all of the relevant jobholders referred to in paragraph (4)) and the relevant payment period, requiring the employer, within the period specified in the notice, to pay to the trustees, manager or provider of the scheme —

- (a) subject to sub-paragraph (b), where paragraph (4)(a) applies, the scheme shortfall; or
- (b) where paragraph (4)(b) applies (whether or not paragraph (4)(a) also applies), the shortfall between the contributions that were required to be paid by the employer and those relevant jobholders under the requirements of the scheme or the agreements referred to in regulation 32F(4), as the case may be, and the contributions that were required to be paid by those persons under the first set of requirements in regulation 32E or 32F respectively.

(6) A notice as referred to in paragraph (5) may also require the employer, within a period specified in the notice, to amend the certificate, under regulation 32B, so that the certification period ends on a specified day, being a day before the last day of the certification period but not before the last day of the relevant payment period.

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

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

(8) Where a notice as referred to in paragraph (5) has been given and, under regulation 32B, the employer amends the certificate so that the certification period ends before the last day of the relevant payment period—

- (a) the relevant payment period shall be treated as though it ended on the last day of the new certification period;
- (b) the employer must, within a period of two weeks beginning with the day on which the certificate was amended, notify the Regulator in writing of the amendment; and
- (c) the Regulator may decide to alter the period, as set out in the notice as referred to in paragraph (5), within which the employer must pay a shortfall of contributions as referred to in that paragraph.

(9) Where the Regulator decides under paragraph (8)(c) to alter the period within which the employer must pay a shortfall, the Regulator must give a notice to the employer informing the employer of the new period within which the shortfall must be paid.

(10) For the purposes of this regulation—

- (a) “the relevant payment period” means a period, set out in the notice as referred to in paragraph (5), that constitutes all or part of the certification period; and

- (b) “scheme shortfall” means the shortfall between the contributions that are required to be paid by the employer and a relevant jobholder under the scheme, contribution agreements<sup>(14)</sup> or like agreements referred to in regulation 32F, as the case may be, and the contributions that are required to be paid by those persons under the relevant quality requirement or the applicable alternative requirement (ignoring the requirements in regulations 32E(3)(b) and 32F(4)(d)), as the case may be.

### 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, but not for the purposes of regulation 32G, there are substituted for the percentages referred to in the provisions in the first column of the table below the percentage 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 32E(2)(b) and 32F(2)(b)(ii) (first set of requirements – employer)	2%	3%
Regulations 32E(2)(c) and 32F(3)(b) (first set of requirements – total contributions)	3%	6%
Regulations 32E(3)(a)(ii) and 32F(4)(b)(ii) (second set of requirements – employer)	1%	2%
Regulations 32E(3)(a)(iii) and 32F(5)(b) (second set of requirements – total contributions)	2%	5%
Regulations 32E(4)(b) and 32F(6)(b)(ii) (third set of requirements – employer)	1%	2%
Regulations 32E(4)(c) and 32F(7)(b) (third set of requirements – total contributions)	2%	5%

### Pension schemes based in an EEA State other than the United Kingdom

**32J.**—(1) Section 28 of the Act applies to a personal pension scheme to which section 26 of the Act does not apply 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(6) apply.

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(14) see the Pensions Act 2008, section 28(8), for the definition of “contribution agreements”; the subsection was amended by the Pensions Act 2011, section 13(5).

(3) A scheme as referred to in section 28(3A) of the Act<sup>(15)</sup> 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) of the Act, it satisfies the requirements 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 requirements 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 this Part—

“alternative requirement” means an alternative requirement prescribed by regulation 32E, 32F or 32G, including regulations 32E and 32F as modified by regulation 32I;

“basic pay” means the gross earnings of the jobholder from their employment by the employer, disregarding the gross amount of —

- (a) any commission, bonuses, overtime or similar payments;
- (b) any shift premium pay; and
- (c) any reasonable allowance with respect to —
  - (i) any duty of the jobholder, such as a duty in connection with the role of fire or bomb warden, that is ancillary to the main duties of the jobholder’s employment;
  - (ii) the cost of relocation of the jobholder to a different place of work;
  - (iii) in a case not covered by sub-paragraph (ii), the purchase, lease or maintenance of a vehicle;
  - (iv) in a case not covered by sub-paragraph (ii) or (iii), the purchase, lease or maintenance of an item;
  - (v) in a case not covered by sub-paragraph (ii), (iii) or (iv), the delivery of a service to the jobholder;

“certification period” means the period for which a certificate is in force;

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

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

“shift premium pay” means, where the employer applies different rates of pay to different periods of time for which the jobholder works within a certification period, the difference between the earnings that result from the application of the different rates of pay to the periods to which each of them respectively apply and the earnings that would result from the application of the lowest of the different rates of pay to the total time worked during the certification period.

(2) In regulations 32E to 32J and this regulation, “certificate” means a certificate that is given in accordance with regulations 32B to 32D.”.

## Substitution of regulation 35

5. For regulation 35 substitute—

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(15) Section 28(3A) was inserted by the Pensions Act 2011, section 13(2).

### **“Further conditions applicable to automatic enrolment schemes**

**35.**—(1) The conditions prescribed for the purposes of section 17(1)(c) (automatic enrolment schemes) of the Act are—

- (a) that the scheme must be—
  - (i) an occupational pension scheme within section 18(a) or (b) (occupational pension schemes) of the Act; or
  - (ii) a personal pension scheme where the operation of the scheme—
    - (aa) is regulated by a competent authority; and
    - (bb) is carried on by a person who is in relation to that activity authorised by a competent authority; and
- (b) where the scheme is an occupational pension scheme within the meaning of section 18(b) (occupational pension schemes) of the Act or a personal pension scheme where the operation of the scheme is carried on in accordance with subparagraph (a)(ii) by a person authorised by a competent authority other than that of the United Kingdom, the regulatory requirements applicable must provide that—
  - (i) at least 70% of the relevant benefits will be designated for the purpose of providing the jobholder with an income for life; and
  - (ii) the benefits payable to the jobholder under the scheme are payable no earlier than they would be under pension rule 1 in section 165(1) of the Finance Act 2004**(16)**.

(2) For the purposes of this regulation—

“competent authority” has, as the case may be, the meaning given in—

- (a) paragraph 4 of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions**(17)**;
- (b) paragraph 22 of Article 4 of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments**(18)**;
- (c) paragraph 1(h) of Article 2 of Directive 2009/65/EC of the European Parliament and of the Council on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities**(19)**; or
- (d) paragraph (n) of Article 1 of Directive 2002/83/EC of the European Parliament and of the Council concerning life assurance**(20)**;

“regulatory requirements” includes provisions of legislation that concern tax;

“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 for a sum of money to be made available for the provision of benefits to a member, that sum”.

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**(16)** 2004 c.12.

**(17)** OJL 177, 30.6.2006, p1.

**(18)** OJS 145, 30.4.2004, p1

**(19)** OJL 302, 17.11.2009 p1.

**(20)** OJL 345, 19.12.2002, p1.

### **Amendment of regulation 36**

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

- (a) in paragraph (4), for the words after “by—” substitute—
  - “(a) in relation to a scheme which has members on 1st July 2012, the percentage increase in the retail prices index for the year by reference to which the revaluation is made;
  - (b) in relation to any scheme, the percentage increase in the general level of prices for the year by reference to which the revaluation is made; or
  - (c) in relation to any scheme, 2.5%,

whichever is the lesser or the least”.

- (b) 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 level is not published for any month, any substituted level 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.

(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**

**7.** After Part 14 (Due dates), 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 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<sup>(21)</sup> who is appointed as a police member of the Scottish Crime and Drug Enforcement Agency in accordance with paragraph 7(1) of that Schedule; or
- (b) who serves 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.

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(21) 2006 asp 10.

### **Persons working on vessels**

52. The relevant provisions(22) apply, without modification, in relation to a person employed or engaged in any capacity on board a ship as if such a person were a worker for the purposes of those provisions.”.

### **Review**

8. After Part 15 (special occupations) insert—

## **“PART 16**

### **Review**

- 53.—(1) Before the end of the review period, the Secretary of State must—
- (a) carry out a review of regulation 52;
  - (b) set out the conclusions of the review in a report; and
  - (c) publish the report.
- (2) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by that regulation;
  - (b) assess the extent to which those objectives are achieved; and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (3) “Review period” means the period of six years beginning with 1st July 2012.”.

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

Date

Minister of State,  
Department for Work and Pensions

### **EXPLANATORY NOTE**

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

These Regulations amend the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (“the principal Regulations”).

Regulation 3 amends regulation 1 of the principal Regulations to provide that the Regulations come into force on 1st July 2012 instead of 1st October 2012. It also amends regulation 1 to provide that, save for certain cases, new regulation 52 (persons working on vessels) is to cease to have effect eight years after it comes into force (1st July 2020).

Regulation 4 inserts Part 7A into the principal Regulations. Part 7A makes detailed provision with regard to certification under section 28 of the Pensions Act 2008 (“the Act”).

New regulations 32B to 32D of the principal Regulations make provision in relation to the giving of a certificate under section 28, the period it is in force, the keeping of records and the provision of information.

New regulations 32E to 32G and 32I of the principal Regulations prescribe alternative quality requirements in relation to which a certificate may be given.

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(22) see section 96(3) of the Act for the definition of “the relevant provisions”; this expression includes a reference to provisions in force in Northern Ireland.

New regulation 32H of the principal Regulations sets out circumstances in which, where a certificate has been given, a scheme is not to be treated as having satisfied the relevant quality requirement in the Act.

New regulation 32J sets out provisions in relation to the giving of a certificate with respect to schemes that have their main administration in an EEA State other than the United Kingdom.

Regulation 5 amends regulation 35 of the principal Regulations to include conditions for a scheme to count as an automatic enrolment scheme, for defined benefits schemes that provide for a sum of money to be made available for the provision of a pension.

Regulation 6 amends regulation 36 of the principal Regulations (circumstances in which a scheme is not a qualifying scheme) to provide that the minimum rate for revaluation of benefits in a scheme which provides for average salary benefits must be an annual increase by the general level of prices or 2.5% whichever is the lesser (with a variation for such schemes that have members on 1st July 2012).

Regulation 7 inserts a new Part 15 into the Regulations, comprising new regulations 51 and 52. New regulation 51 applies the employer duties in Part 1 of the Act to police members of the Scottish Drug Enforcement Agency and members of staff of the Scottish Police Services Authority. Regulation 52 applies the employer duties in Part 1 of the Act, and the corresponding provisions in force in Northern Ireland, to persons employed or engaged in any capacity on board a ship.

Regulation 8 inserts a new regulation 53 into the principal Regulations. Regulation 53 requires the Secretary of State to review the operation and effect of regulation 52 and publish a report within a period of six years beginning with 1st July 2012. Following the review it will fall to the Secretary of State to consider whether the regulation should be allowed to expire as regulation 1 of the principal Regulations provides, be revoked early, or continue in force with or without amendment. A further instrument would be needed to continue the regulations in force with or without amendments or to revoke it early.

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 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>