

2016 No.

PENSIONS

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

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - - - *6th April 2016*

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 (a), makes the following Regulations:

Citation and commencement

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

Amendment of the Employers' Duties (Implementation) Regulations 2010

2.—(1) The Employers' Duties (Implementation) Regulations 2010(b) are amended as follows.

(2) In paragraph (4) of regulation 3 (early automatic enrolment)(c)—

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

“where there are jobholders for whom arrangements must be made by the employer under section 3(2) of the Act on the early automatic enrolment date,” and

(b) for head (i) of sub-paragraph (c) substitute—

“(i) where paragraph (5)(a) or (d) applies, before the early automatic enrolment date;”.

(3) In paragraph (5) of regulation 3, at the end of sub-paragraph (c), insert—

“or

(d) in any case where the employer reasonably believes that there will be no jobholder for whom arrangements need to be made under section 3(2) of the Act by the employer on the early automatic enrolment date, the early automatic enrolment date is any date which is earlier than the staging date corresponding to that employer's description.”

(4) In regulation 4 (staging of the employers' duties)(d)—

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

(b) S.I. 2010/4.

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

(d) Regulation 4 has been amended by S.I. 2012/1813.

- (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(a) are amended as follows.

(2) In paragraph (1) of regulation 2 (registration: general)(b)—

(a) in sub-paragraph (a), after “employer” insert—

“, unless the employer has already provided all the relevant information under regulation 2A”; and

(b) for sub-paragraph (c) substitute—

“(c) after an automatic re-enrolment date for that employer.”.

(3) After regulation 2 insert—

“Provision of information where early automatic enrolment

2A.—(1) An employer may provide the information specified in paragraphs (2) and (3) of regulation 3 in relation to each of its PAYE Schemes at the same time as notifying the Regulator of an early automatic enrolment date in accordance with regulation 3(4)(c) of the Employers Duties (Implementation) Regulations 2010.

(2) Where an employer provides information in accordance with this regulation, in respect of the information specified in paragraph (2)(d) to (g) of regulation 3, the employer must provide that information which the employer reasonable believes will be correct on the relevant dates referred to in that paragraph.

(3) All information provided to the Regulator by (or on behalf of) an employer under this regulation must be accompanied by a declaration that the information is, to the best of the employer's knowledge and belief, correct and complete.”.

(4) For paragraphs (1) and (2) of regulation 4 (registration: re-registration)(c) 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 starting from the third anniversary of the employer's staging date; and
- (b) in any other case, within the period of 5 months starting from 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.

(2) Paragraph (1) applies in the case of an automatic re-enrolment date occurring by virtue of section 6(1)(b) of the Act but not in relation to the cases described in subsections (4) and (5) of that section, and the reference in paragraph (1)(a) and (b) to the employer's automatic re-enrolment date is to that automatic re-enrolment date occurring by virtue of section 6(1)(b).”.

(5) In paragraph (3) of regulation 4—

- (a) omit head (iii) in sub-paragraph (c) and the preceding “and”;
- (b) after sub-paragraph (c) insert—

(a) S.I. 2010/5.

(b) Regulation 2 was amended by S.I. 2012/215.

(c) Regulation 4 was amended by S.I.2012/215 and 2013/2556.

“(ca) the automatic re-enrolment date;”

(c) for paragraph (e) substitute—

“(e) the number of workers in an 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 employer’s duties, each of those schemes;”.

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

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

(2) In paragraph (1) of regulation 5E (winding-up lump sum)(b) 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) or 5(1A) or (1B) of the Act applies to the worker.”.

(3) After regulation 5E, insert—

“Company directors

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

(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”.

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)(c).

(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”.

(5) Regulation 32M (alternative quality requirements for UK defined benefits schemes)(d) is amended as follows.

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

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

(a) S.I. 2010/772.

(b) Regulation 5E was inserted by S.I. 2015/501.

(c) 2005 c. 5. Section 863A was inserted by section 74 of, and paragraph 6(1) of Schedule 17 to, the Finance Act 2014 (c. 26).

(d) Regulation 32M was inserted by S.I. 2015/501.

(8) After paragraph (5), insert—

“(5A) Subject to paragraph (5B), where—

- (a) the jobholder was in contracted-out employment on 5th April 2016;
- (b) the rules of the scheme of which the jobholder is a member have not been amended—
 - (i) using the powers in section 24(2) of the Pensions Act 2014 (abolition of contracting out for salary related schemes etc.)**(a)**; or
 - (ii) on or after the coming into force of these Regulations, in any other way which would mean that the rules of the scheme would not satisfy the contracting-out requirements as if those requirements were still in force; and
- (c) there has been no determination in the most recent written report provided to the employer of the jobholder by the actuary of whether there is a material difference in the cost of providing the benefits accruing for different groups of relevant members taking into account the criteria mentioned in paragraph (4) over the relevant period,

the employer of the jobholder may choose, notwithstanding paragraph (4), that the relevant members are the active members of the scheme who were in contracted out employment on 5th April 2016.

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

- (a) the date by reference to which the first written report signed by an actuary, 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 stated; or
- (b) 5th April 2019.”

(9) In paragraph (6), after “(4)” insert “and (5A)”.

(10) 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”)**(b)**;

“contracting-out requirements” means the requirements set out in section 9 of the 1993 Act as they had effect immediately before 6th April 2016;”.

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

	<i>Name</i>
	Minister of State
Date	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 Implementation Regulations). Paragraph (2)(a) has the effect of removing the requirement on an employer to secure the agreement of a pension scheme that it can be used from an early automatic enrolment date where that employer has no jobholders to enrol on that

(a) 2014 c. 19.

(b) Section 8(1) is substituted by section 24(1) of, and paragraph 7 to, the Pensions Act 2014 (c. 19).

early automatic enrolment date. Paragraphs (2)(b) and (4) have the effect of allowing an employer to notify the Pensions Regulator of the early automatic enrolment date on any date prior to that early automatic enrolment date. Paragraph (3) inserts a new sub-paragraph (d) into paragraph (5) of regulation 3 which has the effect of allowing an employer to choose any date prior to that employer's staging date as the early automatic enrolment date where the employer reasonably believes they will have no one to automatically enrol on that early automatic enrolment date.

Regulation 3 amends the Employers' Duties (Registration and Compliance) Regulations 2010 (S.I. 2010/5) ("the Registration Regulations"). Paragraphs (2)(a) and (3) make provision for an employer to provide the information required under regulation 3 of the Registration Regulations at the same time as notifying the Regulator of an early automatic enrolment date under the Implementation Regulations. Paragraphs (2)(b), (4) and (5) amend the Registration Regulations so that the time at which an employer sends the information by regulation 4 to the Regulator is the same whether or not an employer has any jobholders to re-enrol on the automatic re-enrolment date.

Regulation 4 amends the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (S.I. 2010/772).

Paragraph (2) amends regulation 5E 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.

Paragraph (3) inserts new regulations 5EA and 5EB, which turn the employer's duty to automatically enrol or re-enrol a jobholder into a discretion in two circumstances. The first, where new regulation 5EA applies, is where the jobholder is a director of the company by which he is employed, and the second, where new regulation 5EB applies, is where the jobholder is 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.

Paragraphs (5) to (10) amend regulation 32M, which provides employers with an alternative quality requirement for UK defined benefit schemes based on the cost of accruals. Paragraph (8) inserts new paragraphs (5A) and (5B). New paragraph (5A) provides for the requirement to be applied in relation to only those jobholders who were in contracted out employment on 5th April 2016 where the circumstances set out exist if the employer so chooses. New paragraph (5B) places a time limit on the application of new paragraph (5A). Paragraphs (6), (7), (9) and (10) make amendments consequential on paragraph (8).

Assessments of the impact of this legislation on business and civil society organisations have been made. Copies of these assessments are available in the libraries of both Houses of Parliament and alongside this instrument on 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.