STATUTORY INSTRUMENTS

2013 No. 2556

PENSIONS

The Automatic Enrolment (Miscellaneous Amendments) Regulations 2013

Made - - - -	*5th October 2013*
Laid before Parliament	*11th October 2013*
Coming into force in accordance with regulation 1	

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) of the Pension Schemes Act 1993(**1**), sections 49(8), 124(1) and 174(2) of the Pensions Act 1995(**2**) and sections 3(2), 4(5), 5(2), 8(4), (5) and (6), 10(1), 11, 15, 23(1)(c), (3) and (6), 33(2), 37(3), 99 and 144(2) and (4) of the Pensions Act 2008(**3**).

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.—(1) These Regulations may be cited as the Automatic Enrolment (Miscellaneous Amendments) Regulations 2013 and, except in relation to regulations 4 and 5(4) and (7), come into force on 1st November 2013.

(2) Regulations 4 and 5(4) and (7) come into force on 1st April 2014.

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

2. For paragraphs (2) and (3) of regulation 16 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996(**4**) (prescribed time in which an employer must make payments to trustees or managers) 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

(**1**) 1993 c. 48. Section 181 is cited for the meaning given to "prescribe" and "regulations".
(**2**) 1995 c. 26. Section 124(1) is cited for the meaning given to "prescribed" and "regulations".
(**3**) 2008 c. 30. Section 99 is cited for the meaning given to "prescribed" and "regulations".
(**4**) S.I. 1996/1715. Regulation 16 was substituted by S.I. 2010/772 and amended by S.I. 2012/215 and S.I. 2012/1257.

section 49(8) of the 1995 Act is the period commencing on the day on which the first deduction in the relevant period is made and ending—

(a) where the contribution is paid to the trustees or managers of the scheme by means of electronic communication, on the 22nd day of the month following the last day of the relevant period; or

(b) in any other case, on the 19th day of the month following the last day of the relevant period.

(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 period" means a period of three months commencing on the date from which active membership is effective; 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 is registered under chapter 2 of part 4 of the Finance Act 2004.".

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

3. For paragraphs (2) and (3) of regulation 5 of the Personal Pension Schemes (Payments by Employers) Regulations 2000(**5**) (prescribed time for the purpose of calculating the due date for the payment of any contribution on behalf of an employee) 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 day on which the first deduction in the relevant period is made and ending —

(a) where the contribution is paid to the trustees or managers of the scheme by means of electronic communication, on the 22nd day of the month following the last day of the relevant period; or

(b) in any other case, on the 19th day of the month following the last day of the relevant period.

(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 period" means a period of three months commencing on the date from which active membership is effective; 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.".

(**5**) S.I. 2000/2692. Regulation 5 was substituted by S.I. 2010/772 and amended by S.I. 2012/215 and S.I. 2012/1257.

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

4.—(1) The Employers' Duties (Registration and Compliance) Regulations 2010(**6**) are amended as follows.

(2) In regulation 3(1) (registration: after staging date and new PAYE schemes) in each place in which it occurs for "4 months" substitute "5 months".

(3) In regulation 4(1) (registration: re-registration) for "1 month" substitute "2 months".

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

5.—(1) The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(**7**) are amended as follows.

(2) For regulation 4 (pay reference periods for the purposes of sections 1(1)(c), 3(1)(c) and 5(1)(c) of the Act) substitute—

"**4.**—(1) This regulation applies for the purposes of sections 1(1)(c), 3(1)(c) and 5(1)(c) of the Act (jobholders, automatic enrolment and automatic re-enrolment).

(2) The pay reference period in respect of a person is determined in accordance with paragraph (3) or paragraphs (4) and (5), whichever the employer may decide.

(3) For the purposes of this paragraph, the pay reference period is—

(a) in the case of a person who is paid their regular wage or salary by reference to a period of a week, the period of one week;

(b) in the case of a person who is paid their regular wage or salary by reference to a period longer than a week, that period.

(4) For the purposes of this paragraph, subject to paragraph (6)(b), a pay reference period is—

(a) a period equal in length to the usual interval between payments of the person's regular wage or salary; or

(b) the period of a week,

whichever is the longer.

(5) For the purposes of paragraph (4), pay reference periods commence—

(a) where the person is paid monthly, on the first day of a tax month;

(b) where the person is paid weekly or the pay reference period is a week, on the first day of a tax week;

(c) where the person is paid at intervals of multiple weeks, on—

(i) 6th April; and

(ii) the first day of the tax week which commences immediately after the expiry of a pay interval period beginning on 6th April, unless paragraph (6) applies; and

(d) where the person is paid at intervals of multiple months, on—

(i) 6th April; and

(**6**) S.I. 2010/5. Regulation 3(1) was amended by S.I. 2012/215. Regulation 4(1) was amended by S.I. 2012/215. Other amendments have been made to these regulations which are not relevant to these amendments.

(**7**) S.I. 2010/772. S.I. 2010/772 was amended by S.I. 2012/215 and S.I. 2012/1257. Other amendments have been made which are not relevant to these Regulations.

(ii) the first day of the tax month which commences immediately after the expiry of a pay interval period beginning on 6th April, unless paragraph (6) applies.

(6) Where paragraphs (4) and (5) apply and a pay reference period includes the last day of a tax year—

(a) the next pay reference period commences on 6th April; and

(b) if the qualifying earnings which, but for this sub-paragraph, would fall in that pay reference period, are paid or payable on or after 6th April, the pay reference period ends on 5th April.

(7) In this regulation—

"pay interval period" means a period which is equal in length to the usual interval between payments and each whole multiple of that period;

"tax month" means the period beginning with the sixth day of the month and ending on the fifth day of the following month; and

"tax week" means one of the successive periods in a tax year beginning with the first day of that year and every seventh day after that (so that the last day of a tax year or, in the case of a tax year ending in a leap year, the last two days is treated as a separate week).".

(3) For regulation 5 (pay reference periods for the purposes of section 20(1)(b) and (c) and section 26(4)(b) and (5)(b) of the Act) substitute—

"**5.**—(1) The pay reference periods for the purposes of section 20(1)(b) and (c) (quality requirement: UK money purchase schemes) and section 26(4)(b) and (5)(b) (quality requirement: UK personal pension schemes) of the Act are as follows.

(2) A pay reference period may be either—

(a) subject to paragraph (10), a period of a year, ending on the day before an anniversary of the employer's staging date;

(b) a period which is equal in length to the period by reference to which the jobholder is paid their regular wage or salary, commencing on the first day of that period; or

(c) subject to paragraph (4)(b), a period which is equal in length to the usual interval between payments of the jobholder's regular wage or salary, commencing on the date determined in accordance with paragraph (3).

(3) Where paragraph (2)(c) applies, pay reference periods in respect of a person commence—

(a) where the person is paid monthly, on the first day of a tax month;

(b) where the person is paid weekly, on the first day of a tax week;

(c) where the person is paid at intervals of multiple weeks, on—

(i) 6th April; and

(ii) the first day of the tax week which commences immediately after the expiry of a pay interval period beginning on 6th April, unless paragraph (4) applies; and

(d) where the person is paid at intervals of multiple months, on—

(i) 6th April; and

(ii) the first day of the tax month which commences immediately after the expiry of a pay interval period beginning on 6th April, unless paragraph (4) applies.

(4) Where paragraph (2)(c) applies and a pay reference period includes the last day of a tax year—

(a) the next pay reference period commences on 6th April; and

(b) if the qualifying earnings which, but for this sub-paragraph, would fall in that pay reference period, are paid or payable on or after 6th April, the pay reference period ends on 5th April.

(5) Where paragraph (2)(a) applies, the first pay reference period in respect of a person commences—

(a) on the relevant day; or

(b) where there has been a period beginning after the relevant day, during which the requirements of section 1(1)(a) or (c) of the Act were not met but the person remained an active member of a qualifying scheme, on the day following the last day of that period.

(6) Where paragraph (2)(b) applies, the first pay reference period in respect of a person commences on the first day determined in accordance with that paragraph which falls on or after the relevant day.

(7) Where paragraph (2)(c) applies, the first pay reference period in respect of a person commences on the first day determined in accordance with paragraph (3) which falls on or after the relevant day.

(8) Subject to paragraph (2)(c), a pay reference period in relation to any person ends on the day before the day on which the next pay reference period begins.

(9) Where a person ceases to be a jobholder of the employer or ceases to be an active member of a qualifying scheme the last pay reference period—

(a) ends on the day on which the person's status so changes, where paragraph (2)(a) applies; or

(b) is the pay reference period which includes the day on which the person's status so changes, where paragraph (2)(b) or (c) applies.

(10) A pay reference period under paragraph (2)(a) may be less than a year if it either commences or ends within the period of a year ending on the day before an anniversary of the employer's staging date.

(11) In this regulation—

"relevant day" means the first day on or after the staging date on which the person is both a jobholder and an active member of a qualifying scheme; and

"pay interval period", "tax week" and "tax month" have the same meaning as in regulation 4.".

(4) In regulations 6(1), 7(1) and (3), 13(2)(a), 17(1), 18(4)(a), 21(1), the substituted regulation 6(3) in regulation 28(a) and the substituted paragraph (1)(a) and (b) in regulation 29(a), in each place in which it occurs for "one month" substitute "six weeks".

(5) In regulation 8 (arrangements to achieve active membership)—

(a) before "qualifying earnings" omit "any"; and

(b) omit "in any applicable pay reference period".

(6) In regulation 9 (opting out)—

(a) for paragraph (6)(a) substitute—

"(a) it includes the wording set out in Schedule 1;

(aa) it includes statements from the jobholder to the effect that the jobholder wishes to opt out of pension saving and understands that, in so doing, the jobholder will lose the right to pension contributions from the employer and may have a lower income upon retirement;"; 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, the notice is deemed to be 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."

(7) In regulations 24(3), 27(b) and the substituted paragraph (1)(c) in regulation 29(a), in each place in which it occurs for "1 month" substitute "six weeks".

(8) In regulation 37 (test scheme: requirements to revalue accrued benefits and increase pensions in payment)—

(a) in paragraph (2)(a) for "section 84(1)" substitute "section 84"; and

(b) for paragraph (3) substitute—

"(3) For the purposes of paragraph (2)(a)—

(a) a test scheme which falls within section 23(2)(a) of the Act and a test scheme which falls within regulation 39A(2) must satisfy the requirements of section 84 of the 1993 Act by reference to the final salary method; and

(b) a test scheme to which regulation 39A(3) applies must satisfy the requirements of section 84 of the 1993 Act by reference to the average salary method or the final salary method.".

(9) For regulation 38 (staged increase in appropriate age) and the heading immediately before it substitute—

"**Appropriate age**

38.—(1) For the purposes of making a relevant determination, the appropriate age prescribed for a member whose pensionable age is over 65 is the age at which the member attains pensionable age.

(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.".

(10) For regulation 39A (requirement for satisfying the test scheme under section 23(2)(b) of the Act) and the heading immediately before it substitute—

"**Lump sum test scheme requirements**

39A.—(1) For the purposes of section 23(6) of the Act the requirement relating to the sum of money is specified in paragraph (2) in the case of a final salary lump sum test scheme and paragraph (3) in the case of an average salary lump sum test scheme.

(2) The requirement for a final salary lump sum test scheme is that the sum of money to be made available for the provision of benefits to a member amounts to 16% of final pensionable pay, multiplied by the number of years of pensionable service up to a maximum of 40 years.

(3) The requirement for an average salary lump sum test scheme is that either of the requirements specified in paragraph (4) or paragraph (5) is met.

(4) The requirement in this paragraph 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.

(5) The requirement in this paragraph 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) during any period in which a member is deferred, an amount equal to an annual increase on accrued rights at 3.5% above any increase that is required by virtue of regulation 37(2)(a).

(6) For the purposes of paragraphs (4) and (5), average annual qualifying earnings are to be calculated on the basis that each year's qualifying earnings are revalued during pensionable service at—

(a) the minimum rate specified in regulation 36(4), where paragraph (4) applies; and

(b) 3.5% above the minimum rate specified in regulation 36(4), where paragraph (5) applies.

(7) In this regulation—

"average salary lump sum test scheme" means a test scheme falling within section 23(2)(b) of the Act under which the sum of money is determined by reference to average qualifying earnings over the period of pensionable service;

"final pensionable pay" means average annual qualifying earnings in the last three tax years preceding the end of pensionable service; and

"final salary lump sum test scheme" means a test scheme falling within section 23(2)(b) of the Act under which the sum of money is determined by reference to final pensionable pay.".

(11) In regulation 50 (due date for the purposes of section 37(3) of the Act)—

(a) for paragraph (3) substitute—

"(3) Where a jobholder becomes an active member of a qualifying scheme or a worker is enrolled pursuant to section 9 of the Act in a scheme which meets the requirements of section 9 of the Act, paragraph (2) does not apply in respect of contributions—

(a) deducted in the 3 month period commencing with the relevant date; or

(b) due but not made in the 3 month period commencing with the relevant date,

in which case paragraph (4) applies.".

(b) in paragraph (4) for the words "last day" to the end substitute "22nd day of the fourth month after the month which includes the relevant date."; and

(c) in paragraph (7) for the definition of "relevant date" substitute—

""relevant date" means the date from which active membership is effective.".

(12) For Schedule 1 substitute—

"SCHEDULE 1

Regulation 9(6)(a)

Information for workers

WHAT YOU NEED TO KNOW

Your employer cannot ask you or force you to opt out.

If you are asked or forced to opt out you can tell the Pensions Regulator – see www.thepensionsregulator.gov.uk

If you change your mind you may be able to opt back in – write to your employer if you want to do this.

If you stay opted out your employer will normally put you back into pension saving in around 3 years.

If you change job your new employer will normally put you back into pension saving straight away.

If you have another job your other employer might also put you into pension saving, now or in the future. This notice only opts you out of pension saving with the employer you name above. A separate notice must be filled out and given to any other employer you work for if you wish to opt out of that pension saving as well.".

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

Steve Webb
Minister of State
5th October 2013 Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715), the Personal Pension Schemes (Payments by Employers) Regulations 2000 (S.I. 2000/2692), the Employers' Duties (Registration and Compliance) Regulations 2010 (S.I. 2010/5) and the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (S.I. 2010/772) ("the Automatic Enrolment Regulations").

Regulation 2 amends regulation 16 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 which specifies the time limit within which an employer must pay contributions deducted from the member's earnings into an occupational pension scheme. The amendment applies a different time limit in respect of contributions deducted in the first three 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 2000 in relation to personal pension schemes.

Regulation 4 amends regulations 3 and 4 of the Employers' Duties (Registration and Compliance) Regulations 2010, extending the deadlines for information to be provided to the Regulator when duties first apply to an employer or on re-registration of information.

Regulation 5 amends the Automatic Enrolment Regulations.

Paragraph (2) amends regulation 4 of the Automatic Enrolment Regulations, inserting a new definition of pay reference period for the purposes of the Pensions Act 2008. This provides an alternative definition of pay reference period for assessment purposes allowing the length of a pay reference period to be determined by reference to the usual interval between payments of a person's wages. In such cases, the pay reference period will begin on the first day of a tax month (where a person is paid monthly or in multiples of months) or tax week (where a person is paid weekly or in multiples of weeks).

Paragraph (3) replaces regulation 5 which relates to pay reference periods for the purposes of determining whether an occupational money purchase scheme or personal pension scheme meets the quality requirement. This sets out that the pay reference period may be a year, ending the day before an anniversary of the employer's staging date, or the same length as the period by reference to which a person is paid commencing on the first day of that period, or the period equal to the interval between payments of a person's wages, commencing on the first day of a tax week or tax month (depending on the basis of pay). The new regulation also makes provision in respect of the first and last pay reference periods in respect of a person.

Paragraphs (4) and (7) extend 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) amends the wording of regulation 8 of the Automatic Enrolment Regulations

Paragraph (6) makes a clarificatory amendment to regulation 9(6)(a) providing that an opt out notice is valid if it includes the information for workers set out in Schedule 1 and certain statements. In case the amendment casts doubt on the validity of an opt out notice previously accepted as valid by the employer, paragraph (6)(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.

Paragraph (8) makes certain amendments to regulation 37 to allow for test schemes which revalue by the average salary method.

Paragraph (9) makes 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 Pensions Act 2008 before the dates set out in the regulation and to bring the appropriate age prescribed into line with pensionable age for state pension purposes.

Paragraph (10) replaces 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 make clear that there are three different types of test scheme under this regulation and ensure that there is consistency across the test schemes and that average salary lump sum test schemes include revaluation in service and deferment at a consistent level.

Paragraph (11) makes consequential amendments to regulation 50 to ensure that the due date for the purposes of the Regulator issuing unpaid contributions notices takes account of the changes made in the Occupational Pension Schemes (Scheme Administration) Regulations 1996 and the Personal Pension Schemes (Payments by Employers) Regulations 2000 made in regulations 2 and 3.

There is no impact assessment associated with these regulations as the changes do not affect policy which has been previously agreed and supported by an impact assessment. A summary of the net impact of the workplace pension reforms was published in July was published in July 2012 at https://www.gov.uk/government/publications/workplace-pension-reform-summary-of-net-impact-on-business-july-2012.