

Pensions – Consultation on Draft Regulations

Workplace Pension Reform – Completing the Picture

24 September 2009

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Part One – Foreword and consultation arrangements

Who this consultation is aimed at

1. This consultation is aimed at all employers, employee representatives and all pension industry professionals, including occupational pension and workplace personal pension scheme administrators, payroll administrators, accountants, payroll bureaux, Independent Financial Advisors and employee benefit consultants. Comments from workers and the general public are also welcome.

Subject of consultation

2. This document is the third in a series of three consultations seeking views on the proposed regulations to be made in exercise of powers contained in the Pensions Act 2008. This consultation concerns:
 - Arrangements for implementing the reforms including measures to manage the burdens on business, such as allowing employers to phase in contributions gradually over time.
 - Elements of the employer duty requirements not covered in the consultation of March 2009, including pay reference periods; voluntary joining for individuals not eligible for automatic enrolment; re-enrolment of eligible individuals; requirements on employers to maintain membership of a qualifying pension scheme; changes to 'the 19 day' rule; and modifications to when postponement can be used for high quality schemes.
 - The quality requirements for pension schemes, including self-certification for defined contribution schemes.
 - Powers to enforce compliance with the requirements on employers.
3. It is proposed that these regulations will come into force on the commencement of the employer duties, currently scheduled for October 2012.

Purpose of the consultation

4. This document seeks views on the following:
 - Draft Employers' Duties (Implementation) Regulations to be made under Chapter 1 of the Act.
 - Draft Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations to be made under Chapter 1 of the Act.

- Draft Employers' Duties (Registration and Compliance) Regulations to be made under Chapters 1 and 2 of the Act.
 - The Occupational and Personal Pension Schemes (19 Day Rule) (Amendment) Regulations which amend the existing Occupational Pension Schemes (Scheme Administration) Regulations 1996 and Personal Pensions (Payments by employers) Regulations 2000 (known as the 19 day rule).
 - Proposals to change the scope of previous draft regulations included in the first consultation on the postponement of automatic enrolment.
 - Draft guidance on certification of qualifying money purchase schemes and scheme quality tests for defined benefit and hybrid schemes.
5. Two consultations covering regulations for workplace pension reform have already taken place:
- A consultation on the automatic enrolment process and enabling the Pensions Regulator (TPR) to contract out certain activities needed to enforce compliance.
 - A consultation on the scheme order and rules for the personal accounts scheme.
6. This consultation document includes the amended automatic enrolment regulations for information, and should be read in conjunction with the Government response to the automatic enrolment consultation. These greyed out regulations are only included for context and are not open to consultation.

Scope of consultation

7. This consultation applies to England, Wales and Scotland. Northern Ireland has its own body of pensions law and references to Great Britain legislation are to be taken, where necessary, as including references to the corresponding Northern Ireland legislation. It is anticipated that Northern Ireland will make corresponding regulations.

Duration of the consultation

8. The consultation period begins on **24 September** and runs until **5 November**.

How can you respond to this consultation?

9. This document is available on the Department's website at:

www.dwp.gov.uk/consultations

10. Please send your response, preferably by e-mail to:

workplace-pension.reform-consultation@dwp.gsi.gov.uk

Or by post to:

Jason Yianni
Department for Work and Pensions
Enabling Retirement Savings Programme
7th Floor
Caxton House
Tothill Street
London
SW1H 9NA

11. Please ensure your response reaches us by **5 November**.
12. When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled. We will acknowledge receipt of your response.
13. Any queries about the subject matter of this consultation should be made to Jason Yianni at the above address, or telephone 0207 449 7249.
14. We have sent this consultation document to a large number of people and organisations who have already been involved in this work or who have expressed an interest. Please do share this document with, or tell us about, anyone you think will want to be involved in this consultation.

Freedom of information

15. The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.
16. All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purpose of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information which is provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this. We cannot

guarantee confidentiality of electronic responses even if your IT system claims it automatically.

17. If you want to find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

**Central Freedom of Information Team
Department for Work and Pensions,
The Adelphi
1-11 John Adam Street,
London, WC2N 6HT**
Email: freedom-of-information-request@dwp.gsi.gov.uk

18. More information about the Freedom of Information Act can be found on the website of the Ministry of Justice, Freedom of Information pages.
19. The information you send us may need to be passed to colleagues within the Department for Work and Pensions and published in a summary of responses received, and referred to in the published consultation report.

The consultation criteria

20. Government consultations commonly follow the Code of Practice on Consultation which can be found at - www.berr.gov.uk/files/file47158.pdf, and its seven consultation criteria, which are as follows:

- **When to Consult** - Formal consultation should take place at a stage when there is scope to influence the outcome.
- **Duration of consultation exercises** - Consultations should normally last for at least 12 weeks, with consideration given to longer timescales where feasible and sensible.
- **Clarity of scope and impact** - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises** - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
- **The burden of consultation** - Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

- **Responsiveness of consultation exercises** - Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Capacity to consult** - Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

21. We are proposing to consult formally on these for a period of 6 weeks, rather than the usual 12 weeks.

22. This is because elements of the employer compliance regime and the personal accounts scheme will be delivered by external suppliers and we need to provide as much certainty as possible about what they need to deliver as soon as possible. Finalising the regulations earlier will avoid the potential costs associated with changing the proposals at a later date. However we think all stakeholders, and employers in particular, would similarly benefit from early certainty.

23. We want to make sure these proposals work in practice, minimise costs, and reflect the views of those who will be working with them. To minimise the impact of having a shorter consultation period than is normal we have been sharing our thinking with stakeholders during the last month. However, we do acknowledge the challenge the shortened period poses. To assist stakeholders during this we will be holding several seminars and intend to conduct research with employers who have less than 500 workers, in addition to our rolling programme of stakeholder meetings. This activity should ensure our stakeholders will be able to consider the proposals in full and have appropriate opportunities to comment.

Feedback on this consultation

24. We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Roger Pugh
Department for Work and Pensions' Consultation Coordinator:
Room 2A, Britannia House,
2, Ferensway,
Hull, HU2 8NF
Phone: 01482 609571
Fax: 01482 609658
Email: roger.pugh@dwp.gsi.gov.uk

25. Please also make any suggestions as to how the process of consultation could be improved further.

26. If you have any requirements that we need to meet to enable you to comment, please let us know.
27. The responses to the consultation will be published in Spring 2010 in a report on the DWP website that will summarise the responses and the action that we will take as a result of them.

Impact Assessment: Workplace pension reform - completing the picture, Regulations 2010

28. These regulations have an impact on business and the pensions industry. An impact assessment is published alongside these regulations. That document should be read in conjunction with this consultation document and contains further details on the options appraisal that was carried out.

Part Two – Introduction

1. Current estimates suggest that approximately 7 million people are not saving enough to deliver the pension income they are likely to want, or expect, in retirement. Most people aspire to more in retirement than the state can provide, yet an estimated 44 per cent of working age workers are not contributing to a private pension.
2. To counteract this under-saving the Government is introducing workplace pension reforms, legislated for in the Pensions Act 2008. The reforms will place new duties on employers to automatically enrol all eligible jobholders into a workplace pension arrangement, and to contribute to that arrangement at least 3 per cent of jobholders' qualifying earnings. These measures will transform pension saving in the UK: we estimate that 5-9 million people will be newly participating, or saving more, in workplace pensions as a result of the reforms.
3. But the Government cannot achieve these outcomes on its own. Individuals and employers also have their part to play, supported by a strong pensions industry. We want to support employers and pension schemes through this major change in the pensions landscape, and have aimed to **minimise the costs** associated with these reforms whilst maximising individuals' opportunities to save.
4. Further background on the reforms is available on the Department for Work and Pensions' website at www.dwp.gov.uk/policy/pensions-reform
5. The proposals outlined in this consultation document aim to help the right individuals enter the right schemes at the right time, whilst supporting employers and the pensions industry through this major change in the pensions landscape.
6. This consultation should be read alongside:
 - The Government response to the March 2009 consultation on automatic enrolment regulations.
 - The impact assessment, which estimates costs to employers arising from the regulations in this consultation document.

Delivering the reforms

7. It is crucial that the reforms **work operationally** and a key part of this is getting the critical introductory phase right. Our implementation strategy has been designed with this as its focus. Bringing in the duties in stages will aid schemes in managing the volumes of new members they will be required to administer during the implementation period. By staging in the employer duties by employer size - from the largest through to small and

micro employers - we hope to **minimise the burden** on small and medium businesses. We will also be phasing in the contributions gradually over time to give employers and jobholders who are new to pension saving **time to adjust** to the additional cost of making contributions.

Maximising individuals' saving opportunities

8. In the first consultation document¹ (March 2009) and Government response (published alongside this document) we dealt with getting people into pension savings through automatic enrolment. In this document, we consider arrangements for those individuals who choose to opt out, or for those for whom automatic enrolment is not appropriate at this time. We want to make it as **simple as possible** for these individuals to **enter pension saving when the time is right**, and ensure that the processes by which they can join a pension are simple for their employers. We also want all individuals to have **confidence in the continuity of pension provision**.

Maximising existing good provision

9. Our aim has been to allow **as many existing schemes as possible to meet the required standard**, thereby making it easy for employers who already have good schemes in place to meet the requirements and to **protect good existing provision**. We also want to make it as **simple as possible for the pensions industry to provide schemes of a sufficient quality**, and to keep a **level playing field** between occupational and contract-based schemes. In addition we need to make sure that the **schemes that individuals are enrolled into are of sufficient quality**. We have aimed to strike a delicate balance between these needs in the section on scheme quality which outlines the minimal quality criteria with respect to hybrid, defined benefit and non-UK schemes and discusses a simple defined contribution certification process.

Compliance

10. The Pensions Regulator (TPR) will be responsible for ensuring that employers meet their obligations. The aim of the compliance regime is to **support and help employers** who wish to fulfil their duties through **educating and enabling** them to do so. But where employers still fail to comply, TPR will be able to take enforcement action to **ensure a level playing field amongst employers** and to **protect individuals' savings**.

¹ Pensions – Consultation on Draft Regulations, *The Pensions (Automatic Enrolment) Regulations 2009 and The Pensions Regulator (Delegation of Powers) Regulations 2009*, March 12 2009

Part Three – Delivering the reforms

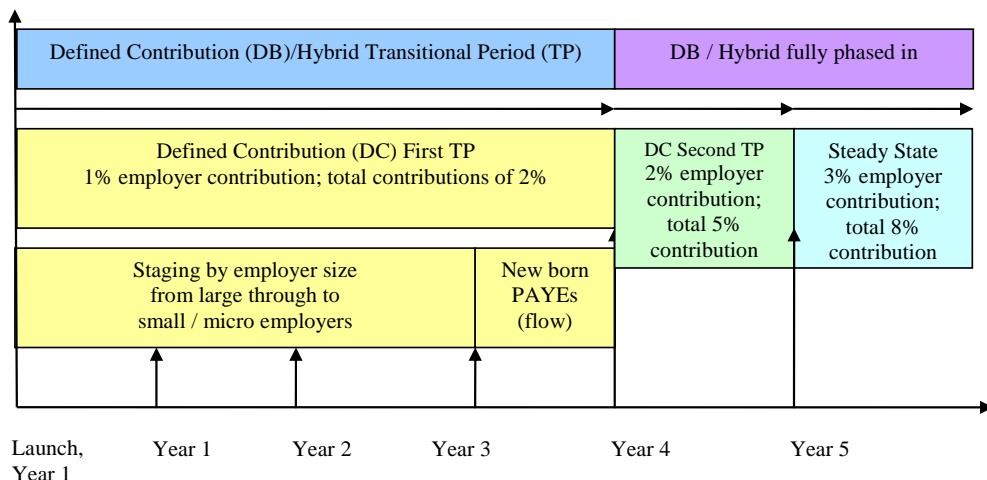
Summary

This section covers the introduction of the duties, including how the duties will be gradually staged in via employer size; how this interacts with the phasing in of contributions for defined contribution schemes; and the deferment of automatic enrolment for defined benefit and hybrid schemes.

Implementation of the private pension reforms

1. The Government has embarked on a radical reform of the private pension system in this country. Change on this scale will improve the lives of millions, but its success depends entirely on being able to make the policy work in practice - a huge challenge for the Department for Work and Pensions (DWP) and its delivery partners, the Pensions Regulator (TPR) and the Personal Accounts Delivery Authority (PADA).
2. It is important to remember that these reforms will have a hugely significant impact over the medium to long term and we should not judge their success solely on immediate results. It is far more important to get the right infrastructure and savings culture in place to ensure the sustainability of the reforms. **We are therefore proposing transitional arrangements after the launch of automatic enrolment to support smooth delivery and help employers adjust gradually to the reforms.** These are:
 - **Staging:** How requirements on employers will be introduced over time.
 - **Transitional arrangements** for defined contribution and defined benefit schemes.

Proposed Arrangements



Staging

3. The Government is currently planning to launch the reforms from October 2012. To ensure a smooth implementation we are planning to make regulations to stage in the application of the duties to different employers over time. This approach follows guidance set out by the Office of Government Commerce² which advocates a staged approach to large change programmes and will mitigate operational risks for DWP's delivery partners (TPR and PADA) and for scheme providers.

Length of staging

4. Following detailed consideration of the operational capacity of the two key delivery partners, **we believe it is necessary to stage the reforms, including the employer duties, over a 3-year period.** This strikes the right balance between getting people into saving as quickly as possible and minimising the operational risk associated with the reforms. At its peak, that would still mean around 100,000 employers being brought into the duties in one month. The 3-year period would include a number of 1-month breaks in which no employers are staged in, to allow any backlogs or unplanned events to be addressed.
5. The operational risk associated with the reforms arises from the combination of high levels of uncertainty and high volumes:
 - It is difficult to estimate how much support employers with no experience of pensions will require from TPR and the personal accounts scheme, and what sort of support employers will need (for example, e-channel or call centre support).
 - We expect that a significant group of employers will wait until the last moment to fulfil their obligations. TPR and PADA are therefore anticipating significant peaks of activity around the staging dates, which can only be managed by reducing the maximum number of employers in each group to a manageable number.
 - Because the volumes of employers and workers will be so large, estimates of call-centre capacity will be extremely sensitive to small changes in assumptions.
6. The challenge is particularly significant for the personal accounts scheme, given that we do not know how many employers and workers will choose to use it. Further, once staging has begun the scheme will not be able to turn away any employer who wishes to use it.
7. We believe that only a longer staging period will reduce the operational risk to an acceptable level. It should also benefit employers by enabling both TPR and pension providers to give employers the support they need

² Programme and Project Management Specialism Centres of Excellence Guidance

to adjust to the reforms, and apply lessons learned to the later stages of implementation.

8. We acknowledge that this is an area in which stakeholders will have a high level of interest, but we believe that this decision should be fundamentally one which is operationally driven. However, in developing this policy, we have been mindful of likely stakeholder concerns and taken these into account as far as possible.
9. **We also considered whether to introduce the reforms all on one day** (a 'big bang' approach). Although there are significant attractions to a 'big bang' approach, primarily in communicating a simple message to stakeholders and maximising levels of contribution from the outset, there are also risks. A 'big bang' approach would clearly attract high levels of activity at launch, with a requirement for scheme providers and delivery bodies to handle peak levels of activity and enquiries from the outset. In addition, uncertainty around the number of employers and workers that will need to be processed by PADA and TPR would pose significant risk for their systems and processes. This would be set against a background where many of the employers involved would be unused to pension administration, which is likely to generate unpredictable numbers of queries, errors in data handling and amount of effort to support them. We concluded that this approach would generate unacceptable levels of risk.

Segmenting employers

10. **We are proposing to bring employers into the duties by size, broadly starting with the largest employers and ending with the smallest employers.** Employers will be staged in on a monthly basis, including some service breaks within the overall profile. We currently anticipate that the large and medium sized employers will be staged in over the first year, with small and micro employers being brought in over the following eighteen months to two years. **The exact final detail of the design (e.g. which particular sizes of employers will be brought into the duties at particular times) will be contained in the final version of the regulations laid in Parliament next year, but an illustrative example of the potential approach is included in the regulations.** We believe this is the right approach, as larger employers are the most likely to already provide a pension to their workers and therefore will need to undertake less preparation to understand and comply with the duties. This approach will also give smaller employers more time to smooth the costs of set-up. Research³ shows that small and micro employers (those with fewer than 50 workers) are the least likely to operate a pension scheme for their workforce and therefore may need more support from their advisers and TPR to help them meet the requirements. The exact detail of the design is currently under review, and we are working to identify the optimal profile to smooth volumes and ensure deliverability.

³ Employers' Pension Provision Survey 2007 (a report of research carried out by the National Institute of Research on behalf of the DWP.)

11. However, we also need to ensure the support, compliance regime and communications campaign work for smaller employers. To ensure that we understand the responses of this group and can adapt our approach accordingly, **we are proposing to bring a small group of randomly selected employers with fewer than 50 workers into the duties earlier** than the vast majority of small employers. It is our intention that they will be described by their PAYE reference numbers, and will be set out in the Schedule to the Implementation Regulations when they are laid in Parliament. The exact detail of the profile is under review, but we are aiming to minimise the time lag between the test group and later tranches to ensure that the employers in the test group still benefit from a longer lead-in to their duties, whilst still allowing sufficient time to evaluate the test group and implement the lessons learned.
12. Employer size will be ascertained using Pay-As-You-Earn (PAYE) data from Her Majesty's Revenue and Customs (HMRC). PAYE scheme size will be determined according to the number of employments attributed to a PAYE scheme. We recognise that a number of employers may run more than one PAYE scheme. In these cases, employers will need to meet the requirements for all their workers at the point at which their first PAYE scheme is brought under the duties.
13. The proposed staging applies to all employers who are operating PAYE for workers prior to October 2012. New employers who start to trade (and who are paying PAYE income to workers) on or after the data cut-off date will comprise the last four groups to start automatic enrolment. Employers who start trading after staging ends will need to start meeting the requirements from the date they have a worker who qualifies for automatic enrolment.
14. We believe that the proposed approach of staging employers from large to small over 36 months provides the right balance between minimising operational risks to delivery, reducing employer burden and maximising individuals' saving. We considered a number of alternative approaches to the staging length, and to the employer segmentation strategy, none of which proved to be viable options. The table below sets out the approaches considered, with the key reasons for rejecting each. A more detailed analysis of the benefits and disadvantages of each approach is set out in the appendix to the Impact Assessment accompanying this consultation.

Implementation Approach	Key reasons for rejection
All employers brought into the duties on day one	<ul style="list-style-type: none"> ▪ Not operationally viable: Unmanageable peaks of activity for TPR, PADA (and pension providers) in processing employers presents a significant and untenable risk to delivery
Staged implementation using common	<ul style="list-style-type: none"> ▪ Not operationally viable within a reasonable timescale: Using CCDs over e.g. 3 years presents unmanageable peaks of activity for TPR and PADA

commencement dates	<ul style="list-style-type: none"> ▪ Staging manageable number of employers at each CCD would mean implementation over 14 years. This presents an unacceptable impact on individuals' saving, with some workers not enrolled until 2025
Staging employers by random selection/ 'proportional staging' (random selection within size bands across tranches)	<ul style="list-style-type: none"> ▪ Operationally challenging, since PADA would be unable to predict their volumes to plan and build systems capacity. Would be unable to manage variable numbers of workers working for randomly selected employers ▪ Undermines effectiveness of compliance regime: TPR unable to ramp up activity from most experienced to least experienced employers, and learn from this process ▪ Significant challenge for communications; difficult for employers to understand when they will become subject to the duties and very difficult to explain to workers when they are likely to be affected ▪ Fairness and competition issues: this increases the maximum possible time between similar employers being staged in to three years
Staging employers by geographical location	<ul style="list-style-type: none"> ▪ Operationally challenging, since employers are not evenly distributed by location ▪ The locations we would need to use to ensure operational deliverability are likely to be smaller than easily defined 'regions', creating communications challenges ▪ Fairness and competition issues, as smaller firms could be staged in prior to their larger competitors ▪ Potential equality impact issues in areas overrepresented by certain groups, compared with the UK average
Staging employers by industry	<ul style="list-style-type: none"> ▪ Operationally challenging, since employers are not evenly distributed by industry. Also, difficult to define industry for some employers whose work covers multiple sectors ▪ Fairness and competition issues, as smaller firms could be staged in prior to their larger competitors
Staging employers by size, small to large	<ul style="list-style-type: none"> ▪ Disproportionate burden on small and micro employers, who would contribute for longer than large employers, creating fairness and competition issues ▪ Significant operational challenge for TPR: Small and micro employers are likely to need most support, but are least predictable in their behaviour, and are most numerous employers. TPR have no time to test their systems or ramp up activity gradually

Ensuring employers know when and how to comply

15. Employers have a crucial part to play in the success of the reforms and we recognise the importance of giving all employers clear messages about how they can comply. We are working with TPR on plans to clearly communicate with employers about the forthcoming duty.
16. As part of their role in maximising compliance with the employer duties, TPR will be responsible for ensuring that employers are fully informed about their duties. TPR will write individually to all employers about 12 months and 3 months in advance of their staging date to inform them when they need to take action and what they need to do to comply.

Early automatic enrolment

17. Employers will not be able to start automatic enrolment until they are legally subject to an obligation to do so. We recognise that some employers may wish to bring forward their automatic enrolment date, perhaps to avoid busy times for their businesses. We will enable them to do so - providing employers with flexibility to plan their employer duties, and bring more people into pension saving early.
18. **We are proposing that employers will be able to bring forward their automatic enrolment date to a specified date after October 2012, preceding the date on which they otherwise would have become subject to the duties.** This is conditional on informing TPR of their intention to bring forward their duty date and being able to demonstrate that they either already have a scheme in place or are sufficiently advanced in setting up a scheme in order to discharge their duty. This will help ensure that employers who want to start automatic enrolment early allow sufficient time to make their pension arrangements.
19. We propose ensuring that allowing employers to bring forward their duty date does not cause operational problems for the PA scheme by amending the personal accounts scheme order to give the trustees discretion over whether to accept an employer before their staging date. This will allow the scheme to manage the volume risk whilst still allowing the trustees to accept employers to use the scheme where capacity allows.
20. Employers operating more than one PAYE scheme who choose to bring forward their duty date will be required to do so for all of their PAYE schemes. As in ordinary staging, the employer duties fix on employers, not on their individual PAYE schemes. Thus all employers who are running more than one PAYE scheme will need to ensure they comply with their duties for all eligible jobholders at the point at which their first PAYE scheme is brought under the duties, regardless of whether they wish to bring forward their duty date or not.

Proposed transitional arrangements for defined contribution

21. We recognise that the new employer duties will increase the cost of running a business for all employers. We are planning to phase in minimum contribution requirements over time to help employers and individuals adjust to the additional costs gradually.

22. We are proposing that employers using defined contribution schemes be required to pay contributions of:

- **1 per cent (of the jobholder's qualifying earnings) until staging is complete.**
- **2 per cent for a further year.**
- **3 per cent thereafter.**

23. Use of a common commencement date (1 October) is in line with Government's better regulation principles. The table below sets out the minimum contributions for employers and the total contributions required during each period, using the current staging proposals.

Period	Duration	Minimum requirements
First transitional period	Years 1-3	Total contributions must total at least 2%, employers required to pay 1%*
Second transitional period	Year 4	Total contributions must total at least 5%, employers required to pay 2%*
Steady state	Year 5 onwards	Total contributions must total 8% ⁴ , employers required to pay 3%*

* The remaining contributions making up the total will comprise the workers' contributions plus tax relief

24. We believe this approach strikes the best balance between enabling employers to adjust gradually to the costs of the reforms, and increasing pension saving as quickly as possible. Because minimum employer contributions stay at 1 per cent for the whole implementation period, all employers will begin at this level. Employers who start the duties later will have less time on 1 per cent, but would already have benefited from a period of time where they do not have to pay contributions.

25. We also considered using the alternative common commencement date of 6 April to define the transitional periods. Employer representatives had mixed views about whether the increase should align with the end of

⁴ Split by 3 per cent from employers, 4 per cent from individuals and 1 per cent from tax relief

the financial year in April, or with the annual increase in the national minimum wage in October. However, using the October date means that phasing of contributions aligns with the staging proposals outlined above.

26. This transition is optional and employers can always choose to pay more than the minimum requirements. Similarly workers can increase the rate of contribution payments whenever they wish, but are not obliged to follow any increases made by their employer where they are above the minimum requirement.

Proposed transitional arrangements for defined benefit and all hybrid schemes

27. Transition for defined benefit and hybrid schemes has to operate differently to transition for money purchase and personal pension schemes because employers offering defined benefit and hybrid schemes cannot pay reduced contributions and phase them in gradually. This is because funding and liability for these schemes needs to be maintained at an appropriate level agreed between the trustees and the employer.
28. Since we cannot phase in contributions for defined benefit schemes, we propose to allow employers using defined benefit schemes to delay automatic enrolment until the staging period has ended, for those jobholders who continue to be entitled to become a member of the qualifying defined benefit or hybrid scheme. As this aligns with the end of the proposed staging period, a 3-year period will allow all employers using defined benefit schemes to benefit from this arrangement.
29. To ensure jobholders working for these employers can still access pension saving, **jobholders will be able to opt in to a qualifying scheme at any point during the transitional period**. Where the employer takes on new workers after their staging date, they will have to enrol them immediately into any qualifying scheme.
30. And to protect individuals' pension savings where defined benefit schemes close, **an employer who closes their defined benefit scheme during the transitional period must enrol their jobholders into an alternative qualifying scheme**. Where that alternative is a defined contribution scheme, they will need to pay employer contributions back to the original automatic enrolment date, which could amount to 3 years' worth of contributions. This will ensure that transitional arrangements for all schemes are complete and the reforms are fully implemented by October 2016.
31. Please note the regulations on this issue are split between two statutory instruments, the Employers' Duties (Implementation) Regulations 2010 and the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.

Summary of proposals

We propose:

Staging implementation of the reforms

- Splitting employers into 25 - 30 groups according to their size, and requiring each group to start automatic enrolment on an assigned date over 3 years from October 2012 to October 2015
- Generally requiring large employers to start automatic enrolment before smaller employers

We are consulting on:

Transitional periods for defined contribution schemes

- A minimum employer contribution of:
 - 1 per cent (of the jobholder's qualifying earnings) from October 2012, for three years
 - 2 per cent for a further year
 - 3 per cent thereafter

Transition periods for defined benefit and hybrid schemes

- Allowing employers with defined benefit or hybrid schemes to defer automatic enrolment for up to 3 years
- Requiring employers who close the scheme before the end of the period to automatically enrol workers into an alternative scheme and back-pay missed employer contributions

Part Four – Commentary on draft Employers’ Duties (Implementation) Regulations 2010

Regulation 1 - Interpretation

This is a general provision setting out citation, commencement and interpretation and defines key terms in relation to the regulations.

Regulation 2 - Application of the employers’ duties to employers

This regulation prescribes how the employers’ duties will apply to employers described at the table in regulation 4 (and in Schedule 1).

Paragraph (1) provides a preamble, as above, for this regulation.

Paragraph (2) prescribes how an employer will be described for the purposes of these regulations.

Paragraph (2)(a) prescribes that an employer will be described by reference to the size of their PAYE scheme in accordance with paragraphs 3 and 4 of this regulation.

Paragraph (2)(b) prescribes that an employer will be described by any other description contained in the table in regulation 4 (and in Schedule 1).

Paragraph (3) prescribes that the size of an employer’s PAYE scheme means the number of people within that scheme.

Paragraph (4) prescribes that the number of people within a PAYE scheme is based on the latest information available to TPR, as at a prescribed date (the data cut-off).

Paragraphs (5)(a) and (b) prescribes that where the employers’ duties apply to an employer in accordance with the table in regulation 4 and that employer has more than one PAYE scheme, the duties apply to that employer in respect of every person contained in those PAYE schemes.

Paragraph (6)(a) and (b) prescribes that an employer with a PAYE scheme which was established between the date (the data cut-off) specified in paragraph 4 and up to, but not including, a date in April 2015 - to be specified in the final version of the regulations to be laid next year - will fall to be treated in accordance with the table in regulation 4 as a employer.

Paragraph (7) prescribes that where paragraph 6 applies, the employers’ duties do not apply to such an employer until that PAYE scheme is established and then only in accordance with the table in regulation 4.

Paragraph (8) prescribes that where an employer has a PAYE scheme that was established at any date from a date in April 2015 - to be specified in the

final version of the regulations to be laid next year - and the employers' duties do not already apply to that employer, those duties apply to that employer from the day that scheme is established (i.e. these employers will have a day one duty).

Paragraph (9) sets out that the following regulation provides for how the employers' duties are to apply to an employer before their assigned staging date.

Consultation question

Regulation 2: Q.1 – The staging duty date needs to specify on which date in a particular month an employer needs to auto-enrol. Should this be the first day of the month regardless of which day that falls? Alternatively, should it be the first working day of the month, or the first Friday of the month?

Regulation 3 - Early automatic enrolment

This regulation prescribes how the employers' duties are to apply to an employer who wants the duties to apply before the staging date corresponding to its description according to the table in regulation 4.

Paragraphs (1)(a) prescribes that date A means any staging date before the staging date corresponding to an employer's description.

Paragraph (1)(b) prescribes that date B means the staging date corresponding to that employer's description, as prescribed in the final column of the table in regulation 4.

Paragraph (2)(a) prescribes that where, in addition to the requirements in paragraph (2)(b) below, an employer falls within any description in the second column of the table in regulation 4, the employers' duties apply to that employer from date A.

Paragraph (2)(b) prescribes that, in addition to the condition at (2)(a) above, for the employers' duties to apply to that employer from date A, that employer must -

- (i) make contact with a pension scheme which it considers could be used to comply with the employer duties;
- (ii) secure the agreement of the trustee or manager (or scheme administer or provider) of that scheme that it can be used by the employer to comply with those duties from a specific date A; and
- (iii) notify TPR accordingly in writing (including by providing an employer pension scheme reference) at any time before the date specified in the third column of the table in regulation 4, corresponding with that date A.

Paragraph (3) prescribes that where the conditions in paragraphs 2(a) and (b) are satisfied TPR will notify the employer that the employers' duties will apply to that employer from date A.

Paragraph (4) prescribes that where the condition in paragraph 2(a) is satisfied but the condition in paragraph 2(b) is not satisfied, the employers' duties apply to an employer from date B.

Consultation question

Regulation 3: Q.2 – If an employer wants to volunteer to bring forward their automatic enrolment date, TPR needs to be confident that the employer has allowed themselves enough time to get their scheme in place. A missed automatic enrolment date will trigger enforcement activity, which is not in the interests of employers or TPR. How should TPR establish that the employer will be ready? For example, should an employer be required to have a scheme in place before applying? Or should they be able to sign a declaration that they are confident they will be able to discharge their duties?

Regulation 4 - Staging of the employers' duties

Paragraph (1) introduces the table for providing an employer's automatic enrolment (referred to in these regulations as the 'staging date') and early automatic enrolment dates.

This regulation also prescribes that, except where an employer satisfies the conditions for early automatic enrolment in regulations 3(3) and (4), the employers' duties do not apply to employers described in the second column of the table until the staging dates prescribed in the final column.

Paragraphs (2)(a) and 2(b) prescribes that where a date prescribed in the table falls on a day which is not a working day then that date is to be treated as the next working day (and for this purpose 'working day' means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday).

Regulation 5 - Transitional periods for money purchase and personal pension schemes

This regulation prescribes the length of time of each transitional period for defined contribution schemes (money purchase schemes which are occupational or personal pension schemes).

Sub-paragraph (a) prescribes that the length of the first transitional period is 3 years beginning with the coming into force of section 20 (section 20 prescribes the quality requirement for UK money purchase schemes).

Sub-paragraph (b) prescribes the length of the second transitional period as 1 year beginning with the end of the first transitional period.

Regulation 6 - Transitional period for defined benefit and hybrid schemes

This regulation prescribes that the length of time of the transitional period for defined benefit and hybrid schemes is 3 years, beginning with the day on which section 3 comes into force.

Schedule 1 – PAYE reference numbers of employers to whom the employers' duties apply

Paragraph 1 prescribes for the purposes of the first column of the table in regulation 4, the PAYE reference numbers of employers described in that column. As explained in paragraph 11 of Part Three, these will be the randomly selected employers of less than 50 workers (based on PAYE data) who will comprise the Test Group tranche. These will be set out in this Schedule in the version of the regulations laid in Parliament next year.

Part Five – Maximising individuals’ opportunities to save

Summary

This section deals with those parts of the employer duty that have not yet been consulted on previously. Pay reference periods are a tool to enable an employer to check eligibility for auto-enrolment and to test whether their pension scheme has met the qualifying criteria. This section also covers how individuals outside of the auto-enrolment duty may enter pension saving and the requirements around automatic re-enrolment for jobholders. In addition it consults on changes to the ability to postpone automatic enrolment for jobholders on contracts of 3 months duration or less.

Pay reference periods

1. Pay reference periods are the prescribed periods of time that will be used to:
 - Help employers identify whether their worker is a jobholder, and if so to calculate the contributions to which they are entitled.
 - Determine whether a pension scheme meets the quality criteria.⁵
2. To minimise burdens we will not be requiring schemes to change their rules for calculating contributions, but schemes need to meet the minimum levels set out in legislation.

Checking eligibility for automatic enrolment and calculation of contributions

3. The auto-enrolment and contribution provisions will be comparatively straightforward for jobholders with regular earnings. However, some workers have a pattern of fluctuating or commission-based earnings, and some schemes have their own definition of pensionable earnings with a higher or lower entry threshold than that set out in the Pension Act 2008.
4. Therefore, **we propose to set a pay reference period as that over which the jobholder receives his regular wage or a period of one week**, to enable employers to:
 - Trigger auto-enrolment and underpin the calculation and payment of contributions from jobholders, including agency workers.

⁵ For defined contribution pensions the quality criteria includes ensuring there is a minimum 3 per cent employer contribution, with a minimum 8 per cent total contribution in any pay reference period.

- Collect contributions from and including the automatic enrolment date (which may be before active membership is actually achieved).
 - Determine the start date of contributions for a jobholder saving voluntarily.
 - To determine if the level of contributions in any given pay reference period meet the requirement for postponing automatic enrolment⁶.
5. **We propose to set a pay reference period of 12 months** for those workers (accidental jobholders) who may, exceptionally, earn enough to gain jobholder status for isolated pay periods but will not earn over the threshold of the qualifying earnings band for the whole year. These people will not fall to be automatically enrolled.

Checking the scheme meets the appropriate standard

6. In the Act, the lower and upper limits of the qualifying earnings band are shown in annual terms but these can be converted into weekly, monthly, lunar monthly and quarterly figures which can be used to base ongoing contribution deductions.
7. We propose to set a pay reference period of 12 months to allow employers to identify if their scheme is a qualifying defined contribution scheme and allow them, at the end of the year, to assess whether pension contributions paid meet the minimum level requirements. Through this process of annual reconciliation, schemes will be able to continue to use their own definition of pensionable pay and this should ease the burden on schemes.
8. For certification we propose to match the period of the certificate - which will be 12 months or such other shorter period as chosen by the employer. More information on certification can be found in Part 6.

Voluntary saving

9. There are some individuals whom an employer does not have to automatically enrol: people aged between 16 and age 22; and those aged over state pension age but under age 75⁷, or workers earning less than £5,035 per annum. Whilst these people are excluded from automatic enrolment, we want to maximise their opportunities to save for retirement if they wish to do so.

⁶ An employer with a defined contribution scheme that has an 11 per cent overall contribution or a defined benefit scheme may postpone a jobholder's auto enrolment date for 3 months
⁷ State pension age is currently 60 for women and 65 for men. This will equalised to 65 for all by 2020 and will increase from 65 to 68 between 2024 and 2046. By the age of 75 an individual in a scheme must have secured an income for retirement, either through buying an annuity or an Alternatively Secured Pension (ASP).

People aged over 16 and under age 22 or, over state pension age but under age 75

10. Where a jobholder is outside the automatic enrolment age bands, the Act says that the jobholder can opt in to a qualifying automatic enrolment scheme and is eligible for an employer contribution.
11. **We propose that employers be required to tell these jobholders in writing** about the right to join an automatic enrolment scheme, the process for opting in, what it means for them, and where to get more information about pension saving.
12. Where these jobholders instruct their employer in writing that they want to join the scheme, **we propose that employers treat them as jobholders eligible for automatic enrolment and follow the normal automatic enrolment process** set out in the Government response to the consultation of the draft Pensions (Automatic Enrolment) Regulations.

Workers earning under £5,035 per annum

13. Workers (individuals earning less than £5,035 per annum) also have the right to join a tax registered pension scheme, but do not have the right to an employer contribution.
14. **We propose that employers be required to tell these workers in writing** that they have the right to join a pension scheme.
15. **Where a worker instructs the employer in writing that they wish to start saving in a pension, we propose that the employer must make arrangements for them to become an active member of a tax registered scheme**, which may or may not be the same automatic enrolment scheme being used for jobholders. The joining process involved will be done in accordance with the rules of that scheme.
16. To keep administrative burdens to a minimum, employers will not have to identify and set up a scheme prepared to accept workers without qualifying earnings until they receive a request from one of them to join a scheme.

Options considered

17. **We also considered alternative ways of** allowing individuals to give notice that they want to join a scheme:
 - **Simply by telling their employer.** However, stakeholder views suggested that employers and workers would want an audit trail to support wage deductions and we concluded that oral notice was not suitable.

- **By using an ‘opt-in form’ provided by the employer.** However, requiring employers to create or maintain such a form would create disproportionate burdens. Many employers will use third parties to handle pension processes on their behalf, and placing the requirement on the employer would prevent these third parties from providing this on the employer’s behalf.
- **Sourcing a form from the pension scheme** would enforce a separation between the employer and voluntary savers but would in practice still place a burden on employers, as they would have to put jobholders in touch with the relevant scheme.

Automatic re-enrolment

18. The Pensions Act 2008⁸ places a duty on employers periodically to re-enrol jobholders who have left pension saving either during or after the opt out period. While pension saving may not have been the right choice at the point the jobholder stopped saving, going forward a jobholder’s earnings may have increased, financial commitments may have reduced or their priorities may simply be different. With re-enrolment we aim to maximise savings, harness decision-making inertia and take advantage of those changes.
19. The process for automatic **re-enrolment** will largely be the same as the process for automatic **enrolment**. The employer must make arrangements with a scheme to achieve active membership and issue enrolment information to the jobholder. These standard arrangements are the same for all pension schemes.
20. Where a jobholder is going back into a **personal pension scheme** of which they have been an active member in the past, the scheme is not required to re-issue the terms and conditions of the contract to the jobholder. This avoids the formation of a second contract for the same scheme.
21. Where a jobholder falls outside the definition of a jobholder for a period of time, for example because of fluctuating earnings, the employer must make arrangements with a scheme to achieve active membership from the date that jobholder status return but is not required to re-issue the enrolment information. **The regulations setting out the process for automatic enrolment are included within Annex B for ease of reference and context but are not part of this consultation process.**
22. After consultation in the May 2006⁹ and December 2006¹⁰ White Papers, in which we sought views on the frequency of automatic re-enrolment, **we now propose to regulate that jobholders should be automatically re-**

⁸ The duty and timing of the duty is set out within sections 5 (Automatic re-enrolment) and 6 (Timing of automatic re-enrolment).

⁹ Security in retirement: towards a new pensions system.

¹⁰ Personal Accounts – a new way to save

enrolled every 3 years if they continue to work for the same employer¹¹. To minimise employer burdens we propose to link re-enrolment to an employer anniversary, so that employers would only have to carry out re-enrolment for their workforce once every 3 years.¹²

23. **We also considered linking re-enrolment directly to a jobholder anniversary**, such as the date that the jobholder opts out. This would give individuals certainty, but would require employers to monitor each individual jobholder and carry out re-enrolment, in many cases, on a daily basis.

Date of auto re-enrolment

24. **We are proposing that employers would be required to carry out automatic re-enrolment every 3 years from their staging date.**¹³ This means that pension scheme providers, TPR and employer advisory bodies will have manageable volumes of activity at any one time.

25. We also considered:

- **A single date in the year for all employers to auto re-enrol.** But we estimate that there will be too many jobholders eligible for automatic re-enrolment to make this approach viable. The volume of people being re-enrolled and enrolled, and the number of employers carrying out automatic re-enrolment, would place an unmanageable burden on both pension schemes and TPR, in terms of both responding to queries and processing enrolments.
- **Using 6 common commencement dates** (April and October over a 3 year period) **or quarterly dates over 3 years.** However, we believe these options would still carry too high an operational and compliance risk. Grouping several months' worth of small and micro employers together in a single common commencement date would create a spike in activity that would be too large to be operationally viable.

¹¹ Anybody changing jobs during those 3 years and moving to a new employer would be automatically enrolled into a pension scheme by their new employer.

¹² Jobholders with multiple employment will be subject to this requirement for each employment

¹³ Employers can adjust their enrolment and re-enrolment date by using the early automatic enrolment provisions set out in Part 3, paragraphs 16 – 19 if their allocated staging date is not convenient.

Jobholders exempt from automatic re-enrolment

26. If someone has just made a decision to opt out of pension saving we do not want their employer to have to put them back in straight away. We think it is reasonable to assume that jobholders who have recently opted out (or ceased saving after opt out) are more likely to opt out again and also are unlikely to have had a significant change of circumstances.
27. **We propose that jobholders be exempt from automatic re-enrolment if they have left pension saving in the previous 12 months.** We believe this strikes the right balance between allowing long enough for an individual's circumstances to change and minimising the burden on employers by not requiring them to re-enrol individuals who have relatively recently opted out of pension savings.
28. **We also considered exemption periods of 6 months and 18 months.** But we felt the former would not be long enough for an individual's circumstances to have changed significantly, and may be only a short time after the employer had completed the initial automatic enrolment process which would be administratively burdensome. And we believe the latter creates too long a savings gap and tips the balance too far away from our primary intention of increasing the number of people in pension savings.

Exceptional circumstances warranting early re-enrolment

29. In addition, **we are proposing two exceptional circumstances warranting immediate re-enrolment.** These circumstances, which we expect to be rare, are:
 - Where a third party (such as the scheme administrators) stops the scheme qualifying as a high quality defined contribution scheme used under postponement (where the employer contributes falls below 6 per cent);
 - Where a third party (such as the scheme administrators) stops the scheme being a qualifying scheme, or ends the jobholder's membership.
30. For those workers who lose jobholder status (earnings fall below £5,035 or they are no longer considered as working in Great Britain) but then start again, the re-enrolment date will be the day jobholder status returns. Where the jobholder remains a member of the scheme (but not an active member) the re-enrolment process will simply require that the employer makes arrangements with the scheme so that active membership status returns.

Employer duty to maintain active membership

31. In addition to auto-enrolment requirements employers must make sure that jobholders remain active members of a qualifying scheme, unless a jobholder chooses to end their membership. This is important for the jobholder as it protects their right to save by ensuring they remain in pension saving, even if their employer decides to make changes to their pension scheme.

32. This means that an employer may not:

- Stop a scheme from qualifying (such as by paying less than the 8 per cent minimum contribution for a defined contribution scheme).
- Eject a jobholder from a qualifying scheme.
- Force a jobholder to stop membership or opt out of a scheme.

without taking action to put the jobholder into another qualifying pension scheme. Where an employer changes their scheme they must make arrangements for their jobholders to voluntarily join the scheme and existing voluntary processes should apply.

33. Whilst an employer who is changing their pension scheme should start arranging a replacement before disrupting current pension arrangements, **we propose allowing a one-month gap** between membership of the old and new schemes to give employers some leeway to finalise those arrangements.

34. We believe this approach strikes the right balance between reassurance and fairness for employers, and minimising negative impacts on pension saving. It would keep the gap in scheme membership short, and reinforce the need for employers to be proactive and set up a replacement scheme in advance. And it mirrors the proposed one-month joining period set out in the Government response published alongside this consultation.

35. **We also considered not regulating**, so that employers would need to install a new scheme immediately and jobholders' membership would be continuous. While this could work for large employers who may be able to deal with administrative arrangements in time, it would be more difficult for smaller employers who may need more time to complete the switchover. And it would offer no certainty against accidental breach as a result of delays or events beyond the employer's control.

Amendments to the postponement of automatic enrolment regulations

36. The Act allows employers to postpone automatic enrolment for a period of time where they offer high quality schemes. This provision is intended to encourage employers offering higher-quality schemes to continue to do so.
37. This measure was contained in regulation 17 of the draft Pensions (Automatic Enrolment) Regulations which we consulted on earlier this year. This regulation allows employers to postpone automatic enrolment of an individual jobholder into a high-quality qualifying scheme for a period of 3 months after which they must auto-enrol them into that high-quality scheme.
38. The regulation, as drafted, also enables employers to use postponement for jobholders on short-term contracts. This has implications for those jobholders because employers may never enrol those with contracts of less than 3 months. This issue is a finely balanced one and we were interested to hear responses on this to assess the right balance between ensuring individuals are saving in a pension and reducing the burden on business.
39. Agency workers are explicitly within the scope of the Act. Jobholders on a fixed, short-term contract are also likely to be within our target group. We are concerned that enabling employers to use postponement to avoid enrolling jobholders on contracts of 3 months or less could prevent a group of jobholders from ever saving in a pension. **We therefore propose to change the regulations to prevent employers from using postponement for jobholders on short term contracts.** This would ensure that all jobholders on short term contracts are able to benefit from pension saving.

Summary of proposals

We are consulting on the following proposals:

Pay reference periods

- Requiring contributions to be calculated on the basis of jobholders' normal pay cycle
- Using a pay reference period of 12 months to check that a defined contribution scheme qualifies and to allow employers to use annual reconciliation
- For employers using certification, adopting a pay reference period of 12 months or shorter period if chosen by the employer

Voluntary saving

- Arrangements for individuals not eligible for automatic enrolment to give their employer written notice that they want to join pension saving
- A requirement on employers to provide information to these individuals about how they can access workplace pension saving

Automatic re-enrolment

- Automatic re-enrolment every 3 years, on the anniversary of the employer's staging date, for jobholders who have left pension saving and remain eligible for automatic enrolment
- An exemption from automatic re-enrolment where a jobholder has left their employer's pension scheme in the previous 12 months

Employer duty to maintain active membership

- For employers who are moving jobholders between pension schemes, a maximum break in membership of 1 month to allow any administration arrangements with the replacement scheme to be finalised

Amendments following the first automatic enrolment regulation consultation

- Changes to prevent employers from using postponement of automatic enrolment for jobholders on fixed short term contract of 3 months or less

Part Six – Maximising existing good provision

Summary

This section deals with the scheme quality tests. It outlines a certification process which allows schemes to continue using their existing pensionable pay and contribution structures, yet certify that they meet the overall quality requirements. It also covers the quality tests that will need to be met for defined benefit, hybrid and non-UK schemes.

Quality requirements for qualifying schemes

1. As previously set out, employers will be required to automatically enrol all eligible jobholders into a qualifying workplace pension scheme from the date that the duty goes live for them. At the highest level, these schemes must be tax recognised, approved or registered or meet other requirements set out in the Act or in regulations, comply with requirements for automatic enrolment and meet other minimum quality requirements in accordance with scheme type. Employers can use a wide range of scheme types to fulfil their duties but these must all meet certain qualifying criteria.
2. The high-level regulatory framework for qualifying schemes is set out in the Pensions Act. The regulations and rules include the detailed scheme requirements for different types of scheme types and is accompanied by two guidance notes included in **Annex G**.

Policy background/rationale

3. We believe it is necessary to set out qualifying standards to enable employers to be confident that they are fully compliant if their schemes meet these standards and to ensure that jobholders are on course to receive the necessary standards. We recognise that many employers already provide good quality workplace pension arrangements and we want to ensure that employers can continue to use their existing schemes where these meet minimum standards. We are also keen to help employers assess whether their schemes meet the minimum standards in a straightforward way.
4. We believe that the quality requirements set out in the Act and draft regulations and rules strike an appropriate balance between safeguarding individuals' interests and ensuring that pensions remain affordable and relatively straightforward for employers.
5. The basic requirement is that qualifying schemes should provide for an income in retirement and be appropriately regulated. The specific quality requirements for each scheme type are based on a relatively simple test of overall scheme quality. Employers will be able to self-certify in

straightforward cases but may need to pass more complex cases, such as some hybrid and defined benefit schemes, to a scheme professional for certification. We have provided guidance on this alongside the regulations and rules.

UK schemes

6. UK schemes are those with their main administration in the UK and can be defined contribution schemes (occupational or personal pension money purchase schemes), defined benefit schemes or hybrid schemes.

Defined contribution schemes

7. In order to qualify, both occupational and personal defined contribution schemes must require the equivalent of 8 per cent contributions on qualifying earnings, of which 3 per cent must come from the employer. Qualifying earnings are made up of all pay components on a band of earnings between £5,035 and £33,540 (in 06/07 terms)¹⁴.
8. During the passage of the Bill, some employers expressed concern that the definition of qualifying earnings might require employers to make expensive changes to scheme rules and may encourage employers to lower levels of pension contribution. DWP worked closely with a number of industry and employer representatives to consider possible options for simplifying the quality requirements for money purchase schemes.
9. Following detailed discussions a number of amendments were made to the Bill to clarify and simplify the quality requirements for defined contribution schemes. First, the amendments creating sufficient scope to allow employers to calculate their pension contributions using an annual pay reference period to smooth fluctuations in earnings and making it clear that it is value of the contribution that determines whether a scheme qualifies rather than the way in which it is calculated (the reconciliation process).
10. Second, the amendments enabled the certification process. This was the last of these amendments and was introduced to enable employers offering good pension provision to certify that their schemes are on track to provide the minimum contributions for all jobholders but to not have to worry about unexpected increases in qualifying earnings during the course of the year.
11. We are consulting on the regulations and guidance underpinning this certification process. Certification does not introduce a new qualifying standard for defined contribution schemes: it is simply a means for employers to comply with the existing requirements. All employers offering UK defined contribution schemes will be able to use certification.

¹⁴ Qualifying earnings includes salary, wages, commission, bonuses and overtime, statutory sick pay, statutory maternity pay, ordinary statutory paternity pay or additional statutory paternity pay and statutory adoption pay.

12. Certification allows employers with good schemes to continue to calculate pension contributions on basic pay and certify that they are on track to meet the quality requirements over the course of the certificate. Employers will need to review the certificate at the end of its term to make sure the scheme did meet the quality requirements. Where unexpected increases in pay during the year mean that some jobholders occasionally receive contributions below the statutory minimum, **employers will not be required to make retrospective payments, provided that the shortfall does not exceed 5 per cent of their expected contributions under the Act and that no more than 10 per cent of the jobholders in the scheme suffer a shortfall. We have also regulated to ensure that no jobholder suffers a shortfall more than once in 2 years.**
13. We have worked closely on the detail of the certification framework with a range of stakeholders and the draft regulations and guidance note setting this out is at Annex G. We now want to ensure the processes work for schemes and reduce the need for costly administrative checking.

Defined benefit schemes

14. In order to qualify, a defined benefit scheme must either have a contracting out certificate in force which is taken as evidence that the scheme meets the reference scheme test¹⁵ or must satisfy the test in the Act referred to as the 'test scheme standard'. This test requires schemes to provide for a member to be entitled to a pension commencing at the appropriate age (currently 65) and continuing for life. The annual rate of the pension at that age must be –
- a) $1/120^{\text{th}}$ of average qualifying earnings in the last 3 tax years preceding the end of pensionable service, multiplied by
 - b) the number of years of pensionable service, up to a maximum of 40.

15. We would like employers to be able to determine for themselves whether their scheme qualifies wherever possible. We would welcome views on whether the draft regulations achieve the right balance between making the process straightforward for employers and ensuring individuals receive the retirement income they are entitled to.

Hybrid schemes

16. In order to qualify, **hybrid schemes will in some cases need to meet the quality requirements for money purchase schemes or defined benefits scheme and in other cases a combination or modified version of these.** The rules set out in Part 7 direct employers to appropriate requirements for different types of hybrid schemes. There are a range of hybrid schemes and we would welcome views on whether there are additional types that we have not identified and whether the proposed

¹⁵ A test of overall scheme quality for schemes with members in employment contracted out of the State Second Pension Scheme (commonly known as contracted-out schemes)

quality requirements are appropriate and workable. The rules are accompanied by a guidance note in Annex G, which we would also welcome your views on.

Non-UK schemes

17. We are aware that some employers may wish to use schemes established outside of the UK as their qualifying scheme, for example multinational employers.
18. To enable this to happen we want as broad a range of schemes as possible to qualify. This should minimise burdens on employers by allowing them to continue to use their existing provision where possible. Also allowing individuals already in a non-UK scheme to continue with their existing provision, prevents them building up small pots which may become stranded if they then return to their home country.
19. However, we also need to ensure that savers are enrolled into secure workplace pension arrangements, supported by a robust regulatory regime. Given the different regulatory structure to that in the UK we did consider excluding non-UK schemes from either qualifying or being used for automatic enrolment. But, this was problematic, as it would go against the policy objective of enabling employers and individuals to continue using their existing pension provision where possible.
20. Therefore, **we are consulting on the basis that all non-UK schemes which meet the quality requirements applicable to UK schemes can be qualifying and used for automatic enrolment, but we are setting additional criteria for non-UK schemes in order to bring them into line with what would be expected of UK schemes.** These are:

- The scheme must provide an income for retirement; and
- The scheme must be regulated by a regulatory body.

21. We did also consider requiring a scheme to be tax recognised in its country of origin. However, whilst this would entitle a member to tax relief as appropriate on earnings in their country of origin, it would not entitle them to tax relief on UK earnings. For individuals whose non-UK scheme entitles them to UK tax relief, either through registration under the Finance Act 2004, Migrant Member Relief, Double Taxation Relief or Transitional Corresponding Relief arrangements this would not be a problem, but some jobholders may be a member of a qualifying non-UK scheme which is not eligible for UK tax relief. In these cases, to ensure individuals to still receive the full 8 per cent of contributions on qualifying earnings, the regulations propose that employers are required to make up the 'missing' tax relief where they chose to use a non-UK scheme that is not eligible for UK tax relief. We have included a couple of consultation questions around this area to elicit views on whether stakeholders view this as an acceptable solution.

22. In addition, we, and TPR, have concerns over how to minimise the risks to individuals who could be automatically enrolled into non-UK, and specifically non-European Economic Area (EEA) schemes and EEA schemes to which no directives or treaties apply that facilitate TPR's ability to protect members' benefits (generally non-EU schemes). So whilst the consultation is based on a presumption that these schemes will be allowed to be used for automatic enrolment, given the risks involved and the need to act quickly if we do conclude there is an unacceptable risk, DWP will amend the regulations to exclude these non-EEA schemes if the evidence suggests that an unacceptable risk is emerging. Therefore we would welcome views on whether we have in fact struck the right balance in allowing these schemes to be used for automatic enrolment from the outset or not, or whether there are any other steps we could take to mitigate the risk to jobholders.
23. Before the introduction of the duty we will also be issuing guidance on the use of non-UK schemes for automatic enrolment and when it will, or will not, be appropriate for an employer to use these schemes. For example, we would not expect a UK based employer with a predominantly UK domiciled workforce to be using a non-UK scheme for automatic enrolment. We would be interested in views about the appropriate scope of this guidance.
24. Although TPR will be the regulator for the use of workplace pension schemes under the Pensions Act 2008, it will not be the regulator of non-UK schemes used to fulfil the employer duty. We would be interested in your views on if and how this should be communicated to individuals.

Summary of proposals

We are consulting on the following proposals:

Defined contribution certification

- A flexible certification process to allow employers to certify that their money purchase scheme is on track to meet the minimum 8 per cent contribution requirement

Quality requirements for defined benefit and Hybrid schemes

- Allowing sponsors of defined benefit schemes to self-certify that their scheme meets the quality requirements (set out in a combination of regulations and accompanying guidance) and the detailed application of quality requirements in the form of the test scheme standard in certain scenarios
- Asking for views on whether we have identified the full range of existing hybrid schemes and whether our proposed quality requirements will work for the fullest range of schemes

Quality requirements for non-UK schemes

- Allowing non-UK schemes to be used as qualifying and automatic enrolment schemes where they provide an income in retirement and are regulated. We are also ensuring that jobholders receive their full 8 per cent of qualifying earnings, whether a non-UK scheme is eligible for UK tax relief or not

Part Seven – Commentary on the draft Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010

To Note: This part does not include commentary on the regulations which are greyed out in Annex B (the draft statutory instrument) as these regulations are not part of this consultation process. The full instrument is included for context and information, as they are referred to in the regulations being consulted on as part of this document.

PART 1 – Citation, commencement and interpretation

Regulation 2 - Enrolment Information

Enrolment information featured in the draft auto enrolment regulations. This draft reflects the changes post-consultation and includes some new items.

As before this regulation prescribes the written information the employer must give to a jobholder who is automatically enrolled into either an occupational pension scheme or a personal pension scheme. This commentary sets out the new information provision related to the policies included in this consultation document which will be part of this regulation.

Paragraph (1)(g) prescribes that an employer must inform the jobholder that in each employment they have a right to continuous active membership without interference by the employer unless they have active membership of another qualifying scheme.

Employers offering money purchase and personal pension schemes may choose to phase in contributions gradually over the implementation period. Paragraph 2 is a new provision which requires employers who choose to do so to reflect the different employer and jobholder contribution levels to the jobholder.

Regulations 4, 5 and 6 - Pay reference periods for the purposes of the Act

Regulation 4 sub-paragraphs (1)(a) and (b) prescribes a pay reference period of one week or the period over which the jobholder's regular wage is paid, to be used to identify a jobholder.

Regulation 4 sub-paragraph (2)(a) prescribes a pay reference period of 12 months to be used to ascertain if a scheme meets the quality requirements for a money purchase scheme and a personal pension scheme in respect of an individual jobholder.

Regulation 4 paragraph (2)(b) prescribes that the pay reference period to be used to ascertain if a scheme meets the annual quality requirements for a money purchase scheme and a personal pension scheme in respect of an

individual jobholder where the employer uses certification, is the period of the certificate.

Regulation 4 paragraph (2)(c) prescribes that the pay reference period to be used to ascertain if a scheme meets the annual quality requirements for a money purchase scheme in respect of an individual jobholder where that person is a jobholder for less than 12 months, is the period during which the person was a jobholder in relation to that employer.

Regulation 4 sub-paragraph (3) exempts individuals (accidental jobholders) who may, exceptionally, earn enough to gain jobholder status for isolated normal pay periods but will not earn over the threshold of the qualifying earnings band for the whole year do not fall under automatic enrolment.

Consultation Question

Regulation 4: Q.3 - This regulation is designed to ensure that workers without qualifying earnings who may, exceptionally earn enough to gain jobholder status for isolated normal pay periods, but will not earn over the threshold of the qualifying earnings band for the whole year (accidental jobholders) do not fall under automatic enrolment. Does it inadvertently apply to workers with a zero hours contract?

Regulation 5 prescribes how a person's earnings in any pay reference period should be determined and outlines that a person's earnings in a pay reference period must be calculated on gross earnings.

Regulation 6 explains that in regulations 4 and 5 'earnings' covers any of the descriptions used to identify 'qualifying earnings' – see section 13(3) of the Pensions Act 2008.

Regulations 7, 8, 9, 10, 11 and 12 cover areas that were the subject of consultation in March 2009 and are not part of this (September 2009) consultation. Therefore no commentary on these regulations is included.

PART 3 – Automatic re-enrolment

Regulation 13 - Automatic re-enrolment dates for the purposes of these regulations

This regulation determine the re-enrolment dates.

Paragraphs (1)(a) and (b) prescribe that automatic re-enrolment will occur every three years from the date that the employer duties first apply to the employer (their staging date) and every three years going forward.

Paragraphs (2)(a) and (b) prescribes the alternative re-enrolment date where a person other than the employer or the jobholder takes action that results in the jobholder ceasing to be an active member of a quality scheme that can be

used for the purposes of postponement as outlined in section 4 of the Act. Or the scheme ceases to be a quality scheme that can be used for the purposes of postponement as outlined in section 4 of the Act.

The re-enrolment date is the date after the day on which the jobholder ceases to be an active member or the scheme ceases to be a quality scheme for the purposes of postponement.

Paragraph (3)(a) and (b) prescribes the alternative re-enrolment date where a person other than the employer or the jobholder takes action that results in the jobholder ceasing to be an active member of a qualifying automatic enrolment scheme or the scheme ceases to qualify.

The re-enrolment date is the date after the day on which the jobholder ceases to be an active member or the scheme ceases to qualify.

Paragraph (4) prescribes the alternative re-enrolment date where a jobholder ceases to earn above the qualifying earnings threshold (£5,035) or ceases ordinarily to work in Great Britain and therefore no longer meets the definition of jobholder outlined in section 1(1) of the Act.

The re-enrolment date is the date on which the jobholder status returns i.e. the day on which the person's earnings rise above the qualifying earnings threshold or the jobholder returns to ordinarily work in Great Britain (or both)

Consultation question

Regulation 13: Q.4 – In the special circumstances outlined in sections 6(3) and 6(4) where a third party has taken action that either results in the jobholder no longer being an active member or results in the scheme ceasing to qualify, the regulations require employers to re-enrol jobholders immediately. Are there any circumstances where action could be taken by a third party to achieve these outcomes without the employer knowing about it in advance? We welcome your views on the timescales for re-enrolment in these scenarios.

Regulations 14 - Arrangements to achieve active membership

Paragraph (1) prescribes that except in the circumstances outlined in paragraphs 2 and 3 the arrangements that an employer must undertake to achieve active membership for a jobholder with effect from the automatic re-enrolment date are the same as for automatic enrolment.

Paragraph (1)(a) substitutes in all references in regulation 7 to section 3 automatic enrolment with references to section 5, automatic re-enrolment.

Paragraph (1)(b) substitutes in all regulations 7, 8 and 9 the reference to section 3(2) automatic enrolment with references to section 5(2) automatic re-enrolment.

Paragraph (1)(c) substitutes all references in regulations 7, 8 and 9 to ‘the automatic enrolment date’ with ‘the automatic re-enrolment date’.

Paragraph (2) prescribes that where a member is a deferred member of a personal pension scheme before the auto re-enrolment date, the employer may within 1 month enter into arrangements with the provider so that the member becomes an active member of that scheme and provide enrolment information to the member.

Paragraph (3) prescribes that where the jobholder falls within the definition of section 6(5) of the Act, so falls below the lower earnings limit or stops ordinarily working in the UK, and the jobholder is a deferred member of an automatic enrolment scheme prior to the re-enrolment date, when the employer meets the definition of jobholder again, the employer must enter into arrangements with the scheme to make the member an active member.

Paragraphs (4)(a) and (b) prescribe that for the purposes of the re-enrolment regulation the definition of an active member is where the jobholder is a member under the scheme and the employer is paying contributions in respect of the jobholder.

Paragraphs (5)(a) and (b) prescribe that where the definition of active membership in paragraph (4) conflicts with the provisions of an occupational pension scheme or a personal pension scheme the new definition overrides the scheme provisions and the scheme has effect with any modifications made as a consequence of paragraph 4’s definition.

Regulation 15 - Jobholders excluded from automatic re-enrolment

This regulation prescribes an exclusion period of 12 months prior to the re-enrolment date for those jobholders who ceased to be an active member of a qualifying scheme through their own choice or who gave notice to opt out during the opt out period.

Regulations 16 - Opting out

This regulation prescribes for an opt-out right for people who become active members of a scheme as a result of automatic re-enrolment.

Regulations 17 - Refunds

This regulation prescribes that the refund provisions in regulation 12 are relevant for jobholders who opt out as a result of automatic re-enrolment.

PART 4 - Jobholders opting in to pension saving

Regulation 18 - Information on the right to opt in to pension saving

This regulation prescribes the information an employer must provide to a jobholder who has the right to opt into pensions saving. When the right is

exercised the employer will be required to arrange for the jobholder to become a member of an automatic enrolment scheme once in any 12 month period.

Paragraph (1) prescribes that this regulation applies to information for jobholders who fall within section 7 of Pensions Act 2008 i.e. those who are aged at least 16 but under 22 years of age and those who have reached State pension age and are not yet aged 75. It also prescribes the timeline by when the employer must provide this information. Typically the right might apply from the first day of employment. Information may be provided in advance of this date but no later than one month afterwards.

Paragraph (2) prescribes that the employer must give the jobholder written information about their right and states that if they want to exercise this right: the notice to opt in must be written and signed by the jobholder (or where given electronically include a statement confirming that the jobholder submitted the notice); that it must be returned to the employer and must contain information about the minimum overall and minimum employer contributions due in respect of money purchase occupational and personal pension schemes; and must signpost the jobholder to information about pensions and saving for retirement. The provision does not prevent schemes or providers from giving the information to a jobholder on behalf of the employer. However, the duty ultimately rests with the employer.

Regulation 19 - Opt-in notices and arrangements to achieve active membership

This regulation prescribes the arrangements by which a jobholder must give notice and the arrangements that the employer must make on receipt of an opt-in notice in writing or electronically by the jobholder, so that they become an active member of an automatic enrolment scheme.

Paragraphs (1) prescribe to whom an opt-in notice must be given and that an opt-in notice must be in writing and signed by the jobholder, except where sub-paragraph 2 applies.

Paragraph (2) prescribes when the jobholder completes an electronic opt in notice it must be authorised by a statement confirming that the jobholder personally submitted the opt-in notice.

Paragraphs (3) prescribes that the standard automatic enrolment processes is the process to be followed for those who wish to opt-in.

Paragraphs (3)(a), (b) and (c) substitutes all references in regulations 7, 8 and 9 so that those regulations can be used for the purposes of opt-in.

Paragraph (4) exempts an employer from having to take any enrolment action where the jobholder changes their mind before the enrolment date and withdraws the opt-in notice.

Paragraph (5) prescribes that enrolment date is:

- (i) the first day of the jobholder's normal pay reference period following receipt of the opt in notice, or
- (ii) the first day of the jobholder's normal second pay reference period after receipt of the opt in notice if the employer's payroll has already closed.

Regulation 20 - Opting out

This provides for an opt-out right for people who become active members as a result of opting in voluntarily.

Regulation 21 - Refunds

This applies the refund provisions to jobholders who opt out after they opted in.

PART 5 - Workers joining pension saving

Regulation 22 - Information

This regulation prescribes the information an employer must provide to a worker without qualifying earnings who by notice may require their employer to make arrangements for them to start saving into a pension arrangement.

Paragraph (1) prescribes that the employer must provide the information set out in paragraph (2) and includes the timeline by when the employer must provide this information. Typically this will apply from the first day of employment. Information may be provided in advance of this date but no later than one month afterwards.

Paragraph (2) requires the employer to give the worker written information about their right to require the employer to make arrangements and prescribes that a joining notice must be written and signed by the worker (or where given electronically, it must include a statement confirming that the jobholder submitted the notice). Further the employer must inform the worker of their right, in accordance with the relevant scheme's rules, to decide how much they want to contribute, and must signpost the worker to information about pensions and saving for retirement.

Regulation 23 - Form and content of the notice

This regulation prescribes the arrangements the employer must make on receipt of a joining notice in writing or electronically by the worker, so that they can become an active member of a tax registered pension scheme.

Paragraph (1) prescribes that a joining notice must be in writing and signed by the worker except where sub-paragraph (2) applies.

Paragraph (2) prescribes when the worker completes an electronic joining notice it must be authorised by a statement confirming that the jobholder personally submitted the joining notice.

Regulation 24 - Arrangement to achieve active membership

Paragraph (1)(a) prescribes that on receipt of a joining notice from a worker an employer must enter into arrangements with either the trustees or managers of an occupational pension scheme, which is tax registered under the Finance Act 2004 or the provider of a personal pension scheme which must have direct payments arrangements between the worker and the employer, so that the worker may becomes an active member of the scheme in accordance with the scheme rules.

Paragraph (1)(b) prescribes that an employer must provide to the trustees, managers or provider of their chosen scheme with the jobholder information as specified in regulation 3.

Paragraph (2) exempts an employer from having to provide certain of the information specified in regulation 3 that the trustees, managers or provider of a chosen scheme do not require to achieve active membership of that scheme.

PART 6 - Existing members of qualifying schemes

Regulation 25 - Information

Information to existing active members of qualifying schemes was consulted on in the draft auto enrolment regulations published in March 2009. This draft reflects the changes post-consultation and includes a new item. Sub-paragraph (2)(c) prescribes that when informing individuals that they are members of a qualifying scheme, the employer must also include a statement that the jobholder has a right to continuous membership of that without interference from their employer throughout that employment unless the jobholder is or becomes an active member of another qualifying scheme.

Regulation 26 – Continuity of scheme membership

Regulation 26, for the purposes of 2(3) of the Act, prescribes a period of one month after the date that the jobholder ceases active membership of a qualifying scheme or the scheme ceases to be a qualifying scheme.

PART 7 – Exclusion as a qualifying scheme

Regulation 27 - Certain schemes providing average salary benefits excluded from being qualifying schemes

Regulation 27 applies to schemes which provide average salary benefits (often known as career average schemes) which do not provide for any

revaluation of accrued benefits in relation to a jobholder. Such schemes are excluded from being “qualifying schemes” within the meaning of section 16 of the Pensions Act 2008.

The exclusion is made in exercise of the power in section 16(3)(c) of the Pensions Act 2008 and “average salary benefits” are as defined in section 99(1) of the Act (benefits the rate or amount of which is calculated by reference to the average salary of a member over the period of service on which benefits are based).

Schemes that provide for discretionary revaluation are not excluded from being qualifying schemes.

Consultation question

Regulation 27: Q.5 - The test scheme is one that re-values its pensions, in accordance with the final salary method set out in section 84(1) of the Pension Schemes Act 1993. We would welcome your views on the extent to which a career average scheme should be required to provide for revaluation? For example, should schemes that provide only discretionary revaluation be able to qualify provided the discretion is exercisable by the trustees or managers of the scheme or if the scheme makes provision for discretionary revaluation in the statement of funding principles or in some other way for schemes that are not required to have statements of funding principles. Please see the options in the draft regulations.

PART 8 – Scheme quality test

Regulation 28 - Prescribed test scheme requirements

Regulation 28 prescribes further requirements for the test scheme, using powers in section 23(1)(b) of the Pensions Act 2008. These must be satisfied in addition to the requirements of the test scheme which are set out in subsections (2) and (4) of section 23 and which relate to the age at which the pension becomes payable and basis on which it must be calculated.

As a result of regulation 28(1), the test scheme must also satisfy the requirements of:

- a) section 84(1) of the Pension Schemes Act 1993 which relates to the revaluation of the benefits of scheme members who leave pensionable service before normal pension age, and
- b) section 51 of the Pensions Act 1995 which requires the indexation of pensions in payment.

Section 84(1) of the Pension Schemes Act 1993 provides for revaluation using the final salary method and regulation 28(2) cross refers to paragraph (1)(a) to make it clear that, when determining whether a scheme that provides average salary benefits satisfies the test scheme standard, the final salary method is to be applied in the same way in which it would to any other defined benefits

scheme. The average salary method set out in section 84(2) of the Pension Schemes Act 1993 is not relevant for these purposes.

Regulation 29 - Staged increase in appropriate age

Regulation 29 provides for the appropriate age in the test scheme to be gradually increased from 66 - 68 over three decades starting from 2024 so that it keeps pace with changes to State Pension Age.

Consultation question

Regulation 29: Q.6 - Changes to State Pension Age mean that it will gradually increase to 68. Should the appropriate age in the test scheme similarly increase over time and if so how should the increase be applied? We would welcome views on our proposal in regulation 29.

Regulation 30 - Requirements for meeting the test scheme standard

Regulation 30 contains provisions made in exercise of the powers in section 22(4) to (7).

Paragraph (1) explains what is meant by references to determining or certifying whether the test scheme standard is met. This is whether the pensions to be provided for relevant members of the scheme are equivalent to, or better than, the pensions that would be provided for them under the Test Scheme Standard.

Paragraph (2) has the effect that only an actuary or an employer can certify that a scheme satisfies the Test Scheme Standard. Paragraph (3) then goes on to exclude the employer from doing so in certain cases. These are where any calculation, comparison or assessment is involved which is of a description usually carried out by actuaries. Paragraph (6) requires that guidance must be followed when deciding whether an employer is permitted to certify a scheme under this provision.

Paragraph (4) states that employers or actuaries determining whether the Test Scheme Standard is met must consider the scheme pensions for all those who are relevant members at the date from which the determination has effect which may precede the date on which the determination is actually made. In making the determination, none of the following count toward satisfying the test of equivalence:

- (i) pension credit benefits,
- (ii) death benefits,
- (iii) discretionary benefits (apart from those arising from pre-retirement revaluation)
- (iv) survivors' benefits
- (v) money purchase benefits
- (vi) benefits in respect of those who are not jobholders
- (vii) benefits in respect of those who have opted out of the employer duty

Paragraph (5) prohibits an employer or an actuary from certifying that the scheme meets the test scheme standard, if the pensions for more than 10 percent of the relevant members of the scheme fail the test of equivalence to the test scheme.

Paragraph (6) provides that in determining whether the employer or the (scheme) actuary can certify the scheme or whether the scheme satisfies the test scheme standard, the (scheme) actuary and the employer must follow the relevant guidance issued by the Secretary of State.

Paragraph (7) cross refers to section 22(7) of the Pensions Act 2008 which requires the actuary certifying the scheme to be the actuary appointed by the trustees under section 47 of the Pensions Act 1995. Under this paragraph, schemes that are not required to appoint an actuary are exempt from this requirement.

PART 9 – Hybrid Schemes

Regulation 31 - Interpretation and application of Part 7

Regulation 31(1) sets out definitions of the “the paragraph (a) requirements” and “the paragraph (b) requirements”. These relate to the quality requirements for money purchase schemes and defined benefit schemes which are set out in section 24(1)(a) and (b) respectively.

Regulation 31(1) also defines a “relevant rule” as being one made under section 24(2) to (4) of the Act.

The Hybrid Schemes Quality Requirements Rules 2010 are made under those provisions and can be found in Annex D of this consultation document. The regulations in Part 9 need to be read together with those rules. The commentary on those rules can be found at the end of this Part.

Regulation 32 - Modification of test scheme standard for money purchase lump sum accruals

Regulation 32(1) provides for paragraph (2) to apply where any relevant rule identifies a specific type of hybrid scheme and states that the quality requirements for defined benefits schemes are to apply with the modification made by this regulation.

There are alternative versions of paragraph (2) of this regulation as we are consulting on two different approaches.

The first alternative is that in determining whether the quality requirements for defined benefits schemes are satisfied, section 23 of the Pensions Act 2008 has effect as if the annual accrual rate for the test scheme in sub-section (4) were substituted with a requirement that:

The amount available for the provision of a pension to a member accrues at an annual rate of at least 16 per cent of average qualifying earnings in the last three tax years preceding the end of pensionable service.

The second alternative would instead substitute a requirement that:

The amount available for the provision of a pension to a member accrues at an annual rate of at least 8 per cent of average qualifying earnings in the last three tax years preceding the end of pensionable service with annual increases of 3.5 per cent above the annual increase for that the test scheme is already required to have under regulation 28(1)(a).

Consultation question

Regulation 32: Q.7 - We are keen to maximise the contributions made to schemes in which the member accrues a lump sum with which to secure an annuity or pension. We would welcome views on how we can ensure that a member's pension fund maintains its value over time? Our first proposal, would require annual accruals of 16% and annual increases linked to prices and capped at 2.5 per cent - as already required by Chapter 2 of Part 4 of the Pension Schemes Act 1993. (see regulation 28). Our alternative second proposal would require annual accruals of 8 per cent of qualifying earnings and increases equivalent to 3.5 per cent over and above those that are already required under regulation 28. Which is the right approach? If you disagree with both, how should the value of the fund be inflation-proofed?

Regulation 33 - modification of test scheme standard for final salary lump sum accruals

Regulation 33 provides for paragraph (2) to apply where any relevant rule identifies a specific type of hybrid scheme and states that the quality requirements for defined benefits schemes are to apply with the modification made by this regulation.

Paragraph (2) modifies the test scheme standard so that section 23 of the Act has effect as if the annual rate of accrual for the test scheme in sub-section (4) were substituted with a requirement that:

The amount available for the provision of a pension to a member accrues at an annual rate of at least 16 per cent of average qualifying earnings in the last three tax years preceding the end of pensionable service.

Regulation 34 - modifications allowing different quality requirements to be satisfied in aggregate.

Regulation 34(1) provides for paragraph (2) to apply where any relevant rule identifies a specific type of hybrid scheme and states that the quality

requirements for money purchase schemes and the quality requirements for defined benefits schemes are to apply with the modifications made by this regulation.

Paragraphs (2) and (3) have the effect that, notwithstanding that the money purchase scheme quality requirements and the defined benefits scheme quality requirements are only partially satisfied, there are certain circumstances in which they may be regarded as being satisfied in relation to any jobholder. Those circumstances are set out in paragraph (3) and are as follows.

a) The relevant rule must require that:

- i the quality requirements for money purchase schemes apply in relation to the money purchase benefits provided by the scheme; and
- ii the quality requirements for defined benefits schemes apply to the defined benefits provided by the scheme.

b) In relation to any jobholder:

- i all of the money purchase scheme quality requirements must be met except for:
 - a. the requirement in section 20(1)(b) of the Pensions Act 2008 for an employer to pay a contribution equivalent to 3% of qualifying earnings in respect of a jobholder); and/or
 - b. the requirement in section 20(1)(c) of the Pensions Act 2008 for the total employee and employer contribution to be equivalent to at least 8 per cent of qualifying earnings; and
- ii all of the defined benefits scheme quality requirements must be met except for the requirement setting the annual rate of accrual for the test scheme in section 23(4) of the Pensions Act 2008;.and
- iii having carried out the calculations described in paragraph (4), the aggregate of the resulting percentages must be at least 100.

The first calculation described in paragraph (4)(a) relates only to the money purchase scheme quality requirement that under which an employer pays a contribution equivalent to 3%. The extent to which this requirement is actually met must be calculated as a percentage of the minimum rate of the employer's contribution specified in the quality requirement.

The second calculation described in paragraph (4)(b) relates to the defined benefits scheme quality requirement that specifies the annual rate of accrual of pension for the test scheme. The extent to which this requirement is actually met must be calculated as a percentage of the annual rate specified in section 23(4).

Paragraph (5) states that where a hybrid scheme is modified in this way subparagraph (5) of regulation 30 is also modified so that neither an actuary nor an employer can certify a scheme where the aggregate percentage of the

benefits for more than 10 per cent of the relevant members of the scheme is less than 100.

PART 10 – Non-UK pension schemes

Regulation 35 - Description of an occupational pension scheme with its main administration outside the EEA States

Regulation 35, for the purposes of section 18(c) of the Pensions Act 2008, defines an occupational pension scheme as one within the meaning of subsection (1) of section 1 of the Pension Schemes Act 1993 that has its main administration outside of the EEA Member States.

Regulation 36 - Quality requirements: Non-UK occupational pension schemes

Regulation 36 paragraph (1) prescribes that a non-UK money purchase scheme must satisfy the quality requirements in section 20 of the Pensions Act 2008 in relation to a jobholder.

Paragraph (2) prescribes that a non-UK defined benefits scheme must satisfy the quality requirements in section 21-23 of the Pensions Act 2008 in relation to a jobholder.

Paragraph (3) prescribes that a non-UK hybrid scheme must satisfy the quality requirements in section 24 subject to prescribed modifications.

Paragraphs 4 (a) and (b) prescribe that a hybrid scheme meets the quality requirements if it falls within a description of hybrid schemes set out in the Hybrid Schemes Quality Requirements Rules 2010 and also meets the quality requirements as directed by the relevant rule.

Regulation 37 - Quality requirements: Non-UK personal pension schemes

Regulation 37 prescribes the quality requirements to be satisfied by personal pension schemes for the purposes of section 27 of the Pensions Act 2008 which covers personal pension schemes to which section 26 does not apply. A personal pension scheme to which the quality requirements in section 26 do not apply satisfies the quality requirements in relation to a jobholder if:

- a) The requirements laid out in paragraphs (3) to (7) of section 26 of the Pensions Act 2008 are satisfied. These requirements: specify that a personal pension scheme must provide money purchase benefits, set out the contributions payable by the jobholder and the employer and require a direct payments arrangement for their collection within the meaning of 111A of the Pension Schemes Act 1993; or

- b) article 6 of Directive 98/49/EC of the Council of Europe¹⁶.applies in relation a jobholder classified as a 'posted worker', and who is a member of a 'supplementary pension scheme' as defined in article 3(b) of that Directive.

Regulation 38 - Prescribed requirements for non-UK qualifying schemes

Paragraph (1) prescribes the additional requirements for purposes of the section 16(2) that all non-UK pension schemes, whether occupational or personal, must meet in order to be qualifying schemes

Regulation 38 paragraph (1) disapplies the requirement for non-UK occupational and personal pension schemes to be UK tax-registered if the schemes satisfy the requirements set out in paragraphs 2 and 3, and the requirements set out in either paragraphs 4, 5, 6 or 7 - below.

Paragraph (2) is satisfied if -

The scheme is an occupational pension scheme that has its main administration in a country where there is a body that regulates occupational pension schemes and the scheme is regulated by that body; or

The scheme is a personal pension scheme with a provider established in a country where there is body that regulates personal pensions and the body regulates that scheme's provider.

Paragraph (3) applies to non-UK money purchase occupational pension or personal pension schemes and requires them to have rules that provide that -

- a) At least 70 per cent of the benefits provided by the scheme must be used to provide an income in retirement; and
- b) That the benefits provided by the scheme must not be available to the jobholder any earlier than they would be under UK law, i.e. no earlier than the day on which the individual meets 'normal minimum pension age'. Before 6th April 2010, this means 50, and, on and after that date, this means 55.

Paragraph (4) prescribes that it is satisfied if the scheme is a qualifying overseas pension scheme.

Paragraph (5) prescribes that it is satisfied if relief from taxation has been given in respect of contributions paid by an individual under a double taxation agreement.

¹⁶ Directive 98/49 of the European Council of 29 June 1998 on safeguarding the supplementary pension rights of employed and self employed persons moving within community.

Paragraph (6) prescribes that it is satisfied if relief from tax is given via transitional corresponding relief in respect of contributions paid by an individual.

Paragraph (7) prescribes that it applies to money purchase schemes and is satisfied if the employer's contribution contains an amount which represents the value of any relief from tax that the individual would have been entitled to had they been a member of a registered UK pension scheme.

Paragraph (8) defines the meaning of 'double taxation agreements' and 'qualifying overseas pension scheme' for the purposes of this regulation.

Consultation questions

Regulation 38: Q.8 – We would welcome your views on the extent to which non-UK pension schemes will be able to participate as qualifying schemes for the purposes of the Act.

Regulation 38: Q.9 – We are keen to ensure individuals who are automatically enrolled into non-UK schemes are protected from risks which may be higher with such schemes. These risks could include fraud, excessive charges, inappropriate or reckless investments, and difficulty accessing entitlements on retirement or on a transfer. Do the provisions of this regulation provide adequate protection for individuals being automatically-enrolled into non-UK schemes? What other safeguards might help? Would draft guidance on the use of these schemes be helpful and if so what should its scope be?

Regulation 38: Q.10 – One option for restricting the use of non-UK schemes to safeguard jobholders would be to allow schemes to qualify only if they are eligible for UK tax relief. This would mean that in most cases these schemes could only be qualifying rather than automatic enrolment schemes, because a form of UK tax relief is available only to migrants who were both resident outside the UK when they joined and also members of the non-UK scheme when they became UK residents. We would welcome your views on this.

Regulation 38: Q.11 – When a scheme does not qualify for UK tax relief, the total contributions are potentially less than the full 8 per cent of qualifying earnings which will be the standard for defined contribution schemes. We would welcome your views on how we can ensure jobholders receive the full amount.

PART 11 – Postponement of automatic enrolment

Regulation 40 - Postponement of the automatic enrolment date

Regulation 39, paragraph (1) prescribes the circumstances in which an employer may postpone automatic enrolment of a jobholder.

Paragraph (1)(a) prescribes the circumstances for a UK money purchase scheme which was in existence on the jobholder's automatic enrolment date and prevents employers from using postponement for short-term workers.

Paragraph (1)(a)(i) prescribes that the employer's contribution must be equal to or more than 6 per cent of the jobholder's qualifying earnings in any relevant pay reference period.

Paragraph (1)(a)(ii) prescribes that the total amount of contributions paid by employer and the jobholder must be at least 11 per cent of the amount of the jobholder's qualifying earnings in any relevant pay reference period.

Paragraph (1)(b) prescribes the circumstances for a UK personal pension scheme which was in existence on the jobholder's automatic enrolment date. Again, the use of postponement for short-term workers is excluded.

Paragraph (1)(b)(i) prescribes that the employer's contribution must be equal to or more than 6per cent of the jobholder's qualifying earnings in any relevant pay reference period.

Paragraph (1) (b)(ii) prescribes that the total amount of contributions paid by employer and the jobholder must be at least 11 per cent of the amount of the jobholder's qualifying earnings in any relevant pay reference period.

Paragraph (1)(c) prescribes that postponement can apply to a jobholder who is to be automatically enrolled in a UK defined benefits qualifying scheme, which was in existence on the jobholder's automatic enrolment date. Again this paragraph excludes the use of postponement for short-term workers.

Paragraph (1)(d) prescribes that postponement can apply to a jobholder who is to be automatically enrolled in a UK hybrid qualifying scheme which was in existence on the jobholder's automatic enrolment date. It again excludes the use of postponement for short-term workers.

Paragraph (1)(d) sub-paragraph (i)(aa) prescribes that the employer's contribution for the money purchase part of a UK hybrid scheme must be equal to or more than 6 per cent of the jobholder's qualifying earnings in any relevant pay reference period;

Paragraph (1)(d) sub-paragraph (i)(bb) prescribes that the contributions payable by the employer and jobholder must be at least 11per cent of the jobholder's qualifying earnings in any relevant pay reference period;

Paragraph (1)(d)(ii) prescribes that for of the defined benefit part of a UK hybrid scheme that part of the scheme must satisfy the requirements contained in section 21 of the Act.

Paragraph (2) prescribes that where a jobholder's automatic enrolment has been postponed, automatic enrolment will take place 3 months after the enrolment date.

Paragraph (3) prescribes that the minimum period for which an employer must continue to pay the higher level of employer contributions following the postponement period of an individual jobholder is 3 months.

Consultation question

Regulation 40: Q.12 – We are keen to ensure that short term workers do not miss out on pension saving through employers' use of postponement. We propose that postponement may only be used for jobholders who will achieve active membership of a qualifying scheme. In other words, the employer must expect the jobholder still to be in post beyond the postponement period. Does this change provide sufficient protection for short term workers? Are there circumstances where short term workers could still miss out on pension saving due to postponement? If so, how might these be addressed?

PART 12 – Automatic enrolment following transitional period for defined benefit and hybrid schemes

Regulation 41 - Information

This regulation prescribes the information an employer who operates a defined benefit or a hybrid pension scheme has to provide to a jobholder if the employer wants to adjust gradually to the effect of the reforms. It is an easement which has parity with enabling employers to phase in contributions for occupational money purchase or personal pension schemes.

Paragraph (1) prescribes that this regulation applies in relation to jobholders whose employers operate defined benefit and hybrid schemes as defined.

Paragraph (2) prescribes that the employers must provide information prescribed in paragraph (3) below to the jobholder no later than two months after the transitional period starts (i.e. what would have been the auto enrolment date unless section 30 applied).

Paragraph (3) prescribes that the employer must give a jobholder written information about the scheme into which the jobholder will become an active member; the date from which the jobholder will become a member of that scheme; signpost the jobholder to information about pensions and saving for retirement and make clear that the jobholder may opt in to the employer's defined benefit or hybrid pension scheme during the transitional period if they wish.

Consultation question

Regulation 41: Q.13 – Jobholders whose employer decides to make use of the transitional period to gradually adjust to the reforms will be given information about the scheme and date when they will become scheme members and, the right to opt in earlier if they wish. Should this information

be required within one month rather than the two months prescribed in the regulations?

Regulation 41: Q.14 – We would also welcome views as to whether there are any other key pieces of information which should be given to these individuals?

Regulation 42 - Arrangements to achieve active membership

Regulation 42 prescribes the modified arrangements for automatic enrolment where a jobholder becomes an active member of an automatic enrolment defined or hybrid scheme at the end of the transitional period for defined benefits and hybrid schemes.

Paragraph (1) prescribes that the arrangements for automatic enrolment at regulations 7, 8 and 9 are the arrangements prescribed for the purposes of automatic enrolment as modified by section 30 (3) of the Act.

Paragraph (1)(a) substitutes regulation 7 (1). An employer must make arrangements with the trustees or managers of a defined benefits scheme or a hybrid scheme so that before the end of a period of one month beginning with the day after the end of the transitional period, the jobholder becomes an active member of that scheme with effect from the day after the end of the transitional period.

Paragraph (1)(b) substitutes all references to the “automatic enrolment date” in regulations 8 and 9 with “the day after the end of the transitional period prescribed for the purposes of section 30 of the Act”.

Regulation 43

Paragraph (1) of Regulation 43 prescribes the arrangements in regulations 7, 8 and 9 apply in this instance but with some modification per section 30(5) of the Act.

Paragraph (1)(a) prescribes the modified arrangements applicable where a jobholder becomes an active member of an automatic enrolment defined benefit or hybrid scheme so that before the end of a period of one month beginning with the closure date a jobholder becomes a member of that scheme with effect from the closure date.

Paragraph (1)(b) prescribes the modified arrangements for where a jobholder becomes an active member of an automatic enrolment money purchase scheme so that before the end of a period of one month beginning with the closure date a jobholder becomes an active member of that scheme with effect from the automatic enrolment date.

Paragraph (1) (c) a jobholder must receive information about the terms and conditions of an automatic enrolment scheme which is a personal pension scheme before the end of one month beginning with the closure date.

Paragraph 43 (1) (b) substitutes references to (2)(b) in paragraph 2 of 7 with (2)(c).

Paragraph 43 (1) (c) substitutes all references to the ‘automatic enrolment date’ in regulations 8 and 9 with ‘the closure date’.

Paragraph 43 (1) (d) inserts new paragraphs 4, 5 and 6 at the end of regulation 8. Paragraph 4 prescribes that at the request of the jobholder, the employer must deduct any contributions which would have been payable by the jobholder to scheme in respect of the period beginning on the automatic enrolment date and ending on the closure date, from any qualifying earnings or pensionable pay due to the jobholder in any relevant pay reference period.

Paragraph 5 prescribes the period for which the contributions must be deducted under 4 stating that it is 4 years beginning with the date on which the Part 1 of the Act is commenced; or 5 (b) states that a lesser period may apply as agreed between the jobholder and employer.

Paragraph 6 which provides the definition of ‘closure date’ as provided by section 30(4) of the Act.

Regulations 44 and 45 - Opting Out

Regulations 44 and 45 prescribe that the arrangements for opting out are the arrangements prescribed in relation to a jobholder to whom section 3(2) has been modified.

Regulation 46 - Refunds

Regulation 46 prescribes that the arrangements for refunds are the arrangements prescribed in relation to a jobholder for whom section 3(2) has been modified by section 30(3) and section 30(5).

PART 13 - Certification

Regulation 47- Interpretation

Regulation 47 defines the terms used in the regulations.

Regulation 48 - The certificate

Regulation 48(1) prescribes the content and format of a certificate, given under section 28 of the Pensions Act 2008, i.e. in respect of an occupational money purchase scheme, a personal pension scheme and/or certain hybrid schemes to which the money purchase quality requirements in section 20 apply. A certificate must:

- a) Be in the format prescribed in schedule 2.

- b) Be signed by the employer.
- c) Be retained by the employer for 6 years.

Paragraph (2) prescribes that the employer must decide the date on which the certification period commences.

Paragraph (3) prescribes that a certificate remains in force from the effective date for a period of

- a) 12 months;
- b) a shorter period determined by the employer on the effective date;
- c) the date on which the trustees or managers decide to wind up the scheme, or
- d) where the employer is of the opinion that the scheme can no longer satisfy the relevant quality requirement the period up to the date on which the employer formed that opining.

Regulation 49 - The certification process

Regulation 49(1) prescribes that an employer can only give a certificate under section 28(1), if s/he is of the opinion that every scheme to which the certificate relates can meet the relevant quality requirement in relation to any jobholders of that employer who were active members of the scheme throughout the certification period

Paragraph (2) prescribes that in making the determination in paragraph (1) the employer must:

- a) Take account of guidance issued by the Secretary of State.
- b) Complete the determination within 3 months of the start of the certification period.

Paragraph (3) prescribes that at the end of the certification period, the employer must consider whether every scheme to which the certificate relates satisfied the relevant quality requirements during the course of the certificate for jobholders who were active members.

Paragraph (4) prescribes that for the purpose of the determination required by paragraph (3), the employer –

- a) Must take account of guidance issued by the Secretary of State.
- b) Must consider any jobholder who was an active member of the scheme during the certification period.

- c) Must complete the determination within 3 months of the end of the certification period.
- d) May make the determination by reference to a representative sample of jobholders.

Paragraph (5) prescribes that if sample checking is used, the sample size must be sufficient in number and character to give the employer a reasonable indication that relevant quality requirement is satisfied in relation to all jobholders in that category.

Paragraph (6) prescribes that where each personal pension scheme in a group of personal pension schemes have similar terms, the employer may make the determination required at the start and end of the certification period as if the group of schemes were a single scheme.

Regulation 50 - Shortfalls

Regulation 50 provides that (subject to regulation 51) a scheme will not be treated as a qualifying scheme if the determination required at the end of the certification period identifies that there was a shortfall in contributions did not meet the following conditions. The conditions are:

- a) the total amount of contributions in respect of a jobholder, however, calculated required by sections 20, 26 or section 20 (as modified by part 9 of these regulations) did not fall below 0.4% the required amount;
- b) the scheme satisfied the quality requirement through out the period for which the certificate was in force for at least 90per cent of jobholders who were active members;
- c) Jobholders did not experience a shortfall in their contributions more than once in any consecutive 24 month period.

Regulation 51

Regulation 51(1) applies where the shortfall in contributions in respect of a jobholder does not satisfy the conditions prescribed in regulation 50.

Paragraph (2) prescribes that an employer must make payments to the scheme so that the total amount of contributions paid to the scheme is equal to the total amount of the contributions required under the relevant quality requirement.

Paragraph (3) states that a scheme will be treated as having satisfied the relevant quality requirements for the purposes of certification in section 28(1) of the Pensions Act 2008, if the employer makes a payment to the scheme so

that the total amount of contributions paid is equivalent to the total contribution required to satisfy the relevant quality requirement.

Consultation question

Regulations 47- 51: Q.15 - We would welcome views on the detailed operation certification process.

Part Eight – Commentary on Hybrid Schemes Quality Requirements Rules 2010

Rule 1 - Citation, commencement and interpretation

Sub-paragraph (1) prescribes that the rules can be cited as the hybrid schemes quality requirements rules 2010

Sub-paragraph (2) defines the terms used in the rules

Rule 2 – Application

Sub-paragraph (1) provides for the rules to apply to hybrid schemes that fall within the definitions set out in rules 3-9.

Sub-paragraph (2) prescribes in relation to each hybrid scheme described in the rules –

- a) how sub-section (1) of section 24 of the Act (quality requirements for UK hybrid schemes) is to apply in determining whether a particular scheme satisfies the quality requirements in relation to a jobholder and
- b) whether the application of the quality requirements is modified.

(Section 24(1) prescribes that to qualify a hybrid scheme must satisfy the quality requirements for UK money purchase schemes or the quality requirements for UK defined benefits, or some modification thereof).

Sub-paragraph (3) prescribes that any scheme described in a rule is referred to as a relevant scheme.

Rule 3 – Money purchase schemes with ancillary defined benefits

Sub-paragraph (1) applies to schemes that are money purchase schemes under which the only benefits that may be provided other than money purchase benefits are death benefits.

Sub-paragraph (2) prescribes that in the application of section 24(1) – the quality requirements for UK hybrid schemes, sub-section (1)(a) applies without modification. Sub-section (1)(a) of section 24 cross refers to the quality requirements for UK money purchase schemes.

Rule 4 – Self annuitising money purchase schemes

Sub-paragraph (1) prescribes that this rule applies to schemes which are money purchase under which an annuity is payable in accordance with scheme rules by the employer at or after a member's retirement until their death.

Sub-paragraph (2) prescribes that in the application of section 24(1) – the quality requirements for UK hybrid schemes, sub-section (1)(a) of section 24 applies without modification. Sub-section (1)(a) of section 24 cross refers to the quality requirements for UK money purchase schemes.

Rule 5 – Final salary schemes with ancillary money purchase benefits

Sub-paragraph (1) prescribes that this rule applies to a scheme in which –

- a) all scheme members are entitled to, under scheme rules, defined benefits (including average salary benefits) and one or more members, under scheme rules of are entitled to additional money purchase benefits which are or include:
 - (i.) pension credit rights (within the meaning of part 1 of the Welfare Reform and Pensions Act 1999)
 - (ii.) transfer credits (within the meaning of section 124(1) of the Pension Schemes Act 1993)
 - (iii.) other rights derived from voluntary contributions.

Sub-paragraph (3) prescribes that in the application of section 24(1) – the quality requirements for UK hybrid schemes sub-section (b) applies without modification. Sub-section (1)(b) of section 24 cross refers to the quality requirements for UK defined benefit schemes.

Rule 6 – Cash balance schemes

Sub-paragraph (1) provides that this rule applies to schemes under which all of the benefits provided to a member are cash balance benefits

Sub-paragraph (2) defines cash balance benefits as benefits, the rate or amount of which is calculated by reference to an amount calculated otherwise than wholly by reference to payments made by the member or by any other person in respect of the member (or transfers or other credits)

Sub- paragraph (3) prescribes that in the application of subsection (1) of section 24 of the Act (the quality requirements for hybrid schemes), apply subsection (1)(b) – the quality requirements for UK defined benefit schemes subject to the modifications in regulation 8 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.

Rule 7 – Sequential hybrid schemes

Sub-paragraph (1) that this rule applies to schemes that, under the rules, are divided into not than two sections where -

- a) the benefits provided under the money purchase section are wholly or mainly money purchase benefits;
- b) the benefits provided under the other section (the defined benefits section) are wholly or mainly defined benefits; and

- c) members qualify for a pension under one section only at a time

Sub-paragraph (2) prescribes that in applying sub-section (1) of section 24 of the Act, treat the two sections as if they were separate schemes and –

- a) apply sub-section (1)(a) of section 24 (the quality requirements for UK money purchase scheme in respect of the money purchase schemes) without any modification to money purchase section
- b) apply sub-section (1)(b) of section 24 (the quality requirements for defined benefits schemes) without any modification to the defined benefits section.

Rule 8 – Underpin schemes

Sub-paragraph (1) prescribes that this rule applies to schemes which provide for the rate of the pension for scheme members to be the greater of

- a) a rate that is calculated by reference to a member's earnings (a defined benefits scale of benefits);
- b) a rate that is not calculated reference to a member's earnings (a money purchase scale of benefits).

Sub-paragraph (3) in the application of sub-section to a relevant scheme –

- a) if under the scheme rules the scheme is a money purchase scheme underpinned by the provision of defined benefits, apply sub-section (1)(a) of section 24 – the quality requirements for UK money purchase schemes) without any modification
- b) if under the scheme rules the scheme is a defined benefits scheme underpinned by the provision of money purchase benefits, apply sub-section (1)(b) of section 24 (the quality requirements for UK defined benefits schemes) without any modification.

Rule 9 - Combination hybrid scheme

Sub-paragraph (1) prescribes that this rule applies to schemes that under the scheme rules are divided into not more than two sections where –

- a) the benefits to be provided under the money purchase section are wholly or mainly money purchase benefits;
- b) the benefits to be provided under the defined benefits section are wholly or mainly defined benefits; and
- c) members qualify for the provision of pensions or other benefits under both sections at the same time.

Sub-paragraph (2) provides that in the application of sub-section (1) of section 24 to a relevant scheme, treat the two sections of the scheme as if they were separate schemes and determine which requirement to apply in accordance with paragraph 3 and 4.

Sub-paragraph (3) prescribes that the first step is to apply –

- a) the requirements in sub-section (1)(a) of section 24 (the money purchase quality requirements) to the money purchase section without modification; or
- b) the requirements in sub-section (1)(b) of section 24 (the defined benefits quality requirements) without modification.

where the money purchase or defined benefits quality requirements are satisfied, there is no need to take the second step.

Sub-paragraph (4) prescribes that where neither is satisfied, the second step is to -

- a) apply the requirements in sub-section (1)(a) of section 24 (quality requirements for UK money purchase schemes) to the money purchase section;
- b) apply the quality requirements for UK defined benefits schemes requirements in sub-section (1)(b) of section 24 to the defined benefits section

and determine whether those requirements are satisfied in accordance with the prescribed modification in regulation 9 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.

Consultation question

Rules for hybrid schemes: Q.16 - We would welcome views on whether:

- we have captured all of the possible permutations of hybrid schemes
- the descriptions accurately reflect the type of hybrid scheme that we are trying to capture and the proposed quality requirements are workable for the hybrid scheme that we have listed.

Part Nine – Employer Compliance

Summary

This section deals with the compliance regime. It sets out how employers will need to register compliance with TPR and what records will need to be kept. It explains when TPR will be able to investigate and take action if a person claims they have been induced to opt out of pension saving. Also covered is further detail on some of the tools TPR can use to help enforce the payment of contributions, including the rate of interest that may be applied, the basis for estimating outstanding amounts due, and the length of the ‘prescribed period’ which determines when TPR can consider requiring non-compliant employers to pay their workers’ contributions as well as their own. It also sets out the penalties that TPR can use, and when TPR may review notices it has issued.

Building an effective compliance regime

1. The aim of the compliance regime is to help employers who wish to meet their obligations by educating and enabling them. However, we recognise that some employers may still fail to comply, creating an unfair economic advantage over their competitors and threatening individuals’ savings.
2. TPR will operate this regime, in line with primary and secondary legislation put forward by DWP. TPR will be able to take enforcement action such as issuing notices and penalties to maximise compliance. In this document we are consulting on some of the more detailed aspects of the compliance powers set out in the Pensions Act 2008.
3. The compliance approach will aim to be:
 - **Effective:** TPR will aim to maximise employer compliance across employers of all sizes and sectors, by:
 - Checking levels of initial compliance, and following up where employers are not complying, through a registration process;
 - Undertaking risk-based investigation where appropriate; and
 - Supporting and communicating effectively with all employers, but with a specific focus on small and micro-employers, who may need more help to comply. This will enable their workers to benefit from the reforms.
 - **Efficient:** TPR will draw on data held by HM Revenue and Customs (HMRC), and where possible by pension schemes, to check compliance in a cost-effective way. This approach will aim to minimise employer burden, and reflect good regulatory practice;

- **Graduated:** TPR will focus first on educating and enabling employers to comply. It is only if the employer ignores TPR's attempts at contact, or fails to take action to comply following contact, that TPR will move to enforcement. A series of escalating enforcement steps will be available to address non-compliance, including:
 - Telling employers, formally (through a notice) or informally how to put things right;
 - Imposing a penalty if things are not put right. Except where non-compliance is repeated or cannot be fixed, TPR will not be able to charge a penalty without first issuing a notice explaining how to comply; and
 - Taking effective action against the most serious or persistent non-compliance, using escalating penalties or criminal prosecution where appropriate.
 - **Proportionate:** In line with principles of good regulation, TPR will respond appropriately to the nature of non-compliance and its impact:
 - By making early contact with employers who do not seem to be complying, TPR will aim to identify inadvertent non-compliance;
 - Where failure to comply is more serious or persistent, TPR will be able to take enforcement action; and
 - Where a financial penalty is imposed, there will be a right of appeal.
 - **Risk-based:** TPR will weigh up the costs and benefits before taking compliance action, including the broader benefits to both employers and workers of making sure the compliance regime works well. TPR will use the information obtained through registration to inform its regulatory approach. Where appropriate, lessons from other compliance regimes such as tax, national insurance, and minimum wage enforcement will also be taken into account along with TPR's existing regulatory activity.
 - **Simple:** TPR will enforce compliance in a way that is practically feasible, and can be understood by employers. TPR will issue guidance to employers explaining what they need to do.
4. TPR's approach will be risk-based and flexible. But equally, we want to assure those who comply that there will be effective enforcement for those who do not.

Information needed to check compliance

Registration

5. Employers will be required to provide information about how they have met their automatic enrolment duties, via a process of registration. TPR will check the information that it receives from employers at registration against HMRC data on PAYE schemes, and with employers' chosen pension schemes where possible.
6. Registration is needed because there are no existing sources that will allow employer data to be linked to pension data in a timely and reliable manner. It is a large-scale and efficient way for TPR to obtain a small amount of important information about all employers. Registration will enable TPR to establish, from the outset, a culture of compliance and a level playing field amongst employers.
7. **We are proposing that the information required from employers at registration include the following:**
 - Information that enables TPR to identify and contact them.
 - Information about the action they have taken to enrol their jobholders into pension saving, and where those jobholders have opted out.
 - Where they do not have to enrol individuals into pension saving, why this is the case – for example, whether those people are outside the age bands for automatic enrolment, are subject to postponed automatic enrolment, or were already in a qualifying scheme.
 - Information about their pension arrangements, which will enable TPR to link the employer to the pension scheme they have chosen. This will include providing a reference to enable TPR to match the employer with their pension arrangement. TPR guidance will help employers identify the right reference to use.
8. The key consideration in developing this policy was to enable TPR to protect individuals by obtaining sufficient information to identify and follow up non-compliance in a systematic way, while at the same time avoiding over-burdening employers. We consider that this proposal represents the optimal balance between these two requirements.
9. During implementation, **we are proposing that employers will be required to register within 9 weeks after their staging date.** This will enable employers who have undertaken automatic enrolment to provide information about jobholders who have left the pension scheme during the one-month opt-out period. Where employers are able to delay automatic

enrolment for a specified period¹⁷, they will have the same registration deadline as if they had undertaken auto-enrolment at the same time as others in their group, and will provide information about the pension arrangements they have in place that enable them to delay auto-enrolment.

10. Once staging is complete in 2015, we are proposing that new employers be required to register 3 months after PAYE income is payable on behalf of their first worker. On setting up a new PAYE scheme with HMRC, new employers will receive outline information about their auto-enrolment and registration duties, and contact details for TPR.

11. **We are also proposing that all employers be required to register every 3 years ('re-registration').** This will ensure that TPR has an up-to-date set of employer information and can therefore continue to operate an effective compliance regime. Re-registration will involve confirming contact details and pension scheme arrangements, as well as providing information about the re-enrolment arrangements that have been made and the number of workers who were already scheme members. We expect that for most employers, re-registration will follow automatic re-enrolment.

12. We also considered:

- **Requiring registration before auto-enrolment.** This would have involved requiring employers to register how they intended to meet their auto-enrolment duties. However, setting the registration deadline after auto-enrolment (for most employers) will yield better compliance information and enable TPR to take more targeted follow-up action.
- **A 2-step registration process,** which would have involved requiring employers to register both before and after auto-enrolment. This approach was seen as a way of both engaging employers before auto-enrolment, and identifying non-compliance after enrolment should have occurred. However, we determined that this process would be overly complex, and that early engagement should be achieved through communications to employers rather than by placing additional requirements on them.
- **Obtaining information from pension schemes,** as a means to reduce the requirements on employers. However, we believe this is unlikely to be effective for compliance purposes, because pension schemes will not hold all the relevant information on how employers have complied.

¹⁷ 3 months for certain schemes and jobholders under s.4, or between October 2012 and October 2015 for defined benefits and hybrid schemes under s.30.

Record-keeping

13. In addition employers, trustees and managers of pension schemes and pension providers will be required to keep certain records to enable TPR to check employer compliance at a more detailed level. **We are proposing that:**

- **Employers** be required to keep records relating to the pension arrangements they have made, the enrolment of jobholders and the opt-out and ‘opt-in’ processes, and the pension contributions they have made. TPR will use these records where needed to check that employers have undertaken enrolment and opt-out correctly.
- **Occupational pension schemes and pension providers** be required to keep records of enrolments and opt-outs in respect of each employer, as well as information relating to individual scheme members. TPR will use these records to confirm enrolment and payment of contributions with the pension scheme or provider, and help identify prohibited behaviour such as employers inducing workers to opt out of pension saving.

14. TPR may require these records to be produced on request¹⁸. In line with its principles TPR will adopt a risk-based approach in checking employer records, and will use records supplied by pension schemes more systematically to verify automatic enrolment. TPR will be discussing the requirement to verify information in more detail with private pension providers to determine the most appropriate approach.

15. **We are proposing that employers and pension schemes be required to keep most of these records for a period of 6 years**, which is the maximum time allowable under the Pensions Act 2008. This is broadly in line with other document retention legislation relating to pensions, and certain requirements for retention of tax records. This requirement does not affect the legal position on keeping and disposal of records where a company has gone into liquidation¹⁹.

16. We believe these requirements achieve a balance of enabling TPR to check compliance effectively whilst adding to existing requirements as little as possible. Where the required information is already kept for another purpose, such as payroll or tax, duplicate records will not need to be kept to satisfy these requirements. And, to minimise costs for those using paper-based systems, we will not require records to be kept in electronic format.

¹⁸ Section 60 of the Pensions Act 2008

¹⁹ Where a company has gone into liquidation, (i) the liquidator in a winding-up by a court (or in other circumstances) may at any time sell, destroy or otherwise dispose of the books, papers, or other records of the company, or (ii) where there is a voluntary winding-up, the last liquidator may at any time after one year from the date of dissolution, destroy or otherwise dispose of the company's books, papers or other records.

17. We also considered whether it would be possible to use guidance, instead of regulations, to set out these record-keeping requirements. However, using guidance would mean it would not be possible to legally enforce the keeping of any record. Failure to keep records could jeopardise TPR's ability to check compliance, which would be unfair on workers and compliant employers. Furthermore, this approach is not possible under the provisions of the Act.

Time limits on inducements compliance action

18.The Pensions Act 2008²⁰ (PA 2008) prohibits employers from attempting to induce individuals to leave a pension scheme²¹. To provide certainty for employers, their workers and TPR we intend to prescribe two time limits for enforcement action in relation to inducements²².

The time within which a complaint can be made to TPR

19. We propose that individuals have up to 6 months after an alleged inducement to make a complaint to TPR. We believe this strikes the right balance between protecting employers from malicious complaints on one hand, and on the other hand giving individuals or their representatives enough time to prepare and make a complaint. Given that people will take time to grasp employers' new obligations to provide pensions, we believe it may take time for people to identify and take advice on whether a breach may have occurred.

20. We also considered a 3-month time limit. Employment tribunals normally give 3 months to bring a case. However, this generally applies to breaches of the law such as unlawful dismissal which are clearer cut and which cannot be initially overlooked by the individual. Furthermore, the possibility of compensatory awards and early settlements in tribunal cases means that time limits need to be tight to protect employers from malicious complaints. In contrast, the financial incentives for reporting inducement to TPR are much lower.

The time limit applying to proactive investigations by TPR

21.This determines how far back TPR can look from the point where the employer is informed an investigation is being carried out. Action (amounting to TPR having the power to issue a compliance notice) can be taken regarding inducements that occurred within the time limit.

22. We are proposing 12 months from the date of the inducement as the minimum period TPR would need in order to consider taking compliance

²⁰ See section 54 of the Pensions Act 2008.

²¹ We are also proposing to make a minor Order (the Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2009) to ensure the intent of Chapter 3 (Safeguards: Employment and Pre-employment) of the Pensions Act 2008 is fully expressed in law. The Order ensures that workers who report inducement or prohibited recruitment conduct are fully protected by rights not to suffer unfair dismissal or detriment.

²² Under the enabling power in s54(3)(a) and (b).

action in the context of its own proactive investigations. Nevertheless, 12 months is significantly shorter than the length of time an induced opt-out may remain effective, i.e. before the individual is automatically re-enrolled which may take up to 4 years. We would welcome views on whether 12 months is long enough.

Ensuring payment of all contributions due

23.TPR already has powers to take action where pension schemes report that contributions have been paid late. The new duties will mean that from 2012 many more employers will have to deal with paying pension contributions themselves and deducting and paying contributions on behalf of their workers. Therefore, TPR will need to be able to deal with a potentially higher volume of late payment reports, as well as the situation where, due to a breach of an employer duty or the inducements measure, an individual has not become a scheme member and backdated contributions may be due. The Act gives TPR discretion to issue compliance notices and unpaid contributions notices to address these forms of non-compliance.

Due date²³

24.To be able to issue an unpaid contributions notice TPR must be of the opinion that the contributions have not been paid on time. This depends on knowing exactly what that deadline was. That deadline is a scheme-specific deadline and at present not all scheme reports to TPR include this date – many just state the month. Prescribing a due date that would allow TPR to assume a particular date in the month, without having to seek detailed information from schemes, will help minimise burdens.

25.We are proposing to set a due date for all unpaid employer and worker contributions of the 19th day of the month following the month in which workers' contributions were deducted or when employer contributions were due.

26.This fits with existing legislation requiring that worker contributions must be paid over by the 19th of the month following their deduction²⁴, and with what we understand to be the normal industry practice of arranging for employer contributions to be paid over at the same time. Exceptions will apply for occupational defined benefit and hybrid schemes and are set out in the regulations.

Time limit on when TPR can choose to require employers to pay worker contributions²⁵

27.Where employers fail to deduct worker contributions for some time (e.g. by failing to automatically enrol on time), a large backlog of worker

²³ Section 37(3) Pensions Act 2008.

²⁴ If stakeholders support changes to the 19 day rule for the period during which a worker is being automatically enrolled (see Part 10), we would consider amending this regulation accordingly.

²⁵ Section 38(2)(b)(c).

contributions may build up. It would disadvantage the worker if they had to make up a large backlog, or accept a shortfall in their pension fund. This would be particularly unfair where the employer has been wilfully non-compliant. The Act provides TPR with discretionary powers which can be used in a compliance notice or unpaid contributions notice. One of these is the ability to require employers to pay their worker's contributions (as well as their own) where:

- contributions are overdue; or
- where employer duties or the inducements provision²⁶ have been breached,

and backdated contributions are required to put the worker back in the position they should have been in.

28. This requirement may be imposed only where a 'prescribed period' has expired.

Length of the prescribed period

29. The length of the prescribed period needs to achieve:

- Operational viability (thereby maximising compliance activity);
- Protection for individuals (including risk of opt-out and the bewildered employer); and
- Proportionality of the effect on employers.

30. **We are proposing a prescribed period of 3 months.** This would give employers time to sort out any 'teething' problems before they may be liable to be asked by TPR to pay both sets of contributions on their own account. For workers, a 3-month period should minimise any loss in the value of the fund, or alternatively the financial impact of making good their own missing contributions, should they choose to do so.

31. **We also considered** a shorter period of 1-2 months and a longer period of 6 months. But a shorter period could be considered unfair on employers who were just unsure how to comply rather than being wilfully non-compliant. And a longer period would create serious gaps in worker contributions that may not be able to be made good by the individuals themselves or be required of the employer.

²⁶ Section 54, see also 'inducement time limits', above.

Requirement to pay interest²⁷

32.TPR will have discretion to apply interest when requiring payment of contributions. Any payment of interest goes into an individual's fund to help compensate the individual for any loss of investment growth.

The rate of interest

33.**We propose that interest be calculated on a simple per annum basis, using a two-part formula comprising an estimate of long-term return plus allowance for inflation.** The proposed formula is 4.9 per cent plus Retail Price Index (RPI) per cent = interest per annum. The first part is derived from a measure of long-term return on equities²⁸ which will approximate equity loss without needing constantly to revise the regulations. The second part helps address the potential of inflation to erode nominal returns on capital and thereby protects the real value of the interest rate.

34.We also considered:

- **Calculation of interest on a compound basis.** However, this would add administrative burdens on employers and risk confusion without making a substantial financial difference in the vast majority of cases.
- **Using an interest rate based on the Bank of England base rate,** plus a mark-up that can be adjusted by a Treasury Order. HMRC recently legislated²⁹ for such an approach using the base rate as the starting point for their calculations (the late payment rate formula is 0.5 per cent + 2.5 per cent and the repayment rate formula is 0.5 per cent – 1 per cent with an underpinning baseline of 0.5 per cent) but their legislation no longer requires a Treasury order when their rates change. We decided against using the same formula because we needed a rate with greater long-term stability, and also one tied to equity returns rather than cash interest rates in order to properly compensate individuals.

Estimating amount of unpaid contributions³⁰

35.In the event a non-compliant employer fails to engage with TPR to calculate the correct amount payable, TPR needs a method of estimating the amount of unpaid contributions.

²⁷ Section 38(2)(e).

²⁸ Obtained from Barclays Equity Gilts Study, considered the most current and reliable source available.

²⁹ SI 2009/2032

³⁰ Section 38(3) and (4)

36. We are proposing the following estimation formula³¹:

$$\begin{aligned}\text{Unpaid contributions owed} = & \quad \text{maximum monthly qualifying} \\ & \quad \text{earnings} \\ & \quad \times 8 \text{ per cent} \\ & \quad \times \text{number of jobholders affected (or} \\ & \quad \text{PAYE scheme size where the} \\ & \quad \text{number of jobholders affected is} \\ & \quad \text{unavailable)} \\ & \quad \times \text{number of months late.}\end{aligned}$$

37. This will help ensure that an employer does not gain from their refusal to engage with TPR.

Penalties and reviews of compliance activity

Penalties

38. Although its approach is to educate and enable in the first instance, TPR will have the power to issue fixed and, in some circumstances, escalating penalty notices in cases of non-compliance with the employer duties and safeguards.

39. A fixed penalty is intended to get the attention of employers who have failed to engage with the reforms despite the provision of information and support. The daily escalating penalty is intended to target more entrenched non-compliance and prevent such employers gaining a financial advantage over their competitors. In order to reflect the potential financial advantage, it needs to be significantly higher than the fixed penalty.

Fixed penalty notices

40. **We are proposing a flat-rate fixed penalty of £500.** We believe this is large enough to act as a serious “wake up call” to employers who have not responded to earlier warnings, but low enough not to excessively affect small businesses. And a flat-rate penalty is easy to administer and communicate to employers.

41. **We also considered:**

- **Scaling the fixed penalty by the number of jobholders involved.** But this would add complexity to the penalty system and be harder to communicate to employers.
- **An early compliance discount** along the lines used by the National Minimum Wage (NMW) regime. However, whereas compliance with NMW involves a simple payment, TPR will use fixed penalties to

³¹ Expressed slightly differently in regulation 12(2) of the Registration and Compliance Regulations but amounting to the same.

address a wide range of breaches from inducement to failure to keep records to failure to auto-enrol. Furthermore, it may take some time to rectify some of these breaches and involve other parties. We have concluded that such a discount would not be operationally feasible.

- **A discount for prompt payment of the penalty.** This would pose fewer operational difficulties, but its impact on behaviour is not certain. Quick engagement with TPR may motivate non-compliant employers to become compliant more quickly. It may also be reasonable to recognise the effort such employers are making to respond promptly to the ‘wake up call’. However, some may be tempted to pay quickly and continue non-compliance; the discount merely reduces the real level of the penalty.

Escalating penalty notices

42. Escalating penalties are intended to address entrenched employer behaviour and provide a meaningful deterrent to non-compliance. **We are proposing a system of escalating penalties that vary by employer size and aim to address the financial advantages of non-compliance.** The proposed penalty levels were calculated by estimating the total amounts of unpaid contributions that a non-compliant employer could owe over a 2-year period:

<u>Size of PAYE scheme</u>	<u>Penalty</u>
1 - 4 workers:	£50 per day
5 - 49 workers:	£500 per day
50 - 249 workers:	£2,500 per day
250 - 499 workers:	£5,000 per day
500+ workers:	£10,000 per day

43. If escalating penalties are to address the financial advantages of non-compliance, they need to relate to the amount of contributions an employer could save. A major influence on the size of this potential gain is the number of jobholders involved. We therefore consider that escalating penalties should be scaled, as near as possible, according to the number of people affected by the non-compliance. In most cases this will be estimated using PAYE data. Where the penalty is in respect of a failure to comply with an unpaid contributions notice the exact number of people affected will be used where provided by a pension scheme.

Third party penalties

44. Third parties, e.g. trustees or managers of a pension scheme, payroll administrators, accountants or pension scheme administrators, could become liable to both fixed and escalating penalties. This could happen through their not complying with a third party notice if they have contributed towards an employer duty failure. In some circumstances they

may be subject directly to an employer duty themselves and could as a result be issued with a Compliance Notice.

45. We are proposing a fixed penalty of £500 and an escalating penalty of £200 per day for third parties. These rates reflect that third parties are providing a professional service to employers and as such should have a high standard of care.

46. We also considered ways of scaling penalties for third parties but none were viable. For example, not every third party would have an associated PAYE scheme and even where they do, the size of the scheme may bear no relation to the gravity or impact of their non-compliance. Nor can TPR always know the number of people affected by the third party's non-compliance.

Prohibited recruitment conduct penalties

47. There is a separate power for TPR to issue a fixed penalty notice where it believes an employer has contravened the 'prohibited recruitment conduct' measure³². This measure is designed to deter employers from trying to screen out of the recruitment process any job applicants who might want to save in a qualifying workplace pension.

48. Where an employer has carried out prohibited recruitment conduct, **we are proposing a system of fixed penalties that vary by employer size and are higher than other fixed penalties.** This reflects that employers who deliberately contravene this measure are in effect trying to avoid all of their duties under the reforms, and that escalating penalties cannot be applied for prohibited recruitment conduct. The proposed rates, based on PAYE scheme size, are as follows:

<u>Size of PAYE scheme</u>	<u>Penalty</u>
1 - 4 workers:	£1,000
5 - 49 workers:	£1,500
50 - 249 workers:	£2,500
250+ workers:	£5,000

49. We also considered a flat rate penalty of £1,000 but concluded that the scaled rate option should provide a more proportionate response and a stronger deterrent. We believe it is right that larger firms who are more likely to have HR departments able to advise on correct recruitment behaviour should face higher penalties.

Review of notices

50. Recipients of statutory notices under the regimes (e.g. Compliance Notices, penalty notices, unpaid contributions notice) will be able to ask for a review of a notice by TPR, and also present new evidence. TPR will also

³² See sections 50, 51 and 52.

be able to initiate a review of a notice if appropriate, and to change its decision as a result.

51. We are proposing:

- **That a person issued with a notice has up to 28 days to make an application for a review**, starting from the date the notice is issued. This is in line with current regulatory business practice.
- **Up to 18 months for TPR to initiate a review of a notice it has issued**, again starting from the date the notice is issued. As a person may request a review of a notice that is linked to notices or penalties that have been issued previously, an 18-month period will give TPR enough time to review earlier, related compliance actions.

Summary of proposals

We are consulting on the following proposals:

Information needed to check compliance

- Requiring employers to register compliance with TPR by 9 weeks after their staging date, and every 3 years subsequently
- Requirements on employers, pension schemes and pension providers to keep certain records for 6 years

Time limits on inducements compliance action

- A 6-month time limit in which complaints about being induced to leave pension saving can be made to TPR
- When TPR initiates an investigation without a complaint of inducement, limiting to 12 months the period over which it can look back and take action against any inducements identified

Ensuring payment of all contributions due

- Fixing a ‘due date’ of the 19th day of the month following the month in which workers contributions were deducted or when employer contributions were due, to allow TPR to issue a notice for unpaid pension contributions without having to ask the pension scheme when contributions became overdue
- Prescribing a 3-month period after which TPR may require non-compliant employers also to pay their workers’ outstanding contributions
- A rate of interest which TPR may require employers to apply to outstanding contributions which will be calculated as 4.9 per cent (an estimate of long-term equity return) plus Retail Price Index (RPI) per cent

- Where an employer refuses to calculate the amount owed, allowing TPR to estimate based on a worst-case scenario that assumes contributions are owed for all workers, on 8 per cent of the full band of qualifying earnings for each worker, for every month overdue

Penalties and reviews of compliance activity

- A £500 fixed penalty for non-compliance with employer duties or inducements, and an escalating penalty from £50 to £10,000 per day linked to employer size for persistent or serious non-compliance
- For prohibited recruitment conduct, a fixed penalty from £1,000 to £5,000 linked to employer size
- A 28-day time limit in which recipients can seek a review of a notice TPR has issued
- An 18-month time limit in which TPR can initiate a review of a notice it has issued

Part Ten – Commentary on draft Employers’ Duties (Registration and Compliance) Regulations 2010

PART 1 - General

Regulation 1 – Citation, commencement and interpretation

This is a general provision setting out citation, commencement and interpretation and defining key terms in relation to these regulations.

PART 2 - Registration

Regulation 2 – Registration: General

This provision prescribes the situations when an employer will be required to provide information to TPR about how they have met their auto-enrolment duties.

Paragraph (2)(a) prescribes that the employer must provide information during implementation, following the employer’s auto-enrolment date (including the auto-enrolment date that applies to those employers who successfully apply to auto-enrol early).

Paragraph (2)(b) prescribes that following implementation when the staging period has ended, the employer must provide information to TPR where they establish a PAYE scheme with workers for whom the employer pays PAYE income.

Paragraph (2)(c) prescribes that the employer must provide information to TPR following automatic re-enrolment or, in the absence of a duty to auto-re-enrol, 3 years since the employer’s last registration.

Regulation 3 – Registration: Post staging and new PAYE schemes

This provision prescribes the initial registration responsibilities for employers and the timeframes within which they must register. Paragraph (1)(a) specifies that during staging employers will be required to register within 9 weeks after their official auto-enrolment date.

Employers delaying auto-enrolment under s.4 or s.30 will still need to register at the same time as employers not delaying auto-enrolment, i.e. 9 weeks after the date on which they would have been required to auto-enrol their jobholders.

Under paragraph (1)(b) employers who come into being once staging is complete will be required to register 3 months after PAYE income is first payable in respect of any worker.

Paragraph (2) prescribes the information that employers will be asked to provide to TPR.

Paragraphs (2)(a) to (c) prescribe that contact information and details about the employer and – where a person is registering on the employer's behalf – contact details for that person and their relationship to the employer must be provided to TPR during registration. If a person registers on the employer's behalf, the employer will still be responsible legally for ensuring registration has been completed correctly.

Paragraphs (2)(d) to (f) prescribe the details of the employer's workers which must be provided for each PAYE scheme. This information will enable TPR to check compliance, by comparing with HMRC data and confirming with employers' chosen pension schemes where possible. This information is as follows:

- The number of workers in the PAYE scheme as at the staging date or the first day that the duties apply ((d)(i)). This may be compared with HMRC data;

Of the individuals in the PAYE scheme, those who have been enrolled into the employer's pension scheme:

- The number of jobholders who have been auto-enrolled by the end of the joining window (one month after either the staging date or the first day that the duties apply) ((d)(ii)(aa)), and the number who have opted into each of the employer's pension schemes by the registration date ((d)(ii)(bb));
- The number of jobholders who have been auto-enrolled but subsequently opted out by the registration date ((d)(iv));
- The number of workers without qualifying earnings who have become active members of a pension scheme by the registration date ((d)(v))

Of the workers in the PAYE scheme, those who have not been enrolled into the employer's pension scheme:

- Why they have not been enrolled into a pension ((d)(iii)), and the number of workers to whom each scenario applies – for example:
 - Because they are outside the age bands for automatic enrolment ((e)(i));
 - Because they have left the pension within the time period prescribed in regulations under s.3(4) (the current proposal is within the previous 12 months) ((e)(ii));

- Because the employer is delaying automatic enrolment under the postponement (s.4) or defined benefit and hybrid transitional periods (s.30) provisions ((e)(iii) and (e)(iv) respectively);
- Because they were already members of the pension scheme before the day on which the employers' duties applied to that employer (or the staging date) ((f)).

Paragraph (3) prescribes the information that employers must provide about their pension provision, which will allow TPR to verify with the pension provider what action the employer has taken. This information includes the provider name and address, and a reference ('the employer pension scheme reference') to identify the relationship between the pension scheme and the employer.

In the case of an occupational scheme, the employer pension scheme reference will be the scheme registry number allocated by TPR, plus the reference supplied by the pension provider to the employer (where there is one). For the personal accounts scheme, the reference will be allocated to the employer when they put their pension arrangements in place. For personal pension schemes, the reference will be given to employers by the provider prior to registration.

Consultation Questions

Regulation 3: Q.17 – In general, does the proposed registration process achieve the right balance between minimising additional burden and enabling TPR to check compliance effectively? Will the process work for small and large employers, employers with existing provision and those encountering pensions for the first time? Will it work for employers being staged in and new employers who set up afterwards?

Regulation 3: Q.18 – We propose requiring a number of pieces of information during registration. Is there any information that does not appear to be relevant?

Regulation 3: Q.19 – We propose requiring registration 9 weeks after the auto-enrolment date. Is this workable?

Regulation 3: Q.20 – We propose requiring new businesses to register 3 months after paying PAYE income in respect of their first worker. Will this work in practice? Will employers have a PAYE scheme number in time?

Regulation 4 – Registration: Re-registration

This provision prescribes the ongoing registration requirements for all employers with workers. Under paragraph (1), employers will be required to register 3 years after their first enrolment, either: 9 weeks following automatic re-enrolment or, in the absence of a duty to auto re-enrol, 3 years since the original due date of the employer's last registration.

Paragraph (2)(a) prescribes that employers will be required to confirm the key contact and business details provided. Under paragraph (2)(b) employers who have any workers eligible for re-enrolment will need to provide information equivalent to that provided about auto-enrolment at initial registration. This includes information about the pension provision used. Under paragraph 2(c), they will need to indicate where their pension arrangements have changed since the previous registration.

Under paragraph (2)(d)-(h) employers will be required to provide updated information on the workers in their PAYE scheme, equivalent to that provided at initial registration. The reasons for an employer not being required to automatically re-enrol a worker could include (i) where automatic enrolment has been postponed for a new employee, (ii) where the duty did not apply in respect of a particular worker because they were either younger than 22 or had reached pensionable age, or (iii) where the worker has left the pension scheme in the period prescribed under s.5(4) (currently within the previous 12 months).

Consultation Question

Regulation 4: Q.21 – We propose asking employers to re-register every 3 years to enable TPR to check compliance with automatic re-enrolment. Does this seem reasonable?

PART 3 - Compliance

Records and Information

Regulation 5 – Requirement to keep records

Paragraph (1) explains that certain persons are to be required to keep records listed in these regulations, and to provide those records to TPR when requested to do so.

Paragraph (2) prescribes who those persons are: an employer (paragraph 2(a)); a trustee or manager of an occupational pension scheme (paragraph 2(b)); and a provider of a personal pension scheme (paragraph 2(c)).

Paragraphs (3) and (4) prescribes that the records to be kept by employers are those listed in Regulation 6, while those to be kept by trustees and managers of occupational pension schemes and personal pension providers are those listed in Regulation 7.

Paragraph (6) prescribes that records must be able to be arranged according to an ‘employer pension scheme reference’. This means that employers will need to be able to produce records in a way that links them to each pension scheme they are using; and pension schemes and providers, to be able to produce records in a way that links them to each employer who has an arrangement with them. Further information on what this reference constitutes is in the commentary on regulation 3, above.

Regulation 6 – Records: Employers

The records to be retained by employers relate to the scheme or schemes used to satisfy the employer duty, including the enrolment process and the payment of contributions.

Sub-paragraphs (a) to (e) of paragraph 1 list the records relating to the scheme or schemes an employer is using: the name of each scheme, the name and address of the pension provider (where appropriate), the employer pension scheme reference, and, where an employer has certified that his pension scheme meets the relevant qualifying criteria, a copy of the certificate and any subsequent determinations as to its validity.

Sub-paragraphs (1)(f) to (1)(k) prescribes the records relating to the enrolment process which must be retained, including the processing of opt-outs and ‘opt-in’ and joining notices from jobholders and workers who are not eligible for automatic enrolment but who wish to become scheme members. The employer will need to keep a record (but not necessarily the original) of: (i) requests to ‘opt in’ ((1)(i)); (ii) joining notices (for workers without qualifying earnings) ((1)(j)); and jobholders’ consent to opt out ((1)(k)). An employer may meet the requirement by keeping a scanned copy of the appropriate form.

Paragraph (2) lists the records of contributions paid in respect of workers who have been enrolled into a pension: gross earnings ((2)(a)); the employer and worker contributions payable under the scheme rules or personal pension contract ((2)(b)); the amounts due by way of contributions in the relevant pay period, and the amount actually paid if this is different ((2)(c)); and the date on which the contributions were paid to the scheme ((2)(d)). A payment schedule, schedule of contributions or direct payment arrangements may be used to meet these requirements.

Paragraph (3) clarifies the meanings of two expressions used in this regulation, “earnings” and “relevant pay reference period”.

Regulation 7 – Records: Trustees, managers and providers

The records to be retained by trustees and managers of occupational pension schemes and by pension providers reflect TPR’s need to monitor overall enrolment and opt-out activity in order to identify trends and investigate possible breaches, such as inducement to opt out of pension saving.

Paragraph (1) prescribes the records that pension schemes must retain in relation to the enrolment process and opt-out:

- The employer pension scheme reference ((1)(a));
- The date on which each jobholder was automatically enrolled, or on which the employer made arrangements for a worker to be enrolled into the scheme on receipt of the appropriate notification made under section 3, 7 or 9 of the Pensions Act 2008 ((1)(b));

- In the case of jobholders who opt out, the fact that the jobholder opted out and the date on which the jobholder provided the properly completed opt-out form to the employer ((1)(c));
- Where a jobholder does not opt out but subsequently ceases to be a member of the scheme for any reason, the date on which active membership of that scheme ceased ((1)(d)).

Paragraph (2) prescribes the records to be retained in respect of members of schemes, in order to enable TPR to check that the employer has complied with the requirements for individual workers where appropriate. These align with the information that employers will need to give to pension schemes at the time of enrolment, under the automatic enrolment regulations. They are:

- The information provided by the employer to the scheme at enrolment ((2)(a));
- Each member's postal address, as notified by the scheme or member ((2)(b)) –there is no requirement on schemes or providers actively to seek out this information;
- A confirmation that the member is either an active or an inactive member of the scheme ((2)(c)).

Employers and pension schemes who keep personal data on jobholders who have opted out will not breach the Data Protection Act because they will be under a statutory duty to keep those data.

Consultation Question

Regulations 6 and 7: Q.22 – In general, does the proposed set of record-keeping requirements seem reasonable? Will there be particular difficulties in maintaining these records for certain types of employers or schemes, or in particular industries? Are there any that are in your view unnecessary and if so why?

Regulations 6 and 7: Q.23 – Are there records other than those set out here that you think should be included?

Regulation 7: Q.24 – We would like schemes to keep records of opt-outs in order to support enforcement action in relation to issues such as inducements. Schemes would only need to record instances of opting out or ceasing membership for each employer. Does this seem reasonable?

Regulation 8 – Period of preservation of records

Paragraph (1) prescribes that a record listed in these regulations is to be retained for a period of 6 years, starting on the day that the obligation to keep the record arises, except where paragraph (2) applies.

Paragraph (2) prescribes that records of opt-outs should be retained until the date on which the jobholder would next fall due for re-enrolment. This would be a maximum of 4 years.

Payment Failures

Regulation 9 - Due Date

This regulation prescribes the due date applying to employer and worker contributions for the purposes of issuing unpaid contributions notices. This due date is solely for the purposes of issuing the unpaid contributions notice. It will not affect regulations around pay reference periods, annual reconciliation and certification, nor affect other properties of the scheme agreement, such as the level of contributions. Schemes will not be obliged to make any changes to schedules as a result.

Paragraph (1)(a) prescribes the due date for all relevant contributions to an occupational defined contribution or workplace personal pension scheme as being the 19th day of the month following the month in which worker contributions **were deducted** by the employer. So, where worker contributions are normally deducted as part of the payroll process at the end of the month, say June, the due date for all unpaid contributions would be the 19th of July. ‘Relevant contributions’ is defined in the Pensions Act 2008 (s. 39) and covers contributions which the employer makes from salary deductions on the worker’s behalf, and those paid for by the employer.

Paragraph (1)(b) prescribes an alternative due date for contributions to an occupational defined contribution or workplace personal pension scheme. This is the 19th day of the month following the month in which contributions **were due under a payment schedule or direct payment arrangements**. Where, for whatever reason, no contributions have been deducted from the worker the due date would be the 19th of the month following the month that any contributions became due according to the payment schedule.

Paragraph (2) exempts employers using occupational defined benefit schemes or hybrid schemes from the first two sub-paragraphs and applies a different set of rules set out in sub-paragraph (3).

Paragraph (3)(a) prescribes that for employers who provide an occupational defined benefit scheme the due date for the payment of contributions will be whatever the due date is on their scheme’s schedule of contributions.

Paragraph (3)(b) prescribes that for employers who use a hybrid scheme the due date for the payment of contributions in relation to the defined benefit

element of the scheme will be whatever the due date is under the schedule of contributions. For the money purchase element the due date will be as per paragraph (1) of this regulation.

Consultation questions

Regulation 9: Q.25 – For the purposes of unpaid contributions notices we are proposing that TPR use a due date of the 19th of the month following the month in which contributions were deducted, or when employer contributions were due. This is intended to minimise the need for TPR to get detailed information from individual schemes. We propose an exception for defined benefit schemes, and the defined benefit components of hybrid schemes, where it is common for the employer due date to be longer than the 19th day of the following month. Are there any other categories of schemes which typically may have longer employer due dates in their schedules?

Regulation 10 - Unpaid relevant contributions

This regulation prescribes that the length of the prescribed period is 3 months, after which TPR can require an employer to pay both employer and worker unpaid or backdated contributions on the employer's own account.

Consultation question

Regulation 10: Q.26 – We have proposed that TPR cannot include in a compliance notice or unpaid contributions notice a requirement to pay both employer and worker contributions until a “prescribed period” of three months have passed. Would limiting in this way TPR’s ability to use this specific discretionary power strike the right balance between protecting the savings of individuals and not having a disproportionate impact on employers?

Regulation 11 – Contributions: Requirement to pay interest

This regulation prescribes the rate and applicable period for interest which TPR may require be paid on contributions an employer has failed to pay, whether this is a result of failing to comply with the employer duties, or failing to pay according to the schedule agreed with the scheme.

Paragraphs (1) and (2) provide that the rate of interest is determined by TPR using a two-part formula:

4.9 per cent (referred to as the ‘fixed component’) + Retail Price Index (RPI) (referred to as the ‘flexible component’).

The first half of this is fixed until the regulation is amended (prescribed in (2)(a)), whilst the second half (prescribed in (2)(b)), will vary monthly with the publication of the RPI. When RPI is positive, the total rate will be more than 4.9 per cent, and when RPI is negative, the total rate will be less than 4.9 per cent. Paragraph (2)(b)(ii) clarifies that prior to the publication of RPI in any given month, the RPI published in the previous month will apply.

Paragraph (3) prescribes the period over which interest is to be paid. Paragraph (3)(a) prescribes that the period begins on the ‘appropriate date’, a term defined in s. 38(5) of the Pensions Act 2008 and which is different for compliance notices and unpaid contributions notices. If this requirement is included in an unpaid contributions notice interest will be charged on the sum of outstanding contributions from the “due date” as defined by regulation 9 under s. 37(3) of the Pensions Act 2008. If included in a compliance notice following an employer duty breach interest will be charged on the amount of outstanding contributions from a trigger date specified in the notice, which will generally be the original date of the breach.

Paragraph (3)(b) confirms that the period ends when the employer complies with the steps specified in a compliance notice or, in the case of unpaid contributions notice when the outstanding amount specified in the notice has been paid.

Paragraph (4) prescribes that interest is to be calculated on a simple (per annum) basis.

Consultation questions

Regulation 11: Q.27 – We have proposed that where TPR requires an employer to calculate and pay interest on contributions, that this be calculated at 4.9% + RPI. Does this measure of interest provide fair and appropriate restitution? If not, what would be a better approach?

Regulation 12 – Contributions: Estimating contributions

This regulation provides the mechanism by which TPR can estimate the amount of unpaid contributions that an employer has failed to pay.

Paragraph (1) prescribes the formula to be used by TPR in estimating the amount of unpaid contributions, which translates as:

$$\text{Max. qualifying earnings in a } \quad \times 8 \text{ per cent } \times N \times \text{Months since} \\ \text{breach} \\ \text{12 month pay reference period}$$

The “N” multiplier corresponds to the number of jobholders affected: if that information does not exist in TPR’s opinion, the number of workers in the employer’s PAYE scheme.

This provides for a formula that is sufficiently high to use an estimate that broadly equals the worst case scenario for the amount of unpaid contributions. This paragraph also confirms that failure to pay may arise either as a result of failing to comply with the employer duty provisions or where contributions to a scheme have become overdue.

Paragraph (2) allows TPR to estimate contributions owed using certain sources of information additional to information provided by the employer. Paragraph (3) prescribes those sources.

Penalties

Regulation 13 - Fixed penalty notices

This Regulation prescribes that the level of the fixed penalty is £500. It does not cover penalties issued in relation to prohibited recruitment conduct (see “prohibited recruitment conduct”, below).

Consultation questions

Regulation 13: Q.28 – We propose a flat-rate fixed penalty of £500 for non-compliant employers. In most cases, this will have been preceded by informal contact from TPR and a statutory compliance notice. Escalating penalties are also available to TPR for very serious or persistent non-compliance. Does the proposed level of fixed penalty seem proportionate?

Regulation 13: Q.29 – We could offer a discount on the fixed penalty level for those who pay the penalty promptly. However, it is not practical to tie this to whether the underlying non-compliance has been rectified, given the range and type of behaviours that could be required to achieve compliance with the employer duties. Is it desirable and reasonable to offer such a discount? Would it be likely to increase rates of compliance with the employer duties or only affect compliance with the requirement to pay a penalty?

Regulation 14 - Escalating penalty notices

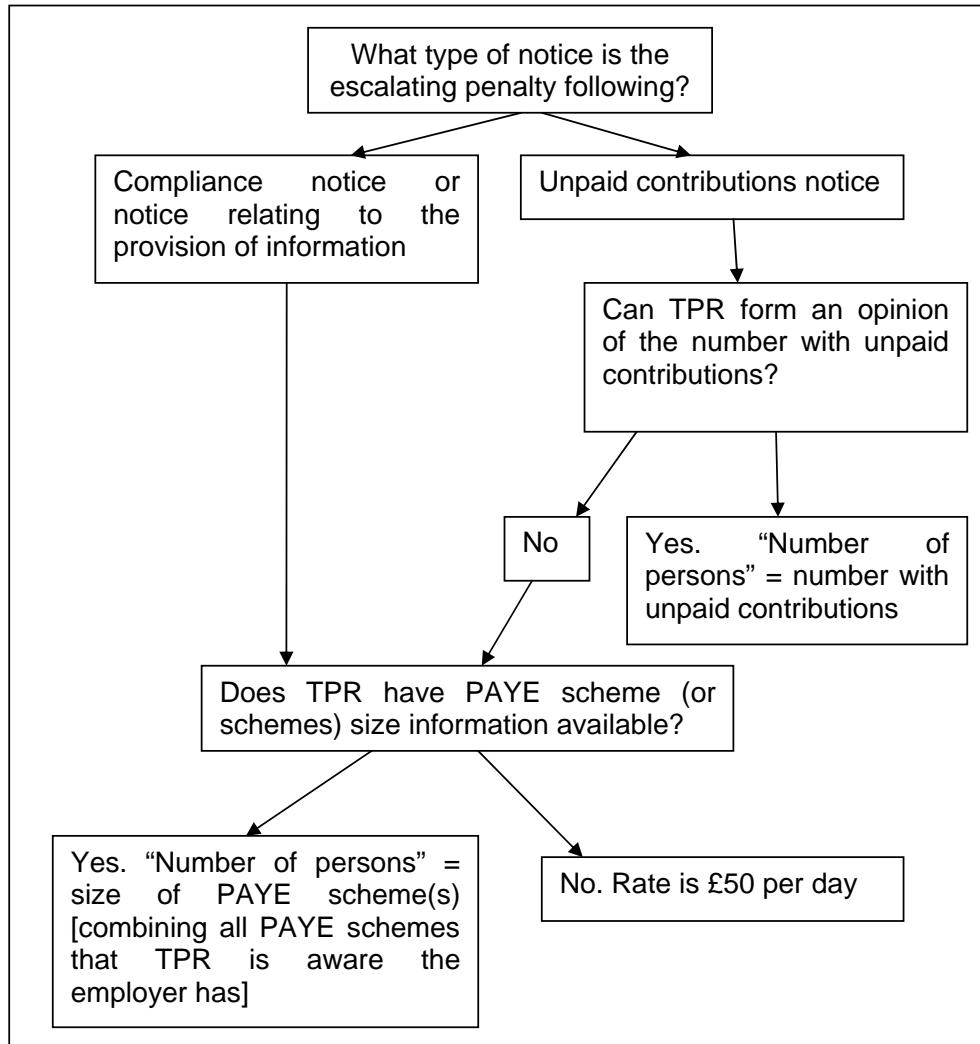
This regulation prescribes the structure and levels of the escalating penalty.

Paragraph (1) prescribes a £200 per day escalating penalty when an escalating penalty notice is issued to someone other than the employer of the affected person (usually termed “third party”). This applies to failure to comply with a third party notice, a compliance notice or a notice relating to the provision of information.

Paragraph (2) prescribes that the table of daily rates of escalating penalties shown in paragraph (3) applies in respect of non-compliance by an employer with:

- a compliance notice
- a notice relating to the provision of information
- an unpaid contributions notice

Paragraph (4) prescribes that paragraphs (5) provides several alternative definitions of “number of persons”, which can be presented as a decision tree (see box 1).



Box 1. How “number of persons” is defined for the escalating penalty notice in relation to employer non-compliance.

Paragraph (6) prescribes the information sources that can be used in conjunction with these definitions and paragraph (7) provides a default amount of £50 a day where TPR believes the number of persons cannot be established.

Regulation 15 – Penalty notices: Prohibited recruitment conduct

This regulation prescribes the structure and levels of the penalty applicable for prohibited recruitment conduct.

Paragraph (1) prescribes that this regulation applies where TPR issues a penalty notice to an employer if it believes that the employer has contravened the prohibition on certain forms of recruitment conduct or has failed to comply with a compliance notice issued in relation to prohibited recruitment conduct.

Paragraph (2) prescribes that the penalty is to be determined according to the number of persons as shown in a table.

Paragraph (3) explains that paragraphs (4), (5) and (6) prescribe how the number of persons is to be determined according to the information available to TPR, as set out in paragraphs (4) to (6).

Paragraph (4) prescribes that the number of persons is the number within an employer's PAYE scheme (or where TPR is of the opinion that there is more than one scheme then the total number within all schemes will apply).

Paragraph (5) prescribes that the number in paragraph (4) depends on the latest information reasonably available by the day that TPR issues an escalating penalty notice. The relevant information being that disclosed to TPR by HMRC under section 88 of the Pensions Act 2004.

Where TPR does not have relevant PAYE scheme information, the penalty level defaults to £1,000.

Review and issue of notices

Regulation 16 – Review of notices and Regulation 17 – Issue of notices

Regulation 16 prescribes the time limit for a recipient of a notice to apply for a review of that notice and the time limit for TPR to decide to otherwise review a notice.

Paragraph (2) prescribes that recipients of a notice will have 28 days within which to apply in writing for a review of a statutory notice issued by TPR.

Paragraph (3) prescribes that TPR has a time limit of 18 months within which it may independently review a notice.

The start date of both time periods is the date a notice is issued by TPR and both time periods mean in calendar days and months.

Regulation 17 supplements Regulation 16 and allows TPR to presume that a notice had been correctly issued where TPR has done certain things, such as posting that notice to a person's last known or notified address.

Inducements

Regulation 18 - Inducements

This regulation prescribes two limits on TPR's ability to issue a compliance notice in respect of a contravention of the inducements measure:

Paragraph (a) prescribes that a compliance notice may not be issued unless the contravention happened within 6 months before a complaint was made to TPR. In other words a complaint must be made within 6 months of an inducement for compliance action to be possible.

Paragraph (b) applies where no complaint has been made, but where TPR has instigated a proactive investigation following TPR's own risk analysis. This paragraph prescribes that a compliance notice may not be issued unless the contravention happened within 12 months before TPR informed the employer of a proactive investigation. This limit gives TPR the ability in effect to look back 12 months in such an investigation and take action against contraventions it identifies.

Consultation questions

Regulation 18: Q.30 – We propose that TPR can look back over 12 months when investigating inducements where a complaint has not been received. There may nevertheless be cases where persuasive evidence emerges only after 12 months. Is this a reasonable limit or should TPR be able to take compliance action over a longer period where it uncovers evidence of a breach of the inducements prohibition?

Part Eleven – Commentary on Order amending the Public Interest Disclosure (Prescribed Persons) Order 1999

Article 1 Citation and commencement

This is a general provision setting out citation and commencement.

Article 2 Amendment of the Public Interest Disclosure (Prescribed Persons) Order 1999

This article amends the Public Interest Disclosure (Prescribed Persons) Order 1999. It amends the entry in the schedule to that Order relating to the Pensions Regulator. That Schedule is a list of persons to whom qualifying disclosures may be made and the matters to which those disclosures may relate. If a person suffers detriment or dismissal as a result of making a qualifying disclosure, that treatment is unlawful. The amendment clarifies that the Schedule now refers to any disclosure made to TPR in connection with TPR's new objective in the 2008 Act of maximising compliance with the new employer duties and safeguards (prohibitions on inducements and certain forms of recruitment conduct). This is in addition to the existing protection for disclosures to TPR relating to occupational pension schemes and other private pension arrangements.

Part Twelve – Minimising refunds

Summary

This section covers changes to existing legislation which should assist in reducing the burden which refunds following opt-out could create.

Background

1. Section 49(8) of the Pensions Act 1995 states that pension contributions deducted from a worker's earnings must be paid to the trustees or managers of the scheme within a prescribed period.
2. Regulation 16 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 states that the prescribed period is 19 days commencing from the end of the month in which the amount is deducted from the earnings in question. For example contributions deducted on 1 October would have to be passed over by 19th November.
3. There is a similar requirement for workplace personal pensions (WPPs) where direct payment arrangements exist in section 111A (15)(b) of the Pensions Schemes Act 1993 and regulation 5 of The Personal Pension Schemes (Payments by Employers) regulations 2000.
4. The *19 day rule* was introduced as part of the post-Maxwell pension reforms. It seeks to mitigate the risk that pension contributions, once deducted remain in the employer's bank account invisible to the scheme trustees or the provider and at risk of misappropriation. Within the current 19 day rule the employer can hold onto contributions for a maximum of 50 days but no longer.

Opt-out and refunds

5. Under the new employer duty, a jobholder must become an active member of a qualifying scheme with effect from day one (the automatic enrolment date). The regulations provide that contributions must be deducted on the first occasion an individual is paid after that date.
6. Where a jobholder chooses to opt out, the effect is that they were never members of the scheme and therefore any contributions paid by the jobholder must be refunded.
7. Due to the 19 day rule outlined above, there will be times when contributions are deducted by the employer and will have to be paid over to the scheme during the joining and opt out window. These contributions would have to be refunded to the jobholder via the employer if they subsequently opt out.

8. In response to the consultation on the draft Pension (Automatic Enrolment) regulations 2009, employers and schemes said that having to pay over contributions and then subsequently refund those contributions for a jobholder who opts out creates significant burden and cost.
9. A significant cross section of stakeholders said that DWP should seek to find a wider legislative fix that will make the arrangements work better. Many suggested that we legislate so that contributions would not be taken until after the opt-out period. We decided against this option, as under the Act pension accrual starts from the automatic enrolment date. Legislating for this would create a significant contribution cliff-edge for jobholders and employers, which we believe is unacceptable from a policy perspective.

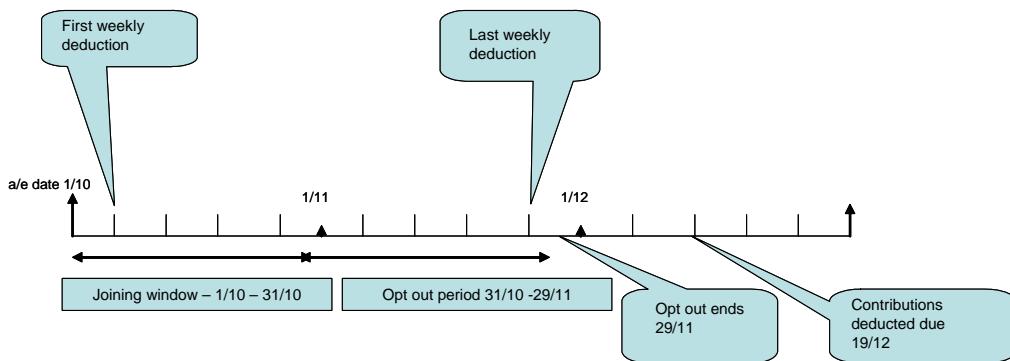
Amendment to the 19-day rule

10. A way of responding to stakeholder concerns and easing the administrative burden around refunds is to look at what employers have to do with worker contributions after they are deducted from a jobholder's salary, during the joining window and opt-out period.
11. Amending the 19-day rule and extending the due date for worker contributions deducted during the joining window and opt-out period would allow employers to hold onto contributions until after the opt out period has passed. This would reduce the need for schemes to refund worker contributions back to employers shortly after having received it, where the jobholder opts out and removes the investment risk of worker contributions losing value where immediate vesting occurs. It would also reduce cost and administration burden for employers who would be able to refund worker contributions out of existing funds.
12. We do not propose to alter the core principle that pension contributions must be paid to the scheme to a timetable agreed with trustees or the provider. We also do not intend to extend the timescale within which worker contributions must be paid over to the scheme on an ongoing basis beyond the opt-out period. Any contributions deducted after the end of the opt-out period would be required to paid over to the scheme by the 19th day of the month following deduction as the legislation currently requires.

Extending the due date

13. We propose to extend the deadline for payment for those contributions deducted during the joining window and opt-out period to the 19th day of the second month following the month in which the jobholder's automatic enrolment date applies. This makes the due date clearly identifiable and means contributions would not need to be passed over until after the opt-out period has ended. Further, it minimises the amount of extra days the employer will hold onto contributions as it effectively extends the current timescale by one month.

Diagram illustrating contributions deducted during the joining window and opt out period due 19th day of the 2nd month following the month in which the automatic enrolment date applies (based on the maximum timescales)



14. We considered other options, including extending the due date to:

- the 19th day of the month following the end of the opt out period;
- the 19th day of the 2nd month following deduction; and
- the 19th day of the 3rd month following deduction/automatic enrolment.

15. In order to minimise any increased risk to members' benefits it is vital that any amendment to the due date for contributions deducted during the joining window and opt-out period still ensures that contributions are paid over to the scheme as soon as possible after the opt-out period ends. The amendment should be simple and easy to reflect on a payment schedule and easy to implement. The option should not create any opportunity for manipulation or non compliance. We concluded that the other options could lead to detriment to the member for one or more of the above reasons.

16. This change for employers must be balanced against the effect any extension has on the protection of members' benefits. By extending the due date for those contributions deducted during the joining window and the opt-out period we would be allowing employers to hold onto monies for a longer period of time, so it is important that we carefully consider the impact on risk to individual's contributions, i.e. would this extension significantly increase the likelihood of funds being misappropriated or being lost through corporate insolvency. We would welcome views on the level of increased risk.

17. An extension to the due date of 1 month would mean that for an average member the extra contribution held would be around £55 (mean qualifying earnings for eligible individuals currently without a workplace pension are

around £13,000, the value of total monthly contributions of 8 per cent based on these qualifying earnings is £88, the jobholder contribution including tax relief is £55).

18. It is also important to consider the administrative cost and burden of any system changes and amendments to payment schedules that would be required to implement this due date change and compare that to the likely cost/burden saving achieved in relation to refunds. We would welcome feedback on these practical arrangements and changes that would need to be made.

Summary of proposals

We are consulting on the following proposal:

- Amending regulations so that contributions do not need to be paid over until the 19th day of the 2nd month following the month in which the automatic enrolment date applies.

Part Thirteen – Commentary on the Occupational and Personal Pension Schemes (19 Day Rule) (Amendment) Regulations 2010

Regulation 1

Paragraph (1) defines the scope of the regulation and details when they will come into force.

Regulation 2

This regulation prescribes that regulation 16 of the Occupational Pension Scheme (Scheme Administration) Regulations 1996 will be substituted for an alternative paragraph.

Paragraph (1) of the new regulation 16 outlines that the prescribed time in which an employer must pass on any contributions deducted to trustees or managers in all circumstances except those outlined in sub paragraph (2). The prescribed period is 19 days commencing from the end of the month in which the amount is deducted from the earnings.

Paragraph (2) prescribes the period in which an employer must pass on any contributions deducted to trustees or managers where a jobholder becomes an active member of an occupational pension scheme under the automatic enrolment, opt in or re-enrolment regulations in respect of any contributions deducted from the jobholder's automatic enrolment, automatic re-enrolment date or the enrolment date up to the end of the opt out period.

The prescribed period in these circumstances is a period starting from the automatic enrolment date and ending 19 days from the end of the month following the month in which automatic enrolment applies.

Paragraph (3) defines the terms automatic enrolment, automatic re-enrolment date, enrolment date, jobholder and opt out period.

Consultation questions

Regulation 2: Q.31 – We are proposing to lengthen the due date for contributions deducted during the joining window and opt out period by approximately one month to minimise costs involved in making refunds to those who opt out. Would this change significantly increase risk to members' benefits? If so, is this risk justifiable in relation to the cost/burden saving achieved for employers and schemes?

Regulation 2: Q.32 – Payment schedules would need to be updated to reflect the new due dates where a jobholder was auto-enrolled. How costly would it be to make these changes, as well as initial system changes? Are the costs likely to be outweighed by the savings from reduced refunds?

Regulation 3

Regulation 3 prescribes that regulation 5 of the Personal Pension Schemes (Payments by Employers) Regulations 2000 will be substituted with an alternative paragraph.

Paragraph (1) of the new regulation 5 prescribes the period for all circumstances except those outlined in Paragraph 2 as 19 days commencing on the day following the last day of the month in which the deduction was made.

Paragraph (2) prescribes the period in the circumstance where a jobholder becomes an active member of a personal pension scheme under the automatic enrolment, opt in or re-enrolment regulations in respect of all contributions deducted from the jobholders automatic enrolment date up to the end of the opt out period.

The prescribed period in these circumstances is a period starting from the automatic enrolment date and ending 19 days from the end of the month following the month in which automatic enrolment applies.

Paragraph (3) defines the terms automatic enrolment date, automatic re-enrolment date, enrolment date, jobholder and opt out period.

Part Fourteen – Summary of consultation questions

Employers' Duties (Implementation) Regulations 2010

Staging

Regulation 2: Q.1 – The staging duty date needs to specify on which date in a particular month an employer needs to auto-enrol. Should this be the first day of the month regardless of which day that falls? Alternatively, should it be the first working day of the month, or the first Friday of the month?

Regulation 3: Q.2 – If an employer wants to volunteer to bring forward their automatic enrolment date, TPR needs to be confident that the employer has allowed themselves enough time to get their scheme in place. A missed automatic enrolment date will trigger enforcement activity, which is not in the interests of employers or TPR. How should TPR establish that the employer will be ready? For example, should an employer be required to have a scheme in place before applying? Or should they be able to sign a declaration that they are confident they will be able to discharge their duties?

The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010

Automatic enrolment processes

Regulation 4: Q.3 – This regulation is designed to ensure that workers without qualifying earnings who may, exceptionally earn enough to gain jobholder status for isolated normal pay periods, but will not earn over the threshold of the qualifying earnings band for the whole year (accidental jobholders) do not fall under automatic enrolment. Does it inadvertently apply to workers with a zero hours contract?

Regulation 15: Q.4 – In the special circumstances outlined in sections 6(3) and 6(4) where a third party has taken action that either results in the jobholder no longer being an active member or results in the scheme ceasing to qualify, the regulations require employers to re-enrol jobholders immediately. Are there any circumstances where action could be taken by a third party to achieve these outcomes without the employer knowing about it in advance? We welcome your views on the timescales for re-enrolment in these scenarios.

Scheme quality

Defined benefit schemes

Regulation 27: Q.5 - The test scheme is one that re-values its pensions, in accordance with the final salary method set out in section 84(1) of the Pension Schemes Act 1993. We would welcome your views on the extent to which a career average scheme should be required to provide for revaluation? For

example, should schemes that provide only discretionary revaluation be able to qualify provided the discretion is exercisable by the trustees or managers of the scheme or if the scheme makes provision for discretionary revaluation in the statement of funding principles or in some other way for schemes that are not required to have statements of funding principles.

Regulation 29: Q.6 - Changes to State Pension Age mean that it will gradually increase to 68. Should the appropriate age in the test scheme similarly increase over time and if so how should the increase be applied? We would welcome views on our proposal in regulation 29.

Hybrid schemes

Regulation 32: Q.7 - We are keen to maximise the contributions made to schemes in which the member accrues a lump sum with which to secure an annuity or pension. We would welcome views on how we can ensure that a member's pension fund maintains its value over time? Our first proposal, would require annual accruals of 16% and annual increases linked to prices and capped at 2.5 per cent - as already required by Chapter 2 of Part 4 of the Pension Schemes Act 1993. (see regulation 28). Our alternative second proposal would require annual accruals of 8 per cent of qualifying earnings and increases equivalent to 3.5 per cent over and above those that are already required under regulation 28. Which is the right approach? If you disagree with both, how should the value of the fund be inflation-proofed?

Please note the additional consultation questions in the defined benefit and hybrid guidance, Annex F.

Non-UK schemes

Regulation 38: Q.8 – We would welcome your views on the extent to which non-UK pension schemes will be able to participate as qualifying schemes for the purposes of the Act.

Regulation 38: Q.9 – We are keen to ensure individuals who are automatically enrolled into non-UK schemes are protected from risks which may be higher with such schemes. These risks could include fraud, excessive charges, inappropriate or reckless investments, and difficulty accessing entitlements on retirement or on a transfer. Do the provisions of this regulation provide adequate protection for individuals being automatically-enrolled into non-UK schemes? What other safeguards might help? Would draft guidance on the use of these schemes be helpful and if so what should its scope be?

Regulation 38: Q.10 – One option for restricting the use of non-UK schemes to safeguard jobholders would be to allow schemes to qualify only if they are eligible for a form of UK tax relief. This would mean that in most cases these schemes could only be qualifying rather than automatic enrolment schemes, because UK tax relief is available only to migrants who were both resident outside the UK when they joined and also members of the non-UK scheme when they became UK residents. We would welcome your views on this.

Regulation 38: Q.11 – When a scheme does not qualify for UK tax relief, the total contributions are potentially less than the full 8 per cent of qualifying earnings which will be the standard for defined contribution schemes. We would welcome your views on how we can ensure jobholders receive the full amount.

Postponement

Regulation 40: Q.12 – We are keen to ensure that short term workers do not miss out on pension saving through employers' use of postponement. We propose that postponement may only be used for jobholders who will achieve active membership of a qualifying scheme. In other words, the employer must expect the jobholder still to be in post beyond the postponement period. Does this change provide sufficient protection for short term workers? Are there circumstances where short term workers could still miss out on pension saving due to postponement? If so, how might these be addressed?

Information to individuals affected by transitional period

Regulation 41: Q.13 – Jobholders whose employer decides to make use of the transitional period to gradually adjust to the reforms will be given information about the scheme and date when they will become scheme members and, the right to opt in earlier if they wish. Should this information be required within one month rather than the two months prescribed in the regulations?

Regulation 41: Q.14 – We would also welcome views as to whether there are any other key pieces of information which should be given to these individuals?

Certification

Regulations 47- 51: Q.15 - We would welcome views on the detailed operation certification process.

Please note the additional consultation questions in the certification guidance, Annex F.

Rules for Hybrid Schemes

Rules for hybrid schemes: Q.16 - We would welcome views on whether:

- we have captured all of the possible permutations of hybrid schemes; and
- the descriptions accurately reflect the type of hybrid schemes that we are trying to capture and the proposed quality requirements set out in the rules and guidance are workable for them.

Employers' Duties (Registration and Compliance) Regulations 2010

Registration

Regulation 3: Q.17 – In general, does the proposed registration process achieve the right balance between minimising additional burden and enabling TPR to check compliance effectively? Will the process work for small and large employers, employers with existing provision and those encountering pensions for the first time? Will it work for employers being staged in and new employers who set up afterwards?

Regulation 3: Q.18 – We propose requiring a number of pieces of information during registration. Is there any information that does not appear to be relevant?

Regulation 3: Q.19 – We propose requiring registration 9 weeks after the auto-enrolment date. Is this workable?

Regulation 3: Q.20 – We propose requiring new businesses to register 3 months after paying PAYE income in respect of their first worker. Will this work in practice? Will employers have a PAYE scheme number in time?

Regulation 4: Q.21 – We propose asking employers to re-register every 3 years to enable TPR to check compliance with automatic re-enrolment. Does this seem reasonable?

Record-keeping

Regulations 6 and 7: Q.22 – In general, does the proposed set of record-keeping requirements seem reasonable? Will there be particular difficulties in maintaining these records for certain types of employers or schemes, or in particular industries? Are there any that are in your view unnecessary and if so why?

Regulations 6 and 7: Q.23 – Are there records other than those set out here that you think should be included?

Regulation 7: Q.24 – We would like schemes to keep records of opt-outs in order to support enforcement action in relation to issues such as inducements. Schemes would only need to record instances of opting out or ceasing membership for each employer. Does this seem reasonable?

Payment failures

Regulation 9: Q.25 – For the purposes of unpaid contributions notices we are proposing that TPR use a due date of the 19th of the month following the month in which contributions were deducted, or when employer contributions were due. This is intended to minimise the need for TPR to get detailed information from individual schemes. We propose an exception for defined benefit schemes, and the defined benefit components of hybrid schemes,

where it is common for the employer due date to be longer than the 19th day of the following month. Are there any other categories of schemes which typically may have longer employer due dates in their schedules?

Regulation 10: Q.26 – We have proposed that TPR cannot include in a compliance notice or unpaid contributions notice a requirement to pay both employer and worker contributions until a “prescribed period” of three months have passed. Would limiting in this way TPR’s ability to use this specific discretionary power strike the right balance between protecting the savings of individuals and not having a disproportionate impact on employers?

Regulation 11: Q.27 – We have proposed that where TPR requires an employer to calculate and pay interest on contributions, that this be calculated at 4.9% + RPI. Does this measure of interest provide fair and appropriate restitution? If not, what would be a better approach?

Penalties

Regulation 13: Q.28 – We propose a flat-rate fixed penalty of £500 for non-compliant employers. In most cases, this will have been preceded by informal contact from TPR and a statutory compliance notice. Escalating penalties are also available to TPR for very serious or persistent non-compliance. Does the proposed level of fixed penalty seem proportionate?

Regulation 13: Q.29 – We could offer a discount on the fixed penalty level for those who pay the penalty promptly. However, it is not practical to tie this to whether the underlying non-compliance has been rectified, given the range and type of behaviours that could be required to achieve compliance with the employer duties. Is it desirable and reasonable to offer such a discount? Would it be likely to increase rates of compliance with the employer duties or only would it only affect compliance with the requirement to pay a penalty? Inducements

Regulation 18: Q.30 – We propose that TPR can look back over 12 months when investigating inducements where a complaint has not been received. There may nevertheless be cases where persuasive evidence emerges only after 12 months. Is this a reasonable limit or should TPR be able to take compliance action over a longer period where it uncovers evidence of a breach of the inducements prohibition?

The Occupational and Pensions Schemes (19 Day Rule) (Amendment) Regulations 2010

Regulation 2: Q.31 – We are proposing to lengthen the due date for contributions deducted during the joining window and opt out period by approximately one month to minimise costs involved in making refunds to those who opt out. Would this change significantly increase risk to members’ benefits? If so, is this risk justifiable in relation to the cost/burden saving achieved for employers and schemes?

Regulation 2: Q.32 – Payment schedules would need to be updated to reflect the new due dates where a jobholder was auto-enrolled. How costly would it be to make these changes, as well as initial system changes? Are the costs likely to be outweighed by the savings from reduced refunds?

Annex A – Draft Employers’ Duties (Implementation) Regulations 2010

STATUTORY INSTRUMENTS

2010 No.

PENSIONS

The Employers’ Duties (Implementation) Regulations 2010

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

The Secretary of State, in exercise of the powers conferred by sections 12, 29, 30 and 144 of the Pensions Act 2008(1), makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employers’ Duties (Implementation) Regulations 2010 and shall come into force on xxxx 2012.

(2) In these Regulations—

“the Act” means the Pensions Act 2008;

“employer” has the meaning given in regulation 2;

“employer pension scheme reference” has the same meaning as in regulation 1 of the Employers’ Duties (Registration and Compliance) Regulations 2010(2);

“the employers’ duties” means sections 2 to 9 of the Act;

“HMRC” means Her Majesty’s Revenue and Customs;

“PAYE income” has the same meaning as in section 683 of the Income Tax (Earnings and Pensions) Act 2003(3);

“PAYE scheme” means the HMRC record allocated to an employer who employs a worker or workers to whom PAYE income is payable and a corresponding reference number is issued to enable the employer to pay over amounts deducted to HMRC; and

“staging date” means the date when the employers’ duties apply to employers, prescribed in the final column of the table in regulation 4.

(1) c.30.

(2) S.I. 2010/xxxx.

(3) c.1. Section 683 has been amended but not in a way material to these Regulations.

Application of the employers' duties to employers

2.—(1) This regulation and regulations 3 and 4 set out when the employers' duties apply to employers described in the table in regulation 4 (and in Schedule 1).

(2) For the purposes of these regulations an employer is a person within the meaning of section 88(7) of the Act who—

(a) has a PAYE scheme of any size, determined by the Regulator in accordance with paragraphs (3) and (4), and

(b) meets any other description contained in the table in regulation 4 (and in Schedule 1).

(3) The size of an employer's PAYE scheme means the number of persons within that scheme.

(4) The number of persons within a PAYE scheme is based on the latest information available to the Regulator, as at xxxx 2012.

(5) Where—

(a) the employers' duties apply to an employer in accordance with the table in regulation 4, and

(b) for any reason, an employer has more than one PAYE scheme,

those duties apply to that employer in respect of every person contained in those PAYE schemes.

(6) Any employer that has a PAYE scheme that was established between—

(a) the date specified in paragraph (4), and

(b) up to (but not including) xxxx April 2015,

falls to be treated as a new employer in accordance with the table in regulation 4.

(7) Where paragraph (6) applies, the employers' duties do not apply to such an employer until that PAYE scheme is established and then only in accordance with the table in regulation 4.

(8) Where an employer has a PAYE scheme that was established at any date from xxxx April 2015 and the employers' duties do not already apply to that employer, those duties apply to that employer from the day that that scheme is established.

(9) Regulation 3 makes provision on how the employers' duties are to apply to an employer before the staging date corresponding to its description (in accordance with the table in regulation 4).

Early automatic enrolment

3.—(1) In this regulation—

(a) "date A" means any staging date before the staging date corresponding to an employer's description, as prescribed in the final column of the table in regulation 4, and

(b) "date B" means the staging date corresponding to that employer's description, as prescribed in the final column of the table in regulation 4.

(2) Where—

(a) an employer falls within any description in the first column of the table in regulation 4, and

(b) that employer—

(i) makes contact with a pension scheme which it considers could be used to comply with the employers' duties,

(ii) secures the agreement of the trustee or manager (or scheme administrator or provider) of that scheme that it could be used by the employer to comply with those duties from a specific date A, and

(iii) notifies the Regulator accordingly in writing (including by providing an employer pension scheme reference), at any time before the date specified in the second column of the table in regulation 4, corresponding with that date A,

the employers' duties apply to that employer from that date A.

(3) Where the conditions in paragraphs (2)(a) and (b) are satisfied, an employer is notified by the Regulator that the employers' duties will apply to that employer from date A.

(4) Where the condition in paragraph (2)(a) is satisfied but the condition in paragraph (2)(b) is not satisfied, the employers' duties apply to an employer from date B.

Staging of the employers' duties

4.—(1) Except where an employer satisfies the conditions for early automatic enrolment in regulation 3(2)(a) and (b), the employers' duties do not apply to employers described in the first column of the following table until the staging dates prescribed in the final column.

(2) Where—

- (a) a date prescribed in the following table falls on a day which is not a working day, then
- (b) that date is to be treated as the next working day (and for the purposes of this paragraph “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday).

Table 1 – This table is included for illustrative purposes only.

<i>Employer size (or additional description)</i>	<i>Date before which notification to automatically enrol early must be sent</i>	<i>Staging date</i>
25,000 or more	1st September 2012	1st October 2012
8000-24,999	1st September 2012	1st October 2012
		1st October 2012
		1st October 2012
Less than 50 and specified in Schedule 1		
New (PAYE scheme established between 1st April 2012 and 31st December 2012)		1st June 2015

New	1st July 2015
New	1st August 2015
New	1st September 2015

Transitional periods for money purchase and personal pension schemes

5. For the purposes of section 29 of the Act (transitional periods for money purchase and personal pension schemes)—

- (a) the first transitional period is 3 years, beginning with the coming into force of section 20 (quality requirement: UK money purchase schemes)(1), and
- (b) the second transitional period is 1 year, beginning with the end of the first transitional period.

Transitional period for defined benefits and hybrid schemes

6. For the purposes of section 30 of the Act (transitional period for defined benefits and hybrid schemes) the transitional period for defined benefits and hybrid schemes is 3 years, beginning with the day on which section 3 comes into force(2).

SCHEDULE 1

Regulation 4

PAYE reference numbers of employers to whom the employers' duties apply

1. For the purposes of the first column of the table in regulation 4, the employers described there are those which have a PAYE scheme corresponding to a reference number specified in the following table.

[The PAYE reference numbers of the schemes selected for the Test Group stage are to be inserted here.]

(1) Section 20 of the Act came into force on 1st October 2012, by virtue of S.I. xxxx/xxxx.

(2) Section 3 of the Act came into force on xxxx 2012, by virtue of S.I.xxxx/xxxx.

Annex B – Draft Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010

To Note: The greyed out regulations included in this draft statutory instrument are the revised automatic enrolment regulations based in responses to the consultation exercise in March 2009. These regulations are not part of this consultation and are only included for context as they relate to other regulations being consulted on as part of this document.

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

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

2010 No.

PENSIONS

The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010

Made - - - - - ***

Coming into force - - - ***

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 2(3), 3(2), (5) and (6), 4(1) and (3), 5(2) and (4), (6), (7) and (8), 6(1)(b) and (2), 7(4), (5) and (6), 8(2)(b), (3), (4), (5) and 8(6), 9(3), 10, 15, 16(2) and (3)(c), 18(c), 22(4) to (7), 23(1)(b) and (3), 24(1)(a) and (b), 25, 27, 28(5) to (7), 30(6)(c), 33(2), 99(1) and 144(2) and (4) of the Pensions Act 2008(2), makes the following Regulations:

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

PART 1

Citation, commencement and interpretation

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 and shall come into force on [].

(2) In these Regulations—

(1) Section 99 of the Pensions Act 2008 is cited for the meaning it gives to ‘prescribed’ and ‘regulations’.
(2) 2008 c.30.

“the Act” means the Pensions Act 2008;

“the 1993 Act” means the Pension Schemes Act 1993(1);

“the 1995 Act” means the Pensions Act 1995(2);

“automatic enrolment date” has the meaning given by section 3(7) (automatic enrolment) of the Act;

“automatic re-enrolment date” means the date determined in accordance with regulation 14;

“certification period” means the period specified in regulation 47(3);

“joining notice” means a notice given under section 9(2) (workers without qualifying earnings) of the Act;

“opt in notice” means a notice given under section 7(3) (jobholder’s right to opt in) of the Act; and

“opt out notice” means a notice in the form set out in Schedule 1;

“relevant pay reference period” means—

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

Enrolment information

2.—(1) In these Regulations “enrolment information” means the following information—

- (a) a statement in the following terms ‘You have been or will be automatically enrolled into a pension scheme to help you to save for your retirement’;
- (b) the jobholder’s automatic enrolment date;
- (c) the name, address, telephone number and electronic contact details of the scheme in respect of which the jobholder is or will be an active member;
- (d) the value of any contributions payable to the scheme by the employer and the jobholder in any relevant pay reference period;
- (e) a statement that any contributions payable to the scheme by the jobholder have been or will be deducted from any qualifying earnings or pensionable pay due to the jobholder in any relevant pay reference period;
- (f) confirmation as to whether tax relief is or will be given in accordance with section 192 (relief at source) or 193 (relief under net pay arrangements) of the Finance Act 2004(3);
- (g) a statement that the jobholder may remain an active member of the scheme without employer interference unless the jobholder is or becomes an active member of another qualifying scheme;
- (h) a statement that the jobholder has a right to opt out of the scheme during the opt out period;
- (i) a statement indicating the start and end date of the opt out period applicable to the jobholder, where that information is known to the employer prior to the employer giving the enrolment information to the jobholder;
- (j) the source from which the opt out notice may be obtained;
- (k) a statement that opting out means that the jobholder will be treated for all purposes as not having become an active member of the scheme on that occasion;
- (l) a statement that after an opt out notice is received by the employer, any contributions paid by the jobholder will be refunded to the jobholder by the employer;

(1) 1993 c.48.
(2) 1995 c.26.
(3) 2004 c.12.

- (m) a statement that where the jobholder opts out they may opt in, in which case the employer will be required to arrange for that jobholder to become an active member of an automatic enrolment scheme once in any 12 month period;
- (n) a statement that after the opt out period the jobholder may cease to make contributions towards their pension in accordance with scheme rules;
- (o) a statement that a jobholder who opts out or who ceases active membership of the scheme will be automatically re-enrolled into an automatic enrolment scheme by the employer in accordance with regulations made under section 5 (automatic re-enrolment) of the Act;
- (p) a statement giving details of where to obtain further information about pensions and saving for retirement.

(2) The information given to the jobholder under paragraph (1)(d) must include information on any change in the value of any contributions payable to the scheme by the employer or jobholder in any relevant pay reference period which will occur as a result of any changes to contributions brought about by the transitional periods for money purchase and personal pension schemes under section 29 (transitional periods for money purchase and personal pension schemes) of the Act.

(3) For the purposes of this regulation “the value” of contributions may be expressed as a fixed amount or a percentage of any qualifying earnings or pensionable pay due to the jobholder in any relevant pay reference period.

Jobholder information

- 3.—(1) In these Regulations “jobholder information” means the jobholder’s—
- (a) name;
 - (b) date of birth;
 - (c) postal residential address;
 - (d) gender;
 - (e) automatic enrolment date;
 - (f) national insurance number;
 - (g) the value of gross earnings due to the jobholder in any relevant pay reference period (if this information is available to the employer);
 - (h) postal work address;
 - (i) individual work e-mail address, (if an individual work e-mail address is allocated to that jobholder);
 - (j) personal e-mail address (if the employer holds this information).
- (2) “Jobholder information” also includes the value, if any, of contributions payable by—
- (a) the employer; and
 - (b) the jobholder,

in any relevant pay reference period.

(3) For the purposes of this regulation “value” may be expressed as a fixed amount or a percentage.

Pay reference periods for the purposes of the Act

4.—(1) Subject to paragraph (3), the period for the purposes of the pay reference period in section 1(1)(c) (jobholders) of the Act is—

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

(2) The period 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 is—

- (c) a period of 12 months;
- (d) where an employer gives a certificate under section 28 (sections 20, 24 and 26: certification that quality requirement satisfied), the certification period; or
- (e) in the case of a person who is a jobholder in relation to an employer for a period of less than 12 months, the period during which that person is a jobholder in relation to that employer.

(3) Where under a contract of employment a jobholder receives a regular wage or salary of less than the amount referred to in section 13(1)(a) (qualifying earnings) of the Act during a period of 12 months and their gross earnings will not exceed that amount during that same period, the period for the purposes of section 1(1)(c) for that jobholder is a period of 12 months.

5. A person's earnings in any pay reference period shall be determined by calculating the sum of any gross earnings payable to that person in the relevant pay reference period.

6. For the purposes of regulations 4 and 5, "earnings" means sums of any of the descriptions mentioned in section 13(3) (qualifying earnings) of the Act that are payable to a person in connection with that person's employment.

PART 2

Automatic enrolment, opt out and refunds

Arrangements to achieve active membership

7.—(1) The arrangements the employer must make in accordance with section 3(2) (automatic enrolment) of the Act are to enter into arrangements with—

- (a) the trustees or managers of an automatic enrolment pension scheme which is an occupational pension scheme, so that before the end of a period of one month beginning with the automatic enrolment date the jobholder to whom section 3 of the Act applies becomes an active member of that scheme with effect from the automatic enrolment date; or
- (b) the provider of an automatic enrolment pension scheme which is a personal pension scheme, so that before the end of a period of one month beginning with the automatic enrolment date the jobholder to whom section 3 of the Act applies is given information about the terms and conditions mentioned in paragraph (3) of the agreement to be deemed under paragraph (2).

(2) Where the employer enters into arrangements with a personal pension scheme provider under paragraph (1)(b), the jobholder is deemed to have entered into an agreement to be an active member of that scheme with effect from the automatic enrolment date, on the later of—

- (a) the date on which the provider gives the information required by paragraph (1)(b); or
- (b) the date on which the employer gives the jobholder the enrolment information in accordance with regulation 8(1)(a).

(3) The terms and conditions of an agreement deemed under paragraph (2) must, as a minimum, specify—

- (a) the nature and aim of the product;
- (b) the services to be provided by the provider;
- (c) the value of any contributions payable by the jobholder;
- (d) deductions and charges;

- (e) in the absence of a choice made by the jobholder, the investment strategy adopted by the provider in relation to any contributions payable to the scheme by or in respect of the jobholder.

8.—(1) Subject to paragraph (2), for the purposes of the arrangements under section 3(2) of the Act, at any time before the end of a period of one month beginning with the automatic enrolment date, the employer must give—

- (a) the jobholder the enrolment information in writing;
- (b) the trustees or managers of the occupational pension scheme or the personal pension scheme provider the jobholder information.

(2) The requirement in paragraph (1)(b) does not apply in relation to the information specified in regulation 3(1)(g), (h), (i), (j) or (2), if the trustees or managers of the occupational pension scheme notify, or the personal pension scheme provider notifies, the employer that they do not require that piece of information for the purposes of arrangements under section 3(2) of the Act.

(3) Where the information referred to in regulation 3(1)(f) is not available to the employer on the automatic enrolment date, the employer must give the trustees or managers of the occupational pension scheme or the personal pension scheme provider that information within one month from the date on which the employer receives it.

9. For the purposes of the arrangements under section 3(2) of the Act, an employer must, on or after the automatic enrolment date, deduct any contributions payable by the jobholder to the scheme, from any qualifying earnings or pensionable pay due to the jobholder in any relevant pay reference period.

Opting Out

10.—(1) A jobholder who has become an active member of an occupational pension scheme or a personal pension scheme in accordance with arrangements under section 3(2) of the Act, may give notice under section 8 (jobholder's right to opt out) of the Act by giving their employer an opt out notice completed and submitted in accordance with this regulation.

(2) For notice to be effective for the purposes of section 8 of the Act the requirements contained in paragraphs (a) or (b) and (c) and (d) must be satisfied—

- (a) where the jobholder has become an active member of an occupational pension scheme, the requirement to be satisfied is that the jobholder must give their employer a valid opt out notice within a period of one month beginning with the later of—
 - (i) the date on which the jobholder became an active member of the scheme in accordance with regulation 7(1)(a), or
 - (ii) the date on which the jobholder was given the enrolment information;
- (b) where the jobholder has become an active member of a personal pension scheme, the requirement to be satisfied is that the jobholder must give their employer a valid opt out notice within a period of one month beginning with the date on which the agreement was deemed under regulation 7(2);
- (c) the requirement to be satisfied is that notice given by the jobholder under section 8 of the Act must be given by an opt out notice in the form set out in Schedule 1;
- (d) the requirement to be satisfied is that the opt out notice must—
 - (i) be signed by the jobholder, or
 - (ii) where the notice is in an electronic format, include a statement confirming that the jobholder personally submitted the notice.

(3) Where an employer is given a valid opt out notice, the employer must inform the scheme in which the jobholder is an active member that a valid opt out notice has been received.

(4) An employer must not give a jobholder an opt out notice.

(5) A jobholder may only obtain an opt out notice from the scheme in which that jobholder is an active member.

11.—(1) An opt out notice is invalid if—

- (a) it is not in the form set out in Schedule 1;
- (b) it does not include the jobholder's full name;
- (c) it does not include the jobholder's national insurance number or date of birth;
- (d) it is not signed by the jobholder, or where the notice is on an electronic format, authorised by a statement confirming that the jobholder personally submitted the notice;
- (e) it is not dated.

(2) Where the employer is given an invalid opt out notice—

- (a) the employer must inform the jobholder of the reason for the invalidity; and
- (b) regulation 10 is modified so that for the reference to “one month” in regulation 10(2)(a) and (b) there is substituted “6 weeks”.

Refunds

12.—(1) Where an employer receives a valid opt out notice, that employer must refund to the jobholder any contributions which were deducted from the jobholder's qualifying earnings or pensionable pay and any contributions paid to the scheme by the jobholder, except where any of those refunds are required to be paid as tax.

(2) Where a scheme receives the information required by regulation 10(3), the trustees or managers of the occupational pension scheme or the provider of the personal pension schemes, as the case may be, must refund to the employer before the refund date any contributions made to the scheme by the jobholder and any contributions made to the scheme made by the employer on behalf or in respect of the jobholder

(3) For the purposes of this regulation “the refund date” is—

- (a) the day one month from the date on which the employer is given the opt out notice, or
- (b) where the opt out notice is given to the employer after the employer's payroll arrangements have closed, the first day of the second relevant pay reference period beginning with the date on which the opt out notice is given.

PART 3

Automatic re-enrolment

Automatic re-enrolment dates

13.—(1) Subject to paragraphs (2), (3) and (4), the automatic re-enrolment date applicable for the purposes of section 5 (automatic re-enrolment) of the Act—

- (a) is the date 3 years after the date on which sections 2 to 8 of the Act first apply in the case of the employer; and
- (b) the date that occurs every 3 years after that.

(2) In case under section 6(3) (timing of automatic re-enrolment) of the Act, the automatic re-enrolment date is the day after the day on which—

- (a) the jobholder ceases to be an active member of the scheme; or
- (b) the scheme ceases to be a scheme of the relevant kind in accordance with section 4 (postponement of automatic enrolment) of the Act.

(3) In a case under section 6(4) of the Act, the automatic re-enrolment date applicable for the purposes of section 5 is the day after the day on which—

- (a) the jobholder ceases to be an active member of the scheme; or
- (b) the scheme ceases to be a qualifying scheme.

(4) In a case under section 6(5) of the Act, the automatic re-enrolment date applicable for the purposes of section 5 is the day on which all the requirements of section 1(1) (jobholders) of the Act are met (so that the person is a jobholder from that date).

Arrangements to achieve active membership

14.—(1) Except where a jobholder becomes an active member of an automatic enrolment scheme under paragraph (2) or (3) of this regulation, the arrangements prescribed in regulations 7, 8 and 9 are the arrangements prescribed for the purposes of section 5 of the Act, but with the following modifications—

- (a) in regulation 7 for all references to “section 3” substitute “section 5”;
- (b) in regulations 7, 8 and 9 for all references to “section 3(2)” substitute “section 5(2)”; and
- (c) in regulations 7, 8 and 9 for all references to “the automatic enrolment date” substitute “the automatic re-enrolment date”.

(2) Where a jobholder is a member (but not an active member) of an automatic enrolment scheme which is a personal pension scheme before their automatic re-enrolment date, the employer may, before the end of a period of one month beginning with the automatic re-enrolment date, meet the obligation in section 5(2) of the Act by—

- (a) entering into arrangements with the provider of the scheme in which the jobholder is a member so that the jobholder becomes an active member of that scheme; and
- (b) satisfying the requirements contained in regulation 8.

(3) In a case under section 6(5) of the Act, where a jobholder is a member (but not an active member) of an automatic enrolment scheme prior to their automatic re-enrolment date, the employer may, before the end of a period of one month beginning with the automatic re-enrolment date, meet the obligation in section 5(2) of the Act by entering into arrangements with the trustees or managers, or provider, of the scheme in which the jobholder is a member so that the jobholder becomes an active member of that scheme.

(4) For the purposes of this regulation a jobholder is an active member of an automatic enrolment scheme if—

- (a) the jobholder is a member under the scheme; and
- (b) contributions are paid to the scheme by the employer in respect of the jobholder.

(5) Where the provision in paragraph (4) conflicts with the provisions of an occupational or personal pension scheme—

- (a) the provision mentioned in paragraph (4), to the extent that it conflicts, overrides the provisions of the scheme; and
- (b) the scheme has effect with such modifications as may be required in consequence of paragraph (4).

Jobholders excluded from automatic re-enrolment

15. For the purposes of section 5(4) of the Act the prescribed period is the period of 12 months prior to the automatic re-enrolment date.

Opting out

16. The arrangements prescribed in regulations 10 and 11 are the arrangements prescribed for the purposes of section 5 of the Act, but with the modification that in paragraph (1) of regulation 10 for “section 3(2)” substitute “section 5(2)”.

Refunds

17. The arrangements prescribed in regulation 12 are the arrangements prescribed for the purposes of section 5 of the Act.

PART 4

Jobholders opting in to pension saving

Information on the right to opt in to pension saving

18.—(1) Subject to paragraph (3), at any time before the end of a period of one month beginning with the date on which section 7 (jobholder’s right to opt in) of the Act first applies to the jobholder, the employer must give the jobholder the information specified in paragraph (2).

(2) The information, which must be given in writing is—

- (a) a statement that the jobholder may, by notice, require the employer to make arrangements for the jobholder to join an automatic enrolment scheme;
- (b) a statement that the opt in notice must be in writing and be signed by the worker and where the notice is in an electronic format, include a statement confirming that the jobholder personally submitted the notice;
- (c) a statement that the opt in notice must be given to the employer;
- (d) where the jobholder may become an active member of a money purchase scheme or a personal pension scheme—
 - (i) a statement that the jobholder may receive a contribution to the pension scheme from the employer and the value of that contribution in any relevant pay reference period, and
 - (ii) the value of the contributions which the jobholder will be required to make in any relevant pay reference period; and
- (e) details of where to obtain further information about pensions and saving for retirement.

(3) Paragraph (1) does not apply to jobholders who give notice under section 8 (jobholder’s right to opt out) of the Act.

(4) For the purposes of this regulation, “the value” of contributions may be expressed as a fixed amount or a percentage of any qualifying earnings or pensionable pay due to the jobholder in any relevant pay reference period.

Opt in notices and arrangements to achieve active membership

19.—(1) An opt in notice must—

- (a) be given to the employer;
- (b) be in writing; and, save where paragraph (2) applies
- (c) be signed by the jobholder.

(2) Where the opt in notice is in an electronic format, it must include a statement confirming that the jobholder personally submitted the notice.

(3) Where an employer is given an opt in notice, the arrangements prescribed in regulations 7, 8 and 9 are the arrangements prescribed in relation to the jobholder who gave that employer an opt in notice, but with the following modifications—

- (a) in regulation 7 for all references to “section 3” substitute “section 7”;
- (b) in regulations 7, 8 and 9 for all references to “section 3(2)” substitute “section 7(3)”; and
- (c) in regulations 7, 8 and 9 for all references to “the automatic enrolment date” substitute “the enrolment date”.

(4) Where a jobholder, gives an opt in notice to the employer, but in writing withdraws that notice before the enrolment date, the employer is not required to make the arrangements prescribed by regulations 7, 8 and 9.

(5) For the purposes of this regulation the enrolment date is—

- (a) the first day of the jobholder’s relevant pay reference period which begins after the date on which the employer is given the opt in notice, or
- (b) where the opt in notice is given after the employer’s payroll arrangements have closed for the purposes of the jobholder’s relevant pay reference period referred to in sub-paragraph (a), the first day of the jobholder’s second relevant pay reference period which begins after the date on which the employer is given the opt in notice.

Opting out

20. The arrangements prescribed in regulations 10 and 11 are the arrangements prescribed in relation to a jobholder who has given an employer an opt in notice, but with the modification that in paragraph (1) of regulation 10 for “section 3(2)” substitute “section 7(3)”.

Refunds

21. The arrangements prescribed in regulation 12 are the arrangements prescribed in relation to a jobholder who has given an employer an opt in notice.

PART 5

Workers joining pension saving

Information

22.—(1) At any time before the end of a period of one month beginning with the date on which section 9 (workers without qualifying earnings) of the Act first applies to a worker, the worker’s employer must give the worker the information specified in paragraph (2).

(2) The information, which must be given in writing is—

- (a) a statement that the worker may, by notice, require the employer to make arrangements for the worker to join a pension scheme;
- (b) a statement that a joining notice must be in writing and be signed by the worker and where the notice is in an electronic format, include a statement confirming that the worker personally submitted the notice;
- (c) a statement that the worker may, in accordance with the scheme rules, choose how much to contribute to a pension scheme; and
- (d) details of where to obtain further information about pensions and saving for retirement.

Form and content of joining notices

23.—(1) A joining notice given under section 9 (workers without qualifying earnings) of the Act must be in writing and, save where paragraph (2) applies, be signed by the worker.

(2) Where the joining notice is in an electronic format, it must include a statement confirming that the worker personally submitted the notice.

Arrangements to achieve active membership

24.—(1) The arrangements an employer who is given a joining notice by a worker must make in accordance with section 9(2) of the Act are to—

(a) enter into arrangements with—

- (i) the trustees or managers of an occupational pension scheme which satisfies the requirements of section 9(7); or
- (ii) the provider of a personal pension scheme which satisfies the requirements of section 9(7),

so that the worker who is the subject of the joining notice becomes an active member of the scheme in accordance with the scheme rules or requirements applicable to that scheme; and

(b) providing the trustees or managers of the occupational pension scheme or the personal pension scheme provider with the jobholder information.

(2) The requirement in paragraph (1)(b) does not apply in relation to any piece of information specified in regulation 3(1)(g), (h), (i), (j) and (2), if the trustees or managers of the occupational pension scheme or the personal pension scheme provider notify the employer that they do not require that piece of information to achieve active membership of that scheme.

PART 6

Existing members of qualifying schemes

Information

25. At any time before the end of a period of 2 months beginning with the automatic enrolment date, the employer of a jobholder who is an active member of a qualifying scheme on the automatic enrolment date must give that jobholder the following information in writing—

- (a) the name, address and electronic contact details of the scheme of which the jobholder is an active member;
- (b) confirmation that the scheme in which the jobholder is an active member is a qualifying scheme;
- (c) that the jobholder may remain an active member of that qualifying scheme without employer interference unless the jobholder is or becomes an active member of another qualifying scheme.

Continuity of scheme membership

26. The prescribed period for the purposes of section 2(3) (continuity of scheme membership) of the Act is one month beginning with the date on which—

- (a) the jobholder ceases to be an active member of a qualifying scheme; or
- (b) the scheme ceases to be a qualifying scheme.

PART 7

Exclusion as a qualifying scheme

Certain schemes providing average salary benefits excluded from being qualifying schemes

27. For the purposes of section 16(3)(c) of the Act (power to exclude schemes with certain features from being qualifying schemes), a scheme which provides for average salary benefits to be provided to or in respect of a jobholder is not a qualifying scheme in relation to the jobholder if—

- (a) there is no provision for the revaluation of the average salary benefits; or
- (b) there are discretionary powers to revalue such benefits but these are exercisable—
 - (i) otherwise than by the trustees or managers of the scheme; or
 - (ii) by the trustees or managers only with the consent of the employer.

[CONSULTATION PURPOSES ONLY: POSSIBLE ALTERNATIVE TO PARAGRAPH (2)(b)]

- (b) *there are discretionary powers to revalue such benefits but there is no provision for the exercise of such powers to be taken into account in the funding of the scheme (either in the statement of funding principles required by section 223 of the Pensions Act 2004 or otherwise).]*

PART 8

Test Scheme

Prescribed test scheme requirements

28.—(1) For the purposes of section 23(1)(b) (power to prescribe additional requirements for the test scheme) of the Act, a test scheme must—

- (a) satisfy the requirements of section 84(1) (revaluation by final salary method of benefits in the case of scheme members who leave pensionable service before attaining normal pension age) of the 1993 Act; and
 - (b) satisfy the requirements of section 51 (indexation of pensions) of the 1995 Act.
- (2) Paragraph (1)(a) applies in determining whether a defined benefits scheme which provides for average salary benefits meets the test scheme standard in relation to a jobholder as it applies to any other defined benefits scheme.

Staged increase in appropriate age

29. The higher “appropriate age” prescribed for the purposes of section 23(3) (power to prescribe higher appropriate age) of the Act is to be the age specified in Column 1 of the Table with effect from the date specified in Column 2.

Table 2

<i>Pension age in test scheme</i>	<i>Date</i>
66 years	6 April 2024
67 years	6 April 2034
68 years	6 April 2044

Requirements for meeting the test scheme standard

30.—(1) Any reference in this regulation to determining or certifying whether a scheme meets the test scheme standard is to whether the scheme meets that standard for the purposes of section 22(1).

(2) No person other than—

- (a) the scheme actuary (see also paragraph (7)); and
- (b) the employer of the relevant members of the scheme,

may certify that a scheme meets the test scheme standard.

(3) An employer may certify only in cases that do not require any calculation, comparison or assessment of a description usually carried out by actuaries.

(4) In determining whether a scheme meets the test scheme standard, a scheme actuary or employer—

- (a) must have regard to the pensions to be provided under the scheme for persons who are relevant members of the scheme at the date from which the determination has effect (which may precede the date on which it is made); and
- (b) must not have regard to—
 - (i) pension credit benefits;
 - (ii) death benefits;
 - (iii) discretionary benefits (apart from those arising from discretionary pre-retirement revaluation made in the case of schemes providing for average salary benefits);
 - (iv) survivors' benefits;
 - (v) money purchase benefits;
 - (vi) benefits in respect of persons who are not jobholders for the purposes of the Act; or
 - (vii) benefits in respect of persons who have given notice under section 8 of the Act.

(5) A scheme actuary or employer may not certify that a scheme meets the test scheme standard if the pensions to be provided for more than 10 per cent. of relevant members are not broadly equivalent to the pensions which would be provided for them under a test scheme.

(6) In determining whether—

- (a) any of paragraphs (3) to (5) apply in relation to the scheme; or
- (b) the scheme otherwise meets the test scheme standard,

a scheme actuary or employer must follow any guidance issued by the Secretary of State under section 22(5) of the Act which is for the time being in force.

(7) The prescribed circumstances in which scheme actuary does not have the meaning given in section 22(7) of the Act are where the scheme is not required to appoint a scheme actuary under section 47 of the 1995 Act.

PART 9

Hybrid schemes

Interpretation and application of Part 7

31. In this Part—

“the paragraph (a) quality requirements” means the requirements for a money purchase scheme under section 20 (referred to in relation to hybrid schemes in paragraph (a) of section 24(1) of the Act) of the Act;

“the paragraph (b) quality requirements” means the requirements for a defined benefits scheme under sections 21 to 23 (referred to in relation to hybrid schemes in paragraph (b) of section 24(1) of the Act) of the Act;

“relevant rule” means any rule made under section 24(2) to (4) of the Act⁽¹⁾.

Modification of test scheme standard: money purchase benefit lump sum accruals

32.—(1) Paragraph (2) applies where a relevant rule—

- (a) specifies a description of hybrid schemes; and
- (b) states that the paragraph (b) requirements are to apply to any scheme of that description subject to the modification made by this regulation.

(2) In determining whether any such scheme satisfies the paragraph (b) quality requirements in relation to a jobholder, section 23 of the Act has effect as if for subsection (4) there were substituted—

“(4) The amount available for the provision of a pension to a member at the appropriate age must accrue at an annual rate of at least 16% of average qualifying earnings in the last three tax years preceding the end of pensionable service.”.

[CONSULTATION PURPOSES ONLY: POSSIBLE ALTERNATIVE TO PARAGRAPH (2)]

[(2) In determining whether the paragraph (b) quality requirements are satisfied, section 23 of the Act has effect as if for subsection (4) there were substituted—

“(4) The amount available for the provision of a pension to a member at the appropriate age must—

- (a) accrue at an annual rate of at least 8% of average qualifying earnings in the last three tax years preceding the end of pensionable service; and*
- (b) with effect from the end of pensionable service, be increased, as a minimum, by an amount per annum which is equal to the appropriate percentage of the accrued benefit determined by reference to such average earnings.*

(4A) For the purposes of subsection (4)(b), the “appropriate percentage”, as at the end of any year, means the aggregate of 3.5 per cent and any percentage increase required by virtue of regulation 28(1)(a) for that year.]

Modification of test scheme standard: final salary lump sum accruals

33.—(1) Paragraph (2) applies where a relevant rule—

- (a) specifies a description of hybrid schemes; and
- (b) states that the paragraph (b) requirements are to apply to any scheme of that description subject to the modification made by this regulation.

(2) In determining whether any such scheme satisfies the paragraph (b) quality requirements in relation to a jobholder, section 23 of the Act has effect as if for subsection (4) there were substituted—

“(4) The amount available for the provision of a pension to a member must accrue at an annual rate of at least 16% of average qualifying earnings in the last three tax years preceding the end of pensionable service.”.

Modification allowing different quality requirements to be satisfied in aggregate

34.—(1) Paragraph (2) applies where a relevant rule—

- (a) specifies a description of hybrid schemes; and

(1) [The draft rules are published as a part of this consultation.]

- (b) states that the paragraph (a) and the paragraph (b) quality requirements are to apply to any scheme of that description subject to the modifications made by this regulation.
- (2) Notwithstanding that not all of the paragraph (a) or the paragraph (b) quality requirements are satisfied in relation to a hybrid scheme, those requirements are nevertheless to be treated as having been satisfied in relation to any jobholder in the circumstances set out in paragraph (3).
- (3) The circumstances are that—
- (a) the relevant rule requires that the provisions of the scheme relating to defined benefits and the provisions of the scheme relating to money purchase benefits are to be treated as if they provided for benefits under separate schemes and that—
 - (i) in respect of the money purchase benefits provisions, the paragraph (a) quality requirements are to apply; and
 - (ii) in respect of the defined benefits provisions, the paragraph (b) quality requirements are to apply; and
 - (b) in relation to the jobholder—
 - (i) all of the paragraph (a) quality requirements are met apart from either or both of the requirement in section 20(1)(b) of the Act (“requirement X”) and the requirement in section 20(1)(c) of the Act;
 - (ii) all of the paragraph (b) quality requirements are met apart from the requirement in section 23(4) of the Act (“requirement Y”); and
 - (iii) having carried out the calculations set out in paragraph (4), the aggregate of the resulting percentages is at least 100.

(4) Calculate each of the following as a percentage—

- (a) the extent to which requirement X is met as a proportion of the minimum rate of employer’s contribution specified in section 20(1)(b) of the Act;
- (b) the extent to which requirement Y is met as a proportion of the annual rate of pension specified in section 23(4) of the Act.

(5) Where the modification described in paragraphs (2) to (4) has effect in relation to a hybrid scheme of the relevant description, regulation 30 has effect as if for subsection (5) there were substituted—

“(5) A scheme actuary or employer may not certify that a scheme meets the test scheme standard if the aggregate percentage referred to in regulation 34(3)(b)(iii) is less than 100 in relation to more than 10 per cent of relevant members.”.

PART 10

Non-UK Pension Schemes

Description of an occupational pension scheme with its main administration outside the EEA States

35. An occupational pension scheme within the meaning of section 1(1) of the 1993 Act that has its main administration outside the EEA States is an occupational pension scheme for the purposes of section 18(c) (occupational pension schemes) of the Act.

Quality requirements: non-UK occupational pension schemes

36.—(1) A money purchase scheme within section 18(b) or (c) (occupational pension schemes) of the Act satisfies the quality requirement for the purposes of section 25 (quality requirement: non-UK occupational pension schemes) of the Act in relation to a jobholder if it satisfies the requirements for a money purchase scheme under section 20(1) (quality requirement: UK money purchase schemes) of the Act, but for these purposes, section 20(1) of the Act is to be read as if

the words “that has its main administration in the United Kingdom” were “within the meaning of section 18(b) or (c)”.

(2) A defined benefits scheme within section 18(b) or (c) of the Act satisfies the quality requirement for the purposes of section 25 (quality requirement: non-UK occupational pension schemes) of the Act in relation to the jobholder if it satisfies the requirements for a defined benefits scheme under sections 21 to 23 (quality requirement: UK defined benefits schemes) of the Act, but for these purposes the words “that has its main administration in the United Kingdom” in those sections, are to be read as “within the meaning of section 18(b) or (c)”.

(3) Section 24 (quality requirement: UK hybrid schemes) of the Act applies to any hybrid scheme within section 18(b) or (c) of the Act as it applies to a hybrid scheme that has its main administration in the United Kingdom and—

- (a) the reference in section 24(1)(a) to the requirements for a money purchase scheme under section 20 of the Act; and
- (b) the reference in section 24(1)(b) to the requirements for a defined benefits scheme under sections 21 to 23 of the Act,

are to be read subject to the modifications made by paragraphs (2) and (3).

(4) A hybrid scheme within section 18 (b) or (c) of the Act satisfies that quality requirement in relation to the jobholder if the scheme—

- (a) falls within a description of hybrid schemes set out in any rule made under section 22(2) to (4) of the Act; and
- (b) satisfies such of the quality requirements referred to in paragraph (4)(a) or (b) as that rule may specify as being appropriate to schemes of that description, subject to any prescribed modification of those requirements which is referred to in that rule.

Quality requirements: non-UK personal pension schemes

37. A pension scheme to which section 26 (quality requirement: UK personal pension schemes) of the Act does not apply, satisfies the quality requirement for the purposes of section 27 (quality requirement: other personal pension schemes) of the Act in relation to a jobholder—

- (a) if the conditions in paragraphs (3) to (7) of section 26 are satisfied; or
- (b) if Article 6 of Directive 98/49/EC of the European Council of 29 June 1998 on safeguarding the supplementary pension rights of employed and self employed persons moving within the Community⁽¹⁾ applies in relation to the jobholder and the scheme is a supplementary pension scheme within the meaning given by Article 3(b) of that Directive.

Prescribed requirements for non-UK qualifying schemes

38.—(1) Where the requirements set out in paragraphs 2 and 3 are satisfied and the requirements set out in either paragraph 4, 5, 6 or 7 are satisfied, section 16(1)(b) of the Act does not apply in relation to a money purchase scheme or a personal pension scheme to which section 25 or 27 of the Act applies.

(2) The requirements to be satisfied are that—

- (a) the scheme is an occupational pension scheme and there is, in the country or territory in which it has its main administration, a body—
 - (i) which regulates occupational pension schemes; and
 - (ii) which regulates that scheme; or
- (b) the scheme is a personal pension scheme and there is, in the country or territory in which the personal pension scheme provider is established, a body—

(1) OJ L 209, 25.7.1998 p.46-49.

- (i) which regulates personal pension schemes; and
 - (ii) which regulates the personal pension scheme provider in relation to that scheme.
- (3) The requirement to be satisfied is that the regulatory requirements applicable to a money purchase scheme or a personal pension scheme, or the scheme rules, provide that—
- (a) at least 70% of the benefits applicable to the jobholder will be designated for the purpose of providing that jobholder with an income for life; and
 - (b) the benefits payable to the jobholder under the scheme are payable no earlier than they would be under pension rule 1 in section 165 of the Finance Act 2004(1).
- (4) The requirement to be satisfied is that the scheme is a qualifying overseas pension scheme.
- (5) The requirement to be satisfied is that relief from tax is given in respect of contributions paid by an individual under a double taxation agreement for which a deduction of tax is given under the Income and Corporation Taxes Act 1988(2).
- (6) The requirement to be satisfied is that relief from tax is given in respect of contributions paid by an individual under an arrangement entered into by the individual for which a deduction of tax is given under Chapter 2 of Part 5 of the Income Tax (Earnings and Pensions) Act 2003(3) for that tax year in accordance with paragraph 51 of Schedule 36 to the Finance Act 2004;
- (7) This paragraph applies in relation to money purchase schemes and the requirement to be satisfied is that the employer's contribution, however calculated, includes an additional amount, the value of which represents the value of any relief from tax which would have been applicable in relation to the jobholder's contributions if the scheme had been registered under Chapter 2 of Part 4 of the Finance Act 2004.
- (8) For the purposes of this regulation—
- “double taxation agreement” means an agreement having effect by virtue of section 788 (relief by agreement with other territories) of the Income and Corporation Taxes Act 1988;
 - “qualifying overseas pension scheme” has the meaning given in Schedule 33 (overseas pension schemes: migrant member relief) to the Finance Act 2004.

PART 11

Postponement of automatic enrolment

Information

39.—(1) At any time before the end of a period of one month beginning with the date on which the automatic enrolment date was postponed under section 4 (postponement of automatic enrolment) of the Act, the jobholder's employer must give the jobholder the information specified in paragraph (2).

- (2) The information, which must be given in writing is—
- (a) a statement giving the reasons for postponement of the automatic enrolment date;
 - (b) a statement that during the period prior to the automatic enrolment date the jobholder has no entitlement to become an active member of an automatic enrolment scheme under the Act and therefore no entitlement to contributions payable by the employer;
 - (c) the jobholder's automatic enrolment date, as determined by regulation 37;
 - (d) details of where to obtain further information about pensions and saving for retirement.

Postponement of the automatic enrolment date

40.—(1) For the purposes of section 4 (postponement of automatic enrolment) of the Act—

(1) 2004 c.12.
 (2) 1988 c.1.
 (3) 2003 c.1.

- (a) where a jobholder is to become an active member of a money purchase scheme and that scheme was in existence on the date on which the automatic enrolment date was postponed under section 4 of the Act, a prescribed case is a case in which—
 - (i) the employer's contribution payable in accordance with section 20(1)(b) (quality requirement: UK money purchase schemes) of the Act, however calculated, is equal to or more than 6 per cent of the amount of the jobholder's qualifying earnings in any relevant pay reference period, and
 - (ii) the total amount of contributions payable by the jobholder and the employer in accordance with section 20(1)(c) of the Act, however calculated, is equal to or more than 11 per cent of the amount of the jobholder's qualifying earnings in any relevant pay reference period;
 - (b) where a jobholder is to become an active member of a personal pension scheme and that scheme was in existence on the date on which the automatic enrolment date was postponed under section 4 of the Act, a prescribed case is a case in which—
 - (i) the employer's contribution payable in accordance with section 26(4)(b) (quality requirement: UK personal pension schemes) of the Act, however calculated, equal to or more than 6 per cent of the amount of the jobholder's qualifying earnings in any relevant pay reference period, and
 - (ii) the total amount of contributions payable by the jobholder and the employer in accordance with section 26(5)(b) of the Act, however calculated, is equal to or more than 11 per cent of the amount of the jobholder's qualifying earnings in any relevant pay reference period;
 - (c) where a jobholder is to become an active member of a defined benefits scheme and that scheme was in existence on the date on which section 4 of the Act, a prescribed case is a case in which that scheme satisfies the requirements contained in section 21 (quality requirement: UK defined benefits schemes) of the Act;
 - (d) where a jobholder is to become an active member of a hybrid scheme and that scheme was in existence on the date on which the automatic enrolment date was postponed under section 4 of the Act, a prescribed case is a case in which—
 - (i) for the part of the scheme which is a money purchase scheme—
 - (aa) the employers contribution payable in accordance with section 20(1)(b) of the Act as modified by Part 9 of these Regulations, however calculated, is equal to or more than such proportion of 6 per cent of the jobholder's qualifying earnings in any relevant pay reference period as is relevant in relation to the schemes to which section 20 applies as modified by Part 9 of these regulations, and
 - (bb) the total amount of contributions payable by the jobholder and the employer in accordance with section 20(1)(c) of the Act as modified by Part 8 of these Regulations, however calculated, equal to or more than such proportion of 6 per cent as is relevant in relation to the schemes to which section 20 applies as modified by Part 9 of these regulations,
 - (ii) for the part of the scheme which is a defined benefits scheme, that part of the scheme satisfies the requirements contained in section 21 of the Act as modified by Part 8 of these regulations.
- (2) For the purposes of section 4(1) of the Act, in a case prescribed under paragraph (1) the jobholder's automatic enrolment date is the date 3 months after the jobholder's automatic enrolment date under section 3(7) (automatic enrolment) of the Act.
- (3) For the purposes of section 4(3) of the Act, the period prescribed is a period of 3 months from and including the jobholder's automatic enrolment date determined in accordance with this regulation.

PART 12

Automatic enrolment following the transitional period for defined benefit and hybrid schemes

Information

41.—(1) This regulation applies in relation to a jobholder affected by the transitional period for defined benefit and hybrid schemes under section 30 (transitional period for defined benefits and hybrid schemes) of the Act.

(2) At any time before the end of a period of two months beginning with the employer's first automatic enrolment date, the jobholder's employer must give the jobholder the information specified in paragraph (3).

(3) The jobholder's employer must give the jobholder the following information in writing—

- (a) the name, address, telephone number and electronic contact details of the scheme in respect of which the jobholder will be an active member;
- (b) the date with effect from which the jobholder will become an active member of the scheme;
- (c) that the jobholder may opt in, in which case the employer will be required to arrange for the jobholder to become an active member of the scheme once in any 12 month period;
- (d) details of where to obtain further information about pensions and saving for retirement.

Arrangements to achieve active membership

42.—(1) The arrangements prescribed in regulations 7, 8 and 9 are the arrangements prescribed for the purposes of section 3(2) (automatic enrolment) of the Act as modified by section 30(3) (transitional period for defined benefits and hybrid schemes) of the Act, but with the following modifications—

(a) for paragraph (1) of regulation 7 substitute—

“(1) An employer must meet the obligation in section 3(2) (automatic enrolment) of the Act by entering into arrangements with the trustees or managers of an automatic enrolment scheme which is a defined benefits scheme or a hybrid scheme, so that before the end of a period of one month beginning with the day after the end of the transitional period prescribed for the purposes of section 30 (transitional periods for defined benefits and hybrid schemes) of the Act, a jobholder to whom section 3 of the Act applies becomes an active member of that scheme from the day after the end of the transitional period for defined benefits and hybrid schemes.”; and

(b) in regulations 8 and 9 for all references to “the automatic enrolment date” substitute “the day after the end of the transitional period prescribed for the purposes of section 30 of the Act”.

43.—(1) The arrangements prescribed in regulations 8, 9 and 10 are prescribed for the purposes of section 3(2) (automatic enrolment) of the Act as modified by section 30(5) (transitional period for defined benefits and hybrid schemes) of the Act, but with the following modifications—

(a) for paragraph (1) of regulation 7 substitute—

“(1) An employer must meet the obligation in section 3(2) (automatic enrolment) of the Act by entering into arrangements with—

(a) the trustees or managers of an automatic enrolment scheme which is a defined benefits scheme or a hybrid scheme, so that before the end of a period of one month beginning with the closure date a jobholder to whom section 3 of the Act applies becomes an active member of that scheme with effect from the closure date;

- (b) the trustees or managers of an automatic enrolment scheme which is a money purchase scheme, so that before the end of a period of one month beginning with the closure date a jobholder to whom section 3 of the Act applies becomes an active member of that scheme with effect from the automatic enrolment date; or
 - (c) the provider of an automatic enrolment scheme which is a personal pension scheme, so that before the end of a period of one month beginning with the closure date the jobholder receives information about the terms and conditions mentioned in paragraph (4).”.
- (b) in paragraph (2) of regulation 7, for both references to “(2)(b)” substitute “2(c)”;
 - (c) in regulations 8 and 9 for all references to “the automatic enrolment date” substitute “the closure date”; and
 - (d) at the end of regulation 8 add—
“(4) At the request of the jobholder the employer must, for the period prescribed in paragraph (5), deduct any contributions which would have been payable by the jobholder to the scheme in respect of the period beginning on the automatic enrolment date and ending on the closure date, from any qualifying earnings or pensionable pay due to the jobholder in any relevant pay reference period.”
- (5) For the purposes of paragraph (4), the prescribed period is a period of—
- (a) 4 years beginning with the date on which Part 1 of the Act is commenced; or
 - (b) such lesser period as agreed between the jobholder and the employer.
- (6) For the purposes of this regulation and regulations 7 and 9 “closure date” has the meaning given by section 30(4) (transitional period for defined benefits and hybrid schemes) of the Act.”

Opting out

44. The arrangements prescribed in regulations 10 and 11 are prescribed for the purposes of section 3(2) (automatic enrolment) of the Act as modified by section 30(3).

45. The arrangements prescribed in regulations 10 and 11 are prescribed for the purposes of section 3(2) (automatic enrolment) of the Act as modified by section 30(5), but with the modification that in paragraph (2)(a)(i) of regulation 10 for “regulation 7(1)(a)” substitute “regulation 7(1)(a) or (b)”.

Refunds

46. The arrangements prescribed in regulation 12 are prescribed for the purposes of section 3(2) (automatic enrolment) of the Act as modified by section 30(3) or 30(5).

PART 13

Certification

Interpretation of Part

47. In this Part—

- “category of jobholder” means a group of jobholders identified by reference to the broadly similar nature of the earnings they receive;
- “certification period” means the period for which a certificate is in force;
- “earnings” means sums of any of the descriptions mentioned in section 13(3) (qualifying earnings) of the Act that are payable to a jobholder who is an active member of the scheme in relation to which a certificate is given;
- “effective date” means the date determined in accordance with regulation 47(3);

“relevant quality requirement” has the meaning given by section 28(4) (sections 20, 24 and 26: certification that quality requirement is satisfied) of the Act;

“section 26 agreements” has the meaning given by section 28(8) of the Act;

“scheme” means a scheme to which section 28 of the Act applies.

The certificate

48.—(1) A certificate given under section 28(1) of the Act must—

- (a) be in the form prescribed in Schedule 2;
- (b) be signed by the employer;
- (c) be retained by the employer for a period of 6 years.

(2) The employer must decide the date on which the certification period commences.

(3) A certificate remains in force from the effective date for a period of—

- (a) of 12 months;
- (b) such lesser period as determined by the employer on the effective date;
- (c) where an occupational pension scheme is wound up, the period up to the date on which the decision to wind up the scheme is made by the trustees or managers of the scheme; or
- (d) where the employer is of the opinion that the scheme cannot satisfy the relevant quality requirement in relation to the jobholders of the employer who are active members of that scheme, the period up to the date on which the employer forms that opinion.

The certification process

49.—(1) A certificate under section 28(1) may only be given if the employer is of the opinion that every scheme to which the certificate is to apply will satisfy the relevant quality requirement, in relation to any jobholder of that employer who is an active member of that scheme or those schemes throughout the certification period.

(2) For the purposes of the determination required by paragraph (1), the employer must—

- (a) have regard to guidance issued from time to time by the Secretary of State under section 28(6); and
- (b) complete its determination within 3 months after the effective date.

(3) At the end of the certification period the employer must determine whether every scheme in relation to which a certificate was given, satisfied the relevant quality requirement throughout the certification period.

(4) For the purposes of the determination required by paragraph (3), the employer—

- (a) must have regard to guidance issued from time to time by the Secretary of State under section 28(6);
- (b) must have regard to any jobholder of the employer who was an active member of that scheme during the certification period;
- (c) must complete its determination within 3 months after the end of the certification period; and
- (d) subject to paragraph (5), may undertake the determination required by paragraph (3) by reference to a sample of jobholders within each category of jobholder.

(5) Where an employer makes a determination under paragraph (3) using a sample of jobholders as provided for by paragraph (4)(d), that sample must be sufficient in number and character to give the employer a reasonable indication as to whether the relevant quality requirement has been satisfied in relation to all the jobholders in that category of jobholder.

(6) If the section 26 agreements required in the case of each personal pension scheme in a group of personal pension schemes are similar, an employer may make the determinations required by paragraphs (1) and (3) as if the group of schemes were a single scheme.

Shortfalls

50.—(1) Subject to regulation 50, a scheme is not treated as having satisfied the relevant quality requirement for the purposes of section 28(1), if the determination required by regulation 48(3) identifies that the requirements of the scheme, and any section 26 agreements, as to payments of contributions by or in respect of jobholders do not satisfy the conditions prescribed in the following cases—

- (a) the first case is that the total amount of contributions paid to a scheme to which the certificate applies by the jobholder and the employer, however calculated, must not fall more than 0.4 per cent below the requirements in section 20 (quality requirement: UK money purchase schemes) or section 26 (quality requirement: UK personal pension scheme) of the Act or such proportion of 0.4 per cent as is relevant in relation to schemes to which section 20 applies as modified by Part 9 of these Regulations;
- (b) the second case is that the determination required by regulation 48(3) must identify that every scheme in relation to which the certificate was given met the relevant quality requirement throughout the certification period for at least 90 per cent of the jobholders of the employer who were active members of that scheme or those schemes in the certification period;
- (c) the third case is that the requirements of the scheme, and any section 26 agreements, as to payments by or in respect of any jobholder may only fail to satisfy the relevant quality requirement once in any consecutive 24 month period.

51.—(1) This regulation applies where the determination under regulation 48(3) identifies that the requirements of the scheme, and any section 26 agreements, as to payments of contributions by or in respect of jobholders do not satisfy the conditions prescribed in the cases contained in regulation 49.

(2) An employer must, within 3 months after the end of the certification period, make payments to the scheme so that the total amount of contributions paid to the scheme are equal to the total amount of the contributions required by the relevant quality requirement.

(3) Where an employer makes the payments required by paragraph (2), the scheme is treated as having satisfied the relevant quality requirement for the purposes of section 28(1).

Signatory text

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

Date

Name
Parliamentary Under Secretary of State,
Department for Work and Pensions

SCHEDULE 2

Regulation 10

Form of opt out notice

Notice to opt out of pension saving

IF YOU WANT TO OPT OUT OF PENSION SAVING FILL IN THIS FORM AND HAND IT TO

YOUR EMPLOYER

Your full name

Your national insurance number or date of birth.....

I wish to opt out of pension saving.

I understand that if I opt out I will lose the right to pension contributions from my employer.

I understand that if I opt out I may have a lower income when I retire.

SIGNED

DATE.....

WHAT YOU NEED TO KNOW

Your employer cannot force you to opt out.

If you are forced to opt out you can tell the Pensions Regulator. Telephone 0870 606 3636 or see www.thepensionsregulator.gov.uk.

If you change your mind you can opt back in – tell your employer if you want to do this.

If you stay opted out your employer will put you back into pension saving in around 3 years, if you are eligible.

If you change job your new employer will put you back into pension saving straight away, if you are eligible.

SCHEDEULE 2

Regulation 47

Form of certificate**Certificate given for the purposes of section 28 of the Pensions Act 2008**

Name of scheme(s):

Pension Schemes Registry Number(s) (PSR) (if this is available):

Name and Address of employer(s):

Effective Date:

Certification period:

Relevant Quality Requirement:

Satisfaction of the relevant quality requirement

I certify that, in my opinion, the above scheme(s) is/are able to satisfy the relevant quality requirement identified above throughout the certification period in relation to the jobholders I employ who are active members of those scheme(s).

In giving this certificate, I confirm that I have complied with the requirements contained in the Pensions (Automatic Enrolment) Regulations 2010 and have had regard to the jobholders who are active members of the scheme on the effective date and the current Guidance on Certification issued by the Secretary of State for Work and Pensions under section 28(6)(d) of the Pensions Act 2008.

Signature:

Name:

Position:

Date:

EXPLANATORY NOTE

(This note is not part of the Regulations)

[To be completed prior to laying.]

Annex C – The Hybrid Scheme Quality Requirements Rules 2010

D R A F T R U L E S

THE PENSIONS ACT 2008

The Hybrid Schemes Quality Requirements Rules 2010

The Secretary of State for Work and Pensions in exercise of the powers conferred by section 24(2), (3) and (4) of the Pensions Act 2008⁽¹⁾ makes the following Rules:

Introductory

Citation, commencement and interpretation

1.— (1) These Rules may be cited as the Hybrid Schemes Quality Requirements Rules 2010 and come into force on [DATE].

(2) In these Rules—

“the Act” means the Pensions Act 2008;

“contracted out employment” has the same meaning as in section 21(4) of the Act;

“contracted out scheme” has the same meaning as in section 181(1) of the 1993 Act;

“normal pension age” has the same meaning as in Schedule 7 to the Pension Act 2004⁽²⁾;

“the paragraph (a) quality requirements” means the requirements for a money purchase scheme under section 20 of the Act (and referred to in relation to hybrid schemes in paragraph (a) of section 24(1) of the Act);

“the paragraph (b) quality requirements” means the requirements for a defined benefits scheme under sections 21 to 23 of the Act (and referred to in relation to hybrid schemes in paragraph (b) of section 24(1) of the Act);

“prescribed modifications”, in relation to the paragraph (a) or the paragraph (b) quality requirements, means modifications prescribed by regulations made under section 24(1)(a) or (b) of the Act⁽³⁾;

“relevant scheme” has the meaning given by rule 2(2).

Application

2.—(1) These Rules apply to any hybrid scheme which falls within any of the descriptions set out in rules 3 to 9.

(2) Any scheme of a description specified by a particular rule is referred to in the following provisions of that rule as “a relevant scheme”.

(3) In relation to each description of relevant schemes, rules 3 to 9 set out—

(d) how section 24(1) of the Act is to be applied in order to determine whether a particular scheme satisfies the quality requirements in relation to a jobholder; and

(1) 2008 c.30.

(2) 2004 c.35.

(3) At the time these Rules were made, the relevant regulations are the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2009 (S.I. 2010/ [INSERT NUMBER]).

- (e) whether any such requirements are subject to prescribed modifications in their application to such a scheme.

Contracted-out hybrid schemes

3.—(1) The hybrid schemes specified by this rule are hybrid schemes which are contracted-out schemes.

(2) In the application of section 24(1) of the Act to a relevant scheme—

- (a) in relation to any jobholder who is in contracted-out employment, apply the paragraph (b) requirements (with the result that section 21(1) of the Act will apply); and
- (b) in relation to any jobholder who is not in contracted-out employment, the question as to which are the appropriate requirements for the scheme is to be determined in accordance with rules 4 to 9.

The general rule for hybrid schemes

4.—(1) The hybrid schemes specified by this rule—

- (a) are schemes under which the benefits to be provided include both defined benefits and money purchase benefits; but
- (b) do not include—
 - (i) in relation to jobholders who are in contracted-out employment, any contracted-out scheme; or
 - (ii) any scheme falling within a description specified in any of rules 5 to 9.

(2) In the application of section 24(1) of the Act to a relevant scheme, treat the provisions of the scheme relating to defined benefits and the provisions of the scheme relating to money purchase benefits as if they provided for benefits under separate schemes and—

- (a) in respect of the money purchase benefits provisions, apply the paragraph (a) quality requirements without any prescribed modifications;
- (b) in respect of the defined benefits provisions, apply the paragraph (b) quality requirements without any prescribed modifications.

(3) For the purposes of paragraph (2), if either the paragraph (a) or the paragraph (b) quality requirements are satisfied, it is irrelevant whether the other paragraph's requirements are satisfied.

Sequential hybrid schemes

5.—(1) The hybrid schemes specified by this rule are schemes under which the benefits that will be provided include both defined benefits and money purchase benefits, where a member of the scheme—

- (a) may not at the same time qualify for both defined benefits and money purchase benefits; but
- (b) may, in accordance with scheme rules, cease qualifying for one description of benefits and start qualifying for the other.

(2) In the application of section 24(1) of the Act to a relevant scheme apply the general rule set out in rule 0(2).

(3) For the purposes of paragraph (2), both the paragraph (a) and the paragraph (b) quality requirements must be satisfied.

Self-annuitising hybrid schemes

6.—(1) The hybrid schemes specified by this rule are schemes under which—

- (a) the rate or amount of pensions or other benefits to be paid to or in respect of members of the scheme at or after their retirement at the normal pension age will be calculated wholly by reference to a payment or payments made by the member or by another person in respect of the member (or transfers or other credits); and
 - (b) a number of the pensions or other benefits provided to members of the scheme at or after their retirement at the normal pension age will be paid from the scheme's resources.
- (2) In the application of section 24(1) of the Act to a relevant scheme, apply the paragraph (a) quality requirements without any prescribed modifications.

Cash balance hybrid schemes

- 7.—(1) The hybrid schemes specified by this rule are schemes under which—
- (a) the rate or amount of pensions or other benefits to be paid to or in respect of members of the scheme at or after their retirement at the normal pension age will be calculated otherwise than wholly by reference to a payment or payments made by the member or by another person in respect of the member (or transfers or other credits) and expressed as a lump sum; and
 - (b) the lump sum will be available for the provision of a pension or annuity.
- (2) In the application of section 24(1) of the Act to a relevant scheme, apply the paragraph (b) quality requirements subject to the modification prescribed by regulation 32 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (which modifies the test scheme standard in relation to money purchase benefit lump sum accruals).

Final salary lump sum hybrid schemes

- 8.—(1) The hybrid schemes specified by this rule are schemes under which—
- (a) the rate or amount of pensions or other benefits to be paid to or in respect of members of the scheme at or after their retirement at the normal pension age will be calculated by reference to the final salary of members and expressed as a lump sum; and
 - (b) the lump sum will be available for the provision of a pension or annuity.
- (2) In the application of section 24(1) of the Act to a relevant scheme, apply the paragraph (b) quality requirements subject to the modification prescribed by regulation 33 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (which modifies the test scheme standard in relation to final salary lump sum accruals).

Combination hybrid schemes

- 9.—(1) The hybrid schemes specified by this rule—
- (a) are schemes under which—
 - (i) the benefits that will be provided include both defined benefits and money purchase benefits; and
 - (ii) the rate or amount of pensions or other benefits to be paid to or in respect of members of the scheme at or after their retirement at the normal pension age will be calculated by reference to a combination of accrued benefits of both descriptions; but
 - (b) do not include any scheme which falls within the description specified in rule 5.
- (2) In the application of section 24(1) of the Act to a relevant scheme, treat the provisions of the scheme relating to defined benefits and the provisions of the scheme relating to money purchase benefits as if they provided for benefits under separate schemes and determine which requirements to apply to the scheme in accordance with paragraphs (3) and (4).
- (3) The first step is to apply the general rule set out in rule 4(2) to the scheme and, if either the paragraph (a) or the paragraph (b) quality requirements are satisfied—

- (a) it is irrelevant whether the other paragraph's requirements are satisfied; and
 - (b) there is no need to take the second step.
- (4) The second step is to determine whether the paragraph (a) and the paragraph (b) quality requirements may nevertheless be regarded as being satisfied in accordance with the modifications prescribed by regulation 34 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (which sets out circumstances in which different quality requirements can be satisfied in aggregate).

Annex D – Draft Employers’ Duties (Registration and Compliance) Regulations 2010

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

2010 No.

PENSIONS

The Employers’ Duties (Registration and Compliance) Regulations 2010

Made - - - - - ***

Laid before Parliament ***

Coming into force - - ***

The Secretary of State, in exercise of the powers conferred by sections 11, 37, 38, 40, 41, 43, 52, 54, 60, 144(2)(a) and (4)(b) of the Pensions Act 2008(1), makes the following Regulations:

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employers’ Duties (Registration and Compliance) Regulations 2010 and shall come into force on xxxx 2012.

(2) In these Regulations—

“the Act” means the Pensions Act 2008;

“automatic re-enrolment date” has the same meaning as in section 5(8) of the Act;

“contributions made by an employer” means contributions payable by the employer—

(a) on the employer’s own account (but in respect of the worker), or

(b) on behalf of the worker out of deductions from the worker’s earnings;

“direct payment arrangements” has the same meaning as in section 111A of the Pension Schemes Act 1993(2);

“the employers’ duties” means sections 2 to 9 of the Act;

“employer duty provisions” has the same meaning as in section 34(3) of the Act;

“employer pension scheme reference” means—

(1) c.30.

(2) c.48. Section 111A was inserted by the Welfare Reform and Pensions Act 1999, section 9 and amended by section 268 of the Pensions Act 2004.

- (a) in relation to an occupational pension scheme—
 - (i) a reference given by the Regulator (R) to the trustees or managers of a scheme (T), following the provision of registrable information to R by T, and
 - (ii) where that scheme provides money purchase benefits and any of those benefits are secured by a contract of insurance or annuity contract issued by an insurance company which provides administration services to the scheme, the policy number of that contract or the insurance company reference number in relation to that contract;
- (b) in relation to a scheme established under section 67 of the Act, a reference given by that scheme prior to registration to an employer using the same scheme to comply with the employer duty provisions; or
- (c) in relation to a personal pension scheme, a reference given by that scheme prior to registration to an employer using the same scheme to comply with the employer duty provisions;

“HMRC” means Her Majesty’s Revenue and Customs;

“joining notice” means a notice given under section 9(2) (workers without qualifying earnings);

“late payment report” means a notice given by a trustee or manager of a trust or occupational or personal pension scheme to the Regulator under—

- (a) section 49(9)(b) of the Pensions Act 1995(1),
- (b) section 88(1) of the same Act(2), or
- (c) section 111A(7A) of the Pension Schemes Act 1993(3);

“opt in notice” means a notice given under section 7(3) (jobholder’s right to opt in) of the Act;

“opt out notice” means a notice given under section 8 (jobholder’s right to opt out) of the Act;

“PAYE income” has the same meaning as in section 683 of the Income Tax (Earnings and Pensions) Act 2003(4);

“PAYE scheme” means the HMRC record allocated to an employer who employs a worker or workers to whom PAYE income is payable and a corresponding reference number is issued to enable the employer to pay over amounts deducted to HMRC;

“payment schedule” has the same meaning as in section 87 of the Pensions Act 1995(5);

“registrable information” has the same meaning as in section 60(1) of the Pensions Act 2004(6);

“registration” means the process by which employers are required to provide the Regulator with information about action they have taken or intend to take for the purposes of—

- (a) any provision of sections 2 to 10 of the Act, or
- (b) any regulations under those sections,

as set out in regulations [2] to [4] of these Regulations;

“retail price index” means—

- (a) the general index of retail prices (for all items) published by the Office for National Statistics, or
- (b) where that index is not published for a month, any substituted index or figures published by that Office;

(1) c.26. Paragraph (b) of section 49(9) was substituted by the Pensions Act 2004, section 269(1).

(2) Subsection (1) of section 88 was substituted by the Pensions Act 2004, section 269(2).

(3) Subsections (3) to (7) and (7A) were substituted for subsections (3) to (7) as originally enacted, by Pensions Act 2004, section 268(1) and (2). Subsection (18) was inserted by the Pensions Act 2008, section 49.

(4) c.1. Section 683 has been amended but not in a way material to these Regulations.

(5) Section 87 has been amended but not in a way material to these Regulations.

(6) c.35.

“schedule of contributions” has the same meaning as in section 227(2) of the Pensions Act 2004(1);

“staging date” has the same meaning as in regulation 1 of the Employers’ Duties (Implementation) Regulations 2010(2); and

“the staging period” means the period which—

- (a) begins when the employers’ duties first apply to an employer of any description, under the Employers’ Duties (Implementation) Regulations 2010; and
- (b) ends when the employers’ duties apply to all employers described in those Regulations.

PART 2

Registration

Registration: General

2.—(1) This regulation and regulations [*post staging and new PAYE schemes*] and [*re-registration*] requires employers to provide the Regulator with information about action they have taken or intend to take for the purposes of—

- (a) sections 2 to 10 of the Act, or
- (b) regulations made under those sections(3).

(2) An employer must provide information to the Regulator in the following cases—

- (a) after the staging date;
 - (i) where the staging period has ended, and
 - (ii) for any reason PAYE income is payable in respect of any worker; and
- (b) where—
 - (i) an employer makes arrangements under section 5(2) (automatic re-enrolment) by which a jobholder becomes an active member of an automatic enrolment scheme with effect from an automatic re-enrolment date, or
 - (ii) 3 years have passed since an employer last provided information to the Regulator.

(3) Where—

- (a) an employer must provide the Regulator with information under regulations [3] to [4], but
- (b) the final day of the period in regulations 3(1) or 4(1) which applies to that employer is not a working day, then
- (c) an employer may provide the Regulator with information by 9am on the next working day (and for the purposes of this paragraph “working day” means a day which is not a Saturday, Sunday, Bank Holiday or other public holiday).

Registration: Post staging and new PAYE schemes

3.—(1) Where—

- (a) paragraph (2)(a) of regulation [*registration: general*] applies, an employer must provide the information specified in paragraphs (2) and (3) of this regulation within the period of 9 weeks starting from the staging date, or

(1) Regulations have been made under subsection (3), regulations 9 and 10 of the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377).

(2) S.I. 2010/xxxx.

(3) Those regulations are the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations xxxx, S.I. 2010/xxxx.

- (b) paragraph (2)(b) of regulation [registration: general] applies, an employer must provide the information specified in paragraphs (2) and (3) of this regulation within the period of 3 months starting from the day on which PAYE income is payable in respect of any worker,

in relation to each of its PAYE schemes.

(2) The specified information is—

- (a) the employer's—
 - (i) address and postcode, and
 - (ii) registered companies house number, where one exists;
- (b)
 - (i) the name, phone number, ordinary working address, and
 - (ii) email address, where one exists,
 - of any person providing that specified information on behalf of the employer;
- (c) the capacity in which the person providing the information in sub-paragraph (a) works for (or has a relationship to) that employer;
- (d) in relation to those workers in an employer's PAYE scheme—
 - (i) the number of workers in that scheme, either at the staging date or the day on which the employers' duties apply to that employer, whichever is applicable,
 - (ii) where the employer must arrange active membership of an automatic enrolment scheme under section 3(2) or 7(3) of the Act for any workers who are jobholders—
 - (aa) the number of jobholders automatically enrolled under section 3(2), as at the end of a period of one month beginning with either the staging date or the day on which the employers' duties apply to that employer, whichever is applicable,
 - (bb) the number of jobholders who became an active member under section 7(3), or
 - (cc) if the employer uses more than one pension scheme under those arrangements, the number of jobholders who became active members of each pension scheme,
 - (iii) if the employer considers that sections 3(2) or 7(3) do not apply in respect of any jobholder, the employer's reasons for so considering,
 - (iv) the number of jobholders who have given notice under section 8 of the Act, and
 - (v) the number of workers who have become active members of any pension scheme satisfying the requirements of section 9 of the Act (including the number of workers in each pension scheme where more than one pension scheme is used to comply with that section);
- (e) where an employer considers that sub-paragraph (d)(iii) applies by reason of—
 - (i) section 3(1),
 - (ii) section 3(4),
 - (iii) section 4 (postponement of automatic enrolment), or
 - (iv) section 30 (transitional period for defined benefits and hybrid schemes),
 - of the Act, the number of jobholders to which those sections apply; and
- (f) the number of jobholders in an employer's PAYE scheme who, before whichever is applicable of—
 - (i) the staging date, or
 - (ii) the day on which the employers' duties apply to that employer,
 - were active members of an automatic enrolment scheme.

(3) Where an employer must arrange for a jobholder or worker to become an active member of a pension scheme under sections 3, 7 or 9 of the Act, that employer must also provide the following information to the Regulator about any pension scheme used to comply with those duties—

- (a) where that scheme—
 - (i) is an occupational pension scheme which provides money purchase benefits and any of those benefits are secured by a contract of insurance or annuity contract issued by an insurance company which provides administration services to the scheme—
 - (aa) the name of that scheme, and
 - (bb) the name and address of the insurance company providing such a contract;
 - (ii) is a personal pension scheme, the name and address of the provider of that scheme;
- (b) the employer pension scheme reference; and
- (c) whether in respect of that scheme—
 - (i) section 4, or
 - (ii) section 30,applies or had applied to an employer or any jobholders respectively.

(4) 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.

Registration: Re-registration

4.—(1) Where—

- (a) paragraph (2)(c)(i) of regulation [registration: general] applies, an employer must provide the information specified in paragraph (2) of this regulation within the period of 9 weeks starting from the automatic re-enrolment date, in relation to each of its PAYE schemes; or
- (b) paragraph (2)(c)(ii) of that regulation applies, an employer must provide the information specified in paragraph (2) of this regulation at the end of 3 years starting from the last provision of information to the Regulator, in relation to each of its PAYE schemes,

and the time at which an employer provides that information is referred to in this regulation as the point of re-registration.

(2) The specified information is—

- (a) that specified in paragraph (2)(a) to (c) of regulation [*registration: post staging and new PAYE schemes*];
- (b) that specified in paragraph (3)(a) to (c) of that regulation, subject to the following subparagraph;
- (c) where, in order to comply with any of the duties on employers contained in sections 3, 5, 7 or 9 of the Act, an employer by the point of re-registration uses a different pension scheme than had been used at the last time information was provided to the Regulator, the employer must provide the same information specified in paragraph (3)(a) to (c) of regulation [*registration: post staging and new PAYE schemes*] in respect of that different scheme;
- (d) in relation to those workers in an employer's PAYE scheme—
 - (i) the number of workers in that scheme, as at the automatic re-enrolment date or the point of re-registration, whichever is applicable;
 - (ii) where the employer must arrange active membership of an automatic enrolment scheme for any worker who is a jobholder under section 5(2) of the Act, the number of jobholders automatically enrolled and if the employer uses more than one pension

- scheme under those arrangements, the number of jobholders automatically enrolled into each pension scheme, as at the point of re-registration; and
- (iii) if the employer considers that section 5(2) does not apply in respect of any jobholder, the employer's reasons for so considering;
 - (e) where an employer considers that sub-paragraph (d)(iii) applies by reason of—
 - (i) section 4,
 - (ii) section 5(1), or
 - (iii) section 5(4),
 of the Act, the number of jobholders to which those sections apply;
 - (f) the number of jobholders in an employer's PAYE scheme who, before whichever is applicable of—
 - (i) the automatic re-enrolment date, or
 - (ii) the point of re-registration,
 were active members of an automatic enrolment scheme;
 - (g) the number of—
 - (i) jobholders who have become active members of an automatic enrolment scheme under section 7 of the Act, and
 - (ii) workers who have become active members of any pension scheme under section 9 of the Act (including the number of workers in each pension scheme where more than one pension scheme is used to comply with that section); and
 - (h) the number of jobholders in any of the employer's PAYE schemes in respect of whom the employer makes arrangements under section 5(2) but who give notice to an employer under section 8.

(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.

PART 3

Compliance

Records and information

Requirement to keep records

5.—(1) The persons in paragraph (2) must—

- (a) keep the records listed within the corresponding regulation, and
- (b) provide those records, on request, to the Regulator.

(2) The persons are, subject to the exception in paragraph (5), any person who is or has been—

- (a) an employer;
- (b) a trustee or manager of an occupational pension scheme; or
- (c) a provider of a personal pension scheme.

(3) Regulation [Records: Employers] applies in respect of a person falling within paragraph (2)(a).

(4) Regulation [Records: Trustees, managers and providers] applies in respect of a person falling within paragraph (2)(b) or (c).

(5) A person who has ceased to act as a person falling within paragraph (2) shall not be required to keep records, where that person has transferred all the records to another person who has succeeded them in that capacity.

- (6) All records must be kept in such form and manner so that they are—
- capable of being arranged according to the corresponding employer pension scheme reference, and
 - legible or can be provided to the Regulator in a legible form.

Records: Employers

6.—(1) A person falling within paragraph (2)(a) of regulation [*requirement to keep records*] must keep the following records in relation to an occupational or personal pension scheme used by them to comply with the employers' duties—

- where—
 - that scheme is an occupational pension scheme which provides money purchase benefits and any of those benefits are secured by a contract of insurance or annuity contract issued by an insurance company which provides administration services to the scheme—
 - the name of that scheme, and
 - the name and address of the insurance company providing such a contract;
 - that scheme is a personal pension scheme, the name and address of the provider of that scheme; and
 - that scheme does not have its main administration in the United Kingdom—
 - the address of that scheme, and
 - the name of any authority which exercises functions corresponding to the functions of the Regulator in the country or territory outside the United Kingdom where that scheme is situated;
- the employer pension scheme reference;
- where sections 21 (quality requirement: UK defined benefits schemes) or 22 (test scheme standard) of the Act apply, a copy of the certificate issued in respect of a jobholder under section 7(1) of the Pension Schemes Act 1993;
- where section 22 applies, a copy of the certificate given by a scheme actuary in accordance with regulations made under subsection (6) of that section;
- where section 28 of the Act (certification that quality requirement is satisfied) applies and a scheme satisfies the relevant quality requirement throughout the certification period—
 - a copy of that certificate (meeting the requirements prescribed in regulation 45 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010), and
 - any evidence demonstrating that the employer had determined whether any scheme to which the certificate applied satisfied the relevant quality requirement during the certification period (in accordance with regulation 47(3) of those Regulations);
- the name, national insurance number (where one exists) and date of birth of—
 - every jobholder of an employer who becomes an active member of an automatic enrolment scheme pursuant to arrangements made under section 3 of the Act;
 - every jobholder of an employer who was not an active member of a qualifying scheme but who by notice required the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme pursuant to arrangements made under section 7 of the Act; and
 - every worker who by notice required an employer to arrange for the worker to become an active member of a pension scheme pursuant to arrangements made under section 9 of the Act;
- the date on which—

- (i) a jobholder became an active member of an automatic enrolment scheme pursuant to arrangements made under sections 3 or 7 of the Act, or
 - (ii) a worker became an active member of a pension scheme that satisfies the requirements of section 9 of the Act, pursuant to arrangements made under that section;
- (h) any information provided to—
- (i) the trustee or manager of an occupational pension scheme, or
 - (ii) the provider of a personal pension scheme;
- by an employer for the purposes of arrangements under sections 3(2), 7(3) or 9(2) of the Act (including whether or not sections 4 or 30 apply);
- (i) an opt in notice in respect of every jobholder that gives notice under section 7(3) of the Act;
 - (j) a joining notice in respect of every worker that gives notice under section 9(2) of the Act; and
 - (k) an opt out notice in respect of every jobholder that gives notice under section 8 of the Act (or any document providing the same evidence).
- (2) A person falling within paragraph (2)(a) of regulation [*requirement to keep records*] must also keep the following records in respect of every jobholder or worker falling within paragraph (1)(f) where contributions fall to be deducted by an employer under section 33 and regulations made under that section—
- (a) their gross earnings in any relevant pay reference period;
 - (b) evidence of the contributions that the jobholder’s employer must pay in respect of the jobholder, in order to satisfy the quality requirement for the pension scheme used by the employer to comply with the employers’ duties;
 - (c) the contributions payable by an employer during each relevant pay reference period and, if different, the contributions made;
 - (d) the date on which the contributions made by an employer were paid to the pension scheme used by the employer to comply with the employers’ duties; or
 - (e) any relevant—
 - (i) payment schedule;
 - (ii) schedule of contributions; and
 - (iii) direct payment arrangements,
containing the records specified in sub-paragraphs (a) to (d).
- (3) In this regulation—
- (a) “earnings” has the meaning given by section 13(3) of the Act, and
 - (b) “relevant pay reference period” has the same meaning as in regulation 7 of the Occupational and Personal Pensions (Automatic Enrolment) Regulations 2010.

Records: Trustees, managers and providers

- 7.—(1)** A person falling within paragraph (2)(b) or (c) of regulation [*Requirement to keep records*] must keep the following records—
- (a) the employer pension scheme reference;
 - (b) the date on which each jobholder, or where section 9 of the Act applies, each worker, became an active member of a pension scheme, pursuant to arrangements made under sections 3, 7 or 9 of the Act;
 - (c) every instance of a jobholder giving notice under section 8 of the Act (including the date that that notice was received by an employer in accordance with regulation 13(4) of the

- Occupational and Personal Pensions (Automatic Enrolment) Regulations 2010 (opting out)); and
- (d) where a jobholder had been an active member of a qualifying scheme, the date on which the jobholder ceased active membership of that scheme.
- (2) In relation to all persons who are members of a qualifying scheme—
- (a) the full name, date of birth, gender and national insurance number of each member (as received by the trustee or manager of an occupational pension scheme or provider of a personal pension scheme pursuant to the Occupational and Personal Pensions (Automatic Enrolment) Regulations 2010);
 - (b)
 - (i) the postal residential address, and
 - (ii) where that address is in the United Kingdom, the postcode, last known by or notified to that scheme or employer; and
 - (c) a confirmation that—
 - (i) a member is an active member of a scheme, or
 - (ii) a member is no longer an active member of a scheme.

Period of preservation of records

8.—(1) Except where paragraph (2) applies, a record listed in regulations [*Records: Employers*] and [*Records: Trustees, managers and providers*] must be preserved for a period of six years, starting on the day that the record must first be kept.

(2) Paragraph (1) does not apply to any record which is kept under paragraph (1)(k) of regulation [*Records: Employers*] or under paragraph (1)(c) of regulation [*Records: Trustees, managers and providers*], in which case the record must be kept until the jobholder's next automatic re-enrolment date.

Payment Failures

Due date

9.—(1) Subject to paragraphs (2) and (3), for the purposes of section 37 of the Act (unpaid contributions notices) “due date” means the 19th day of the month following the month during which either—

- (a) relevant contributions payable to—
 - (i) the trustees or managers of an occupational pension scheme, or
 - (ii) the provider of a personal pension scheme,

were deducted by an employer (whether or not under section 33 of the Act), or
- (b) relevant contributions payable to—
 - (i) an occupational pension scheme under a payment schedule, or
 - (ii) a personal pension scheme under direct payment arrangements,

were due but not made by an employer.

(2) Paragraph (1) does not apply where an employer uses either—

- (a) a defined benefits scheme; or
- (b) a hybrid scheme,

to comply with the employers' duties, in which case paragraph (3) applies.

(3) Where a scheme used by an employer to comply with the employers' duties—

- (a) is a defined benefits scheme, “due date” means the due dates of relevant contributions payable—
 - (i) by or on behalf of active members of a scheme, and
 - (ii) by or on behalf of an employer,
under a schedule of contributions;
- (b) is a hybrid scheme, “due date”—
 - (i) in respect of any part of that scheme providing defined benefits, has the same meaning as in sub-paragraph (a); or
 - (ii) in respect of any part of that scheme providing money purchase benefits, has the same meaning as in paragraph (1).

Unpaid relevant contributions

10. For the purposes of section 38(2) of the Act, the prescribed period after the appropriate date is 3 months.

Contributions: Requirement to pay interest

11.—(1) For the purposes of section 38(2)(e) of the Act, the rate at which interest must be paid on an amount required by a notice to be paid (“the rate”) is determined by the Regulator in accordance with paragraph (2).

(2) The rate comprises a fixed component and a flexible component where—

- (a) the fixed component is 4.9%, and
- (b) the flexible component is—
 - (i) the retail price index applicable for the month during which the Regulator issues a notice, or
 - (ii) where the retail price index applicable for the month during which the Regulator issues a notice is not published, that index for the preceding month.

(3) For the purposes of section 38(2)(e) of the Act, the period in respect of which interest must be paid on an amount required by a notice—

- (a) begins with the appropriate date, and
- (b) ends when an employer complies with a notice by—
 - (i) taking, or refraining from taking, the steps specified in a compliance notice; or
 - (ii) paying into a pension scheme an amount in respect of relevant contributions that had not been paid, as specified in an unpaid contributions notice.

(4) In this regulation, “interest” means simple interest calculated from day to day.

Contributions: Estimating contributions

12.—(1) The Regulator may estimate the amount of contributions that an employer has failed to pay on behalf or in respect of a worker by applying the formula—

$$\frac{E}{12} \times 8\% \times N \times M$$

where—

E is the maximum qualifying earnings in a pay reference period of 12 months, as defined by section 13(1)(b) of the Act,

N is either—

- (a) the number of jobholders in respect of which the Regulator is of the opinion that the employer has—

- (i) contravened one or more of the employer duty provisions, or
- (ii) not paid relevant contributions on or before the due date, or
- (b) where in the Regulator's opinion the number in (a) does not exist, the number of workers in the employer's PAYE scheme,

at the time that the Regulator makes the estimate, and

M is the number of months from—

- (c) the contravention of one or more of the employer duty provisions, or
- (d) the failure to pay contributions on behalf or in respect of the worker,
until the Regulator makes the estimate.

(2) Other than information provided by the employer, when estimating the amount of contributions under this regulation, the Regulator may use the sources of information set out in paragraph (3).

(3) The sources of information are—

- (a) a late payment report;
- (b) anything reported or sent to the Regulator by any person, including—
 - (i) a trustee or manager of an occupational pension scheme,
 - (ii) a provider of a personal pension scheme, and
 - (iii) a member of either an occupational or personal pension scheme; or
- (c) any information disclosed to the Regulator under section 88 of the Pensions Act 2004(1).

Penalties

Fixed penalty notices

13. Where the Regulator issues a fixed penalty notice to a person under subsection (1) or (2) of section 40 of the Act, the penalty is £500.

Escalating penalty notices

14.—(1) Where an escalating penalty notice is issued to a person—

- (a) in respect of a failure to comply with a third party compliance notice under section 36 of the Act, or
- (b)
 - (i) in respect of a failure to comply with a notice specified in paragraph (2)(a) or (b),
and
 - (ii) that failure was by a person other than an employer,

the prescribed daily rate is £200 per day.

(2) Paragraph (3) applies where an escalating penalty notice is issued to an employer in respect of a failure to comply with—

- (a) a compliance notice under section 35 of the Act;
- (b) a notice under section 72 of the Pensions Act 2004 (provision of information)(2); or
- (c) an unpaid contributions notice under section 37 of the Act.

(3) Except where paragraph (1) applies, the prescribed daily rate is to be determined in accordance with Table 1 and the following paragraphs.

(1) Section 88 was substituted by section 62(1) of the Pensions Act 2008.

(2) Subsections (1A) and (1B) were inserted in section 72 by section 61(2) of the Pensions Act 2008.

Table 3

<i>Number of persons</i>	<i>Prescribed daily rate (£ per day)</i>
1-4	50
5-49	500
50-249	2500
250-499	5000
500 or more	10000

(4) In the first column of Table 1, the expression “Number of persons” is to be construed in accordance with paragraphs (5) to (7).

(5) Where—

(a) paragraph (2)(a) and (b) apply, it is the number of persons within an employer’s PAYE scheme (or where the Regulator is of the opinion that for any reason that employer has more than one PAYE scheme, the total number of persons within those schemes), but where in the Regulator’s opinion this does not exist, paragraph (8) applies;

(b) paragraph (2)(c) applies it is—

(i) the number of workers in respect of which the Regulator is of the opinion that the employer has not paid relevant contributions on or before the due date (within the meaning of regulation [due date] of these regulations); or

(ii) where in the Regulator’s opinion the number in (i) does not exist, the number of persons within an employer’s PAYE scheme (or where the Regulator is of the opinion that for any reason that employer has more than one PAYE scheme, the total number of persons within those schemes),

but where in the Regulator’s opinion the number in (ii) does not exist, paragraph (7) applies.

(6) In this regulation, the Regulator must use the latest information reasonably available to it up to and including the day on which the Regulator issues an escalating penalty notice—

(a) where paragraph (2)(a) and (b) apply, disclosed to it under section 88 of the Pensions Act 2004; and

(b) where paragraph (2)(c) applies—

(i) contained in a late payment report,

(ii) contained in a report given to the Regulator under section 70 of the Pensions Act 2004, or

(iii) disclosed to it under section 88 of the Pensions Act 2004.

(7) Where this paragraph applies, the prescribed daily rate must be treated as being £50 per day.

Penalty notices: Prohibited recruitment conduct

15.—(1) This regulation applies where the Regulator issues a penalty notice to an employer if the Regulator is of the opinion that the employer—

(a) has contravened section 50 of the Act, or

(b) has failed to comply with a compliance notice under section 51 of the Act.

(2) The penalty is to be determined in accordance with Table 2 and the following paragraphs.

Table 4

<i>Number of persons</i>	<i>Penalty (£)</i>
--------------------------	--------------------

1-4	1000
5-49	1500
50-249	2500
250 or more	5000

(3) In the first column of Table 2, the expression “Number of persons” is to be construed in accordance with paragraphs (4) to (6).

(4) It is the number of persons within an employer’s PAYE scheme (or where the Regulator is of the opinion that for any reason that employer has more than one PAYE scheme, the total number of persons within those schemes), but where in the Regulator’s opinion this does not exist, paragraph (6) applies.

(5) In this regulation, the Regulator must use the latest information—

- (a) reasonably available to it up to and including the day on which it issues a penalty notice, and
- (b) disclosed to it under section 88 of the Pensions Act 2004.

(6) Where this paragraph applies, the penalty must be treated as being £1000.

Review and issue of notices

Review of notices

16.—○ This regulation relates to the Regulator’s power under section 43 of the Act to review a notice.

(1) The period within which an application to review a notice may be made under section 43(1)(a) of the Act (written application of a person) is 28 days, starting from the day a notice is issued to a person.

(2) The period within which a notice may be reviewed under section 43(1)(b) of the Act (review by the Regulator) is 18 months, starting from the day a notice is issued to a person.

Issue of notices

17.—(1) This regulation applies where—

- (a) a compliance notice—
 - (i) under section 35 of the Act, or
 - (ii) in respect of prohibited recruitment conduct under section 51 of the Act,
- (b) a third party compliance notice under section 36 of the Act,
- (c) an unpaid contributions notice under section 37 of the Act,
- (d) a fixed penalty notice under section 40 of the Act,
- (e) an escalating penalty notice under section 41 of the Act, or
- (f) a penalty notice in respect of prohibited recruitment conduct under section 52 of the Act,

is issued to a person by the Regulator.

(2) For the purposes of regulation [review of notices], it is presumed that—

- (a) where a notice is given a date by the Regulator, it was posted or otherwise sent on that day,
- (b) if a notice is posted or otherwise sent to that person’s last known or notified address, it was issued on the day that that notice was posted or otherwise sent, and
- (c) a notice was received by the person to whom it was addressed.

Inducements

Inducements

18. For the purposes of subsection (3) of section 54 of the Act, the Regulator may not issue a compliance notice in respect of a contravention of that section unless the contravention occurred within—

- (a) 6 months before the time when a complaint was made to the Regulator about the contravention, or
- (b) 12 months before the time when the Regulator informed the employer of an investigation of the contravention, if no complaint was made before that time.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State,
Department for Work and Pensions

Annex E – Order amending the Public Interest Disclosure (Prescribed Persons) Order 1999

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

2010 No. [x]

TERMS AND CONDITIONS OF EMPLOYMENT

The Public Interest Disclosure (Prescribed Persons)

(Amendment) Order 2010

Made - - - - ***

Laid before Parliament ***

Coming into force - - ***

The Secretary of State, in exercise of the powers conferred by section 43F of the Employment Rights Act 1996 (1), makes the following Order:

Citation and commencement

1. This Order may be cited as the Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2010 and shall come into force on [date].

Amendment of the Public Interest Disclosure (Prescribed Persons) Order 1999

2.—(1) The Schedule to the Public Interest Disclosure (Prescribed Persons) Order 1999(2) is amended in accordance with paragraph (2).

(2) In the entry relating to the Pensions Regulator, in the Second Column, after “Matters relating to occupational pension schemes and other private pension arrangements”, insert “including

(1) 1996 (c.18). Section 43F was inserted by the Public Interest Disclosure Act 1998 (c.23), section 1.

(2) S.I. 1999/1549. This instrument has been amended by other instruments but with the exception of S.I. 2005/2464 not in a way material to this Order.

matters relating to the Regulator's objective of maximising compliance with the duties under Chapter 1 of Part 1 (and the safeguards in sections 50 and 54) of the Pensions Act 2008.”.

Signed by authority of the Secretary of State

Date

Name
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends The Public Interest Disclosure (Prescribed Persons) Order 1999 (the “1999 Order”) by amending the entry in the Schedule to the 1999 Order in relation to the Pensions Regulator.

Section 47B of the Employment Rights Act 1996 (the “1996 Act”) provides a worker with the right not to suffer detriment, as a result of making a ‘protected’ disclosure. Section 103A of the same Act makes similar provision in relation to unfair dismissal. This Order amends the 1999 Order so that a disclosure to the Pensions Regulator including matters relating to the Pensions Regulator’s objective of maximising compliance with the duties under Chapter 1 of Part 1 (and the safeguards in sections 50 and 54) of the Pensions Act 2008 will be a qualifying disclosure.

A qualifying disclosure is a protected disclosure by virtue of section 43A of the 1996 Act.

Annex F – Draft Occupational and Personal Pension Schemes (19 Day Rule) (Amendment) Regulations 2010

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

2010 No.

PENSIONS

The Occupational and Personal Pension Schemes (19 Day Rule) (Amendment) Regulations 2010

Made - - - - - ***

Laid before Parliament ***

Coming into force - - ***

The Secretary of State for Work and Pensions, in exercise of the powers conferred by sections 111A(15)(b), 181(1) and 182(2) and (3) of the Pension Schemes Act 1993(2) and sections 49(8), 124(1) (3) and 174(2) and (3) of the Pensions Act 1995(4) makes the following Regulations:

In accordance with section 185(1) of the Pension Schemes Act 1993 and section 120(1) of the Pensions Act 1995, the Secretary of State has consulted with such persons as the Secretary of State considers appropriate:

Citation and commencement

1. These Regulations may be cited as the Occupational and Personal Pension Schemes (19 Day Rule) (Amendment) Regulations 2010 and shall come into force on [].

Amendment of the 19 Day Rule

2. For regulation 16 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996(5)—

“Prescribed time in which an employer must make payments to trustees or managers”

- (a) **16.—(1)** Save as provided in paragraphs (2), the prescribed period for the purposes of section 49(8) of the 1995 Act (amount deducted from earnings to be paid to the trustees

(1) Section 181 of the Pension Schemes Act 1993 is cited for the meaning it gives to ‘prescribed’ and ‘regulations’.

(2) 1993 c.48; section 111A(15) was inserted by the Welfare Reform and Pensions Act 1999 (c.).

(3) Section 124(1) of the Pensions Act 1995 is cited for the meaning it gives to ‘prescribed’ and ‘regulations’.

(4) 1995 c.26; section 49(8) was substituted for section 49(8) as originally enacted by the Welfare Reform and Pensions Act 1999.

(5) S.I. 1996/1715.

or managers of the scheme within a prescribed period) is 19 days commencing from the end of the month in which the amount is deducted from the earnings in question.

- (b) (2) Where a jobholder becomes an active member of an occupational pension scheme in accordance with regulations 7, 9 and 19 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(1), in relation to any contributions deducted between the automatic enrolment date, the automatic re-enrolment date or the enrolment date (as the case may be) and the end of the opt out period, the prescribed period for the purposes of section 49(8) of the 1995 Act is a period commencing on the automatic enrolment date and ending on 19 days after the end of the month following the month which includes the automatic enrolment date.
- (c) (3) For the purposes of this regulation—
“automatic enrolment date” has the meaning given by section 3(7) of the Pensions Act 2008 (automatic enrolment)(2);
“automatic reenrolment date” means the date determined in accordance with regulation 13 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010;
“enrolment date” has the meaning given in regulation 19(5) of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010;
“jobholder” has the meaning given by section 1(1) of the Pensions Act 2008;
“opt out period” means the period prescribed by regulation 10 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 within which a jobholder who has become an active member of an occupational pension scheme in accordance with arrangements under section 3(2) of the Pensions Act 2008, may give notice under section 8 (jobholder’s right to opt out) of the Act.”.

3. For regulation 5 of the Personal Pension Schemes (Payments by Employers) Regulations 2000(3), substitute—

“Prescribed period for the purpose of calculating the due date for the payment of any contribution on behalf of an employee

- (a) 5.—(1) Save as provided in paragraph (2), the prescribed period for the purposes of section 111A(15)(b) of the 1993 Act (meaning of “due date” where a contribution payable under the direct payment arrangements falls to be paid on behalf of the employee) the prescribed period is 19 days commencing on the day following the last day of the month in which the deduction was made from the employee’s earnings.
- (b) (2) Where a jobholder becomes an active member of an personal pension scheme in accordance with regulations 7, 9 and 19 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010, in relation to any contributions deducted between the automatic enrolment date, the re enrolment date or the enrolment date (as the case may be) and the end of the opt out period, the prescribed period for the purposes of section 111A(15)(b) of the 1993 Act is a period commencing on the automatic enrolment date and ending 19 days after the end of the month after the month which includes the automatic enrolment date.
- (c) (3) For the purposes of this regulation—
“automatic enrolment date” has the meaning given by section 3(7) of the Pensions Act 2008;
“automatic reenrolment date” means the date determined in accordance with regulation 13 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010;

(1) S.I. 20010/[]
(2) 2008 c.30.
(3) S.I. 2000/2692.

“enrolment date” has the meaning given in regulation 19 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010;

“jobholder” has the meaning given by section 1(1) of the Pensions Act 2008;

“opt out period” means the period prescribed by regulation 10 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 within which a jobholder who has become an active member of an occupational pension scheme in accordance with arrangements under section 3(2) of the Pensions Act 2008, may give notice under section 8 (jobholder’s right to opt out) of the Act.”.

Signed by

[date]

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning employers' payments to occupational and personal pension schemes under section 111A of the Pension Schemes Act 1993 (c. 48) and section 49(8) of the Pensions Act 1993 (c.26).

Regulation 1 provides for citation and commencement.

Regulations 2 and 3 amend the Occupational Pension Schemes (Scheme Administration) Regulations 1995 (SI 1995/1715) and the Personal Pension Schemes (Payments by Employers) Regulations 2000 (SI 2000/2692) to specify the time within which an employer must make payments to trustees or managers of occupational pension schemes under the Pensions Act 1995 and the period to be used for the purpose of calculating the due date for the payment by the employer of any contribution paid on behalf of an employee under the Pension Schemes Act 1993.

Annex G – Guidance on qualifying schemes and certification

Consultation question 1: We would welcome suggestions as to how we can make this guidance more user friendly both for actuaries and employers.

Guidance for actuaries and employers certifying a defined benefits and/or a hybrid scheme, under sections 22 and 24 of the Pensions Act 2008

CONTENTS

Part One – Introduction

Part Two – Guidance note for actuaries

Part Three – Guidance note for employers

Part One - Introduction

Legal status

1. This note provides guidance issued by the Secretary of State under section 22(5) of the Pensions Act 2008. It applies in determining whether a pension scheme meets the quality requirements through the test scheme standard that is applied by section 22(2) of that Act in relation to UK defined benefits schemes. It also applies in relation to certain hybrid schemes which, in order to qualify, are required to meet the test scheme standard by virtue of rules made under section 24 of that Act.
2. Regulations made under section 22(4) and (5) of that Act require that any determination made by an employer or actuary as to whether a pension scheme meets the test scheme standard must be made in accordance with the guidance.

Legislation or authority

3. Pensions Act 2008 and the Occupational and Personal Pensions Schemes (Automatic Enrolment) Regulations 2010.

Application

4. This guidance relates to any case in which a determination is required as to the application of the test scheme standard set out in section 22 of the Pensions Act 2008. That standard applies to defined benefits schemes under section 21(2) of the Act in relation to jobholders in employments that are not contracted-out of the State Second Pension Scheme. It also applies to certain hybrid schemes where rules made under section 24(2) to (4) of the Act have the effect that the test scheme standard is to be applied. In relation to certain descriptions of hybrid schemes, the application of the test scheme standard is modified in Pensions (Automatic Enrolment) Regulations 2010 and these modifications are covered by this guidance.
5. Any actuary or employer responsible for determining whether the pensions or benefits in a scheme are better than or equivalent to those that would be provided by a test scheme must follow this guidance when making that determination. The guidance is set out in 4 parts:

Part 1 of the guidance applies to actuaries and relates to defined benefits schemes

Part 1A of the guidance applies to actuaries and relates to hybrid schemes

Part 2 of the guidance applies to employers and relates to defined benefits schemes

Part 2A of the guidance applies to employers and relates to hybrid schemes

Purpose

1. The purpose of this Guidance is to advise actuaries and employers of what they need to consider in determining whether a scheme's pensions or benefits are broadly equivalent to, or better than, those provided under the test scheme or modified test scheme standard.

Background

2. Chapter 1 of Part 1 of the Pensions Act 2008 introduces new duties for employers: principally to enrol automatically eligible jobholders into a qualifying workplace pension scheme and to maintain active scheme membership for those already enrolled into qualifying provision. A qualifying scheme is one that meets:
 - a) the basic standards set out in sections 16, and 18 of the Pensions Act 2008; and
 - b) other specified quality requirements, in accordance with scheme type in sections 20-27 of the Pensions Act 2008.
3. Schemes used for automatic enrolment, in addition to meeting those requirements, also have to meet the requirements in section 17 of the Pensions Act 2008.

Defined benefits schemes

4. The quality requirements for defined benefits schemes are:
 - a) for schemes with members whose employment is contracted out of the State Second Pension Scheme (a contracted-out scheme)
- a contracting-out certificate which is taken as evidence that the scheme satisfies the reference scheme test¹; and
 - b) for schemes with members whose employment is not contracted out of the State Second Pension Scheme - the scheme satisfies the test scheme standard which is contained in sections 21-23 of the Pensions Act 2008, by providing pensions broadly equivalent to or better than those provided by a test scheme.

¹ A test of overall scheme quality for contracted-out schemes: see sections 12A and 12B of the Pension Schemes Act 1993.

The contracting-out certificate

5. A scheme used for contracting employments out of the State Second Pension Scheme should have a contracting-out certificate which is evidence that it meets the conditions for contracting-out, one of which is that the scheme must satisfy the reference scheme test. An actuary is required to determine whether the scheme satisfies the reference scheme test and is also responsible for keeping the scheme's ability to continue to meet the test under review. A scheme with a contracting-out certificate can be used to fulfil any of the enrolment duties arising under Chapter 1 of Part 1 of the 2008 Act.

The test scheme standard

6. Section 22 of the Pensions Act 2008 and the supporting Occupational and Pension Schemes (Automatic Enrolment) Regulations 2010, state that a scheme satisfies the test scheme standard for a jobholder, if the pensions provided to the relevant members in the scheme are broadly equivalent to or better than those that would be provided to those jobholders under a test scheme. The relevant members are jobholders who are active scheme members in employment that is not contracted-out of the State Second Pension Scheme and who are employed by the same employer as J. Jobholder J is a hypothetical jobholder (in non-contracted-out employment) in respect of whom a scheme is to be tested to determine whether it qualifies to be used to fulfil an employer's enrolment duties.

Hybrid schemes

7. Hybrid schemes are defined in section 99 of the Pensions Act 2008, as schemes that are neither defined benefits nor money purchase. They will generally have elements of both. The quality requirements for money purchase schemes and/or the quality requirements for defined benefits schemes will apply to hybrids. For some schemes, the quality requirements apply in combination and are modified. For some others, the quality requirements are simply modified. The Hybrid Schemes Quality Requirement Rules 2010 issued by the Secretary of State and parts 1A and 2A of this guidance set out the common types of hybrid schemes, the quality requirements that apply and how those requirements are to be applied.

Jobholders

8. A jobholder is defined in section 1 of the Pensions Act 2008 as a worker –
 - a) who is working or who ordinarily works in Great Britain under a worker's contract;
 - b) who is aged between 16 and 75; and

- c) for whom the employer pays at least qualifying earnings¹ in the relevant pay reference period

Who may determine whether a scheme meets the test scheme standard

9. The determination of whether a scheme meets the test scheme standard is often referred in shorthand through out the guidance as “the test of equivalence”. The test of equivalence must be certified by an actuary appointed under section 47 of the Pensions Act 1995. An actuary other than the scheme actuary can certify schemes exempt from having to appoint a scheme actuary and in certain circumstances set out below an employer can self-certify.

Circumstances in which an employer can self-certify

10. In certain circumstances employers can determine whether their scheme satisfies the test scheme standard without referring the scheme to an actuary for certification. This is permitted where:
 - a) the pensions provided by a scheme are the same as or better than in every respect (including the earnings on which they are calculated: qualifying earnings) than the pensions that would be provided by a test scheme or its modified form, if it were a real scheme.
 - b) the earnings on which the pension is calculated are not the same or better than qualifying earnings but the scheme compensates for this by a more generous accrual rate or vice versa; and
 - c) the scheme's normal pension age (the age at which an unreduced pension would be payable as of right):
 - i. is not higher than the appropriate age in the test scheme, and
 - ii. if it is lower than the appropriate age in the test scheme, the employer decides not to allow for this extra generosity to count towards satisfying the test scheme standard.
11. The appropriate age in the test scheme will increase over time to keep pace with changes to State Pension Age
12. Employers² can delegate the actual calculations to anyone competent to make the necessary comparisons but the employer remains ultimately responsible for complying with the employer duties, even where an actuary certifies a scheme.

¹ Band earnings between £5,035 and £33,540 in 2006/7 terms.

² Reference to an employer is also a reference to the person certifying the scheme.

Circumstances in which an actuary must certify

13. However, employers will not be able to determine whether their scheme satisfies the test scheme standard and an actuary must certify where:
 - a) a career average scheme or cash balance scheme does not provide for annual increases to the pensions or benefits accrued by the relevant members on a basis at least equal to or better than the rate that would apply under the test scheme. The test scheme provides for revaluation of deferred pensions in the same way that a final salary scheme would, in accordance with section 84(1) of the Pension Schemes Act 1993;
 - b) a combination hybrid does not satisfy either the money purchase quality requirements in full or the defined benefits quality requirements in full;
 - c) any scheme that needs to be tested on the basis of actuarial equivalence.
14. Additionally, an actuary will be required to certify the scheme where actuarial factors need to be applied in order to make a comparison of the scheme pension against the pension that would be provided by the test scheme; where the comparison is based on the actuarial value of the benefits; and in cases where complex calculations are required. Generally, actuarial certification will be required in the following circumstances:
 - a) the scheme's normal pension age (the age at which an unreduced pension would be payable as of right) is higher than the appropriate age in the test scheme;
 - b) the scheme's normal pension age is lower than the appropriate age in the test scheme and the employer decides to offset this against the accrual rate or the definition of pensionable pay and it is necessary to take the value of this into account in order to show that the scheme satisfies the test scheme standard;
 - c) the scheme's benefit structure provides for an explicit lump sum benefit at retirement (other than by commutation of the pension) and it is necessary to take the value of the lump sum into account in order to show that the scheme meets the test of equivalence;
 - d) the scheme provides for revaluation or indexation in excess what is required in legislation and needs to rely on this to pass the test scheme standard;
 - e) a career average scheme or cash balance scheme provides for pensions or benefits to be revalued up to retirement on a basis that

is not equal to or better than the revaluation that would be applied to the deferred pensions under a final salary scheme;

- f) a combination hybrid scheme satisfies the quality requirements for money purchase and defined benefits schemes in aggregate.

Consultation question 2: We would welcome your views on how to simplify this section so that it provides greater clarity for employers.

Consultation question 3: Employers have told us that they would like to certify their schemes without being required to refer to an actuary. We would welcome views on how we can maintain an appropriate balance between safeguarding members' interests and giving employers the flexibility to certify their schemes. Have we achieved this balance in our proposals to allow an employer to self-certify in straightforward cases but to refer more complex schemes to an actuary? If not, what changes would you like to see?

Part Two – Guidance note for actuaries

Part 2 Defined Benefits Schemes

Legislation or authority

1. The Pensions Act 2008 and the Occupational and Personal Pensions Schemes (Automatic Enrolment) Regulations 2010

Introduction

2. Where a defined benefits scheme with members in employment that is not contracted-out of the State Second Pension Scheme (a non-contracted-out scheme) is used to fulfil any of the enrolment duties, the scheme must satisfy the test scheme standard in section 22 of the Pensions Act 2008. This part of the guidance is to assist actuaries, undertaking the test of equivalence. Actuaries should continue to use the relevant guidance issued by the Board for Actuarial Standards for certifying the reference scheme test in relation to contracted-out schemes.

Receiving instructions from an employer

3. The actuary will receive instructions from the employer to determine whether the scheme satisfies the test scheme standard. Since the actuary is already acting for the trustees or manager(s) of the scheme, the trustees or manager(s) must be told that these instructions have been accepted from the employer (unless the actuary has already informed the trustees or manager(s) of an ongoing appointment to provide the employer with such advice as may be required from time to time). The actuary shall provide the signed certificate to the employer.

The Test of Equivalence

4. The ‘test scheme’ is a hypothetical scheme or benchmark. A scheme does not have to match the structure of the test scheme to satisfy the test scheme standard, provided that the person certifying is able to certify that the pensions are broadly equivalent to or better than the pensions under the test scheme.
5. The tests of actuarial equivalence must be satisfied on an overall basis for the relevant membership, collectively: jobholders of the same employer who are active members of the scheme. This means that, on average for the relevant jobholders or groups of jobholders the amount, or where appropriate the actuarial value, of the pension to be provided by the scheme must not be less than the amount or actuarial value of the pensions under the test scheme. Provided that the overall test is satisfied, the actuary certifying must also be satisfied that no more than 10 per cent of the pensions of the individual jobholder members would fail the test of equivalence.

6. The tests of equivalence are to be based on active scheme members who fall within the definition of a jobholder in section 1 of the Pensions Act 2008 on the effective date. The effective date is the date by reference to which the calculations and comparison against the test scheme are made and is likely to be prior to the date on which the actual calculations and comparison are made. The employer will normally inform the actuary of the effective date of the test. This should be well in advance of the enrolment duties being staged for that employer, as the employer will need to have a qualifying scheme when the duties start.

Remuneration data

7. The test of equivalence must be based on the latest remuneration data. If the latest available remuneration data relates to a period ending before the effective date, the actuary must consider obtaining confirmation from the employer that no significant changes in remuneration patterns had occurred before the effective date.
8. The chosen period for which the latest available remuneration data is obtained will normally be the year before the effective date. Where the actuary has reason to believe that remuneration patterns for that period are significantly abnormal and the employer has confirmed in writing that this is the case, then the actuary can test whether the scheme satisfies the broad equivalence test based on remuneration data over a period longer than three years ending on the effective date.
9. Normally, in an actuarial investigation, the actuary would comment briefly on the quality of the data which had been provided, along with any reservations regarding the data. In view of the nature of the certification which has to be provided, the actuary must be satisfied that the quality of the data is sufficient before completing the certification.
10. The sole area of uncertainty will in many cases be the difference between earnings definitions used for the scheme's benefits and qualifying earnings required by the test scheme, and the actuary may be able to draft a statement on this issue for the employer to sign which will permit the actuary to carry out the certification without individual analysis.

Different benefit scales

11. If the scheme has more than one benefit scale available to members, whether these scales are available on an open choice to members or whether they are defined for certain categories of employment, then the equivalence tests must be carried out separately for each scale. If one scale passes, and another does not, the one that does not pass cannot be used to fulfil the employer duties. In this context, 'benefit scale' encompasses the accrual rate, the definition of pensionable pay and the age when the pension becomes payable.

Schemes with more than one employer and employers with more than one scheme

12. In a scheme with more than one participating employer, each employer must satisfy the test of broad equivalence in relation to the jobholders in their employment. For an employer with more than one scheme, the test of broad equivalence must be satisfied in respect of each scheme. The test would be applied to all of the jobholders who work for that employer, whose employment is not contracted out and who are active members of the defined benefits scheme - subject to no more than 10 per cent having pensions that fail the test of equivalence.

Conducting the test of equivalence

13. The actuary need not automatically look at the benefits for each individual member in order to be satisfied that the test of equivalence is satisfied; it is a matter of professional judgement for each actuary as to the amount of investigation that is necessary. If a scheme has a benefit structure which provides pensions equal to or better than the test scheme in every respect, including the earnings definition, the actuary can provide a certificate without further investigation.

14. Where further investigation is required, it will be necessary to compare the scheme pensions that would be earned by jobholder members with those that would be provided under the test scheme. In certain circumstances, it will be necessary to make a comparison between the actuarial values of the respective pensions.

15. The scheme pensions to be compared will be those that are expected to accrue to the members in the three years following the effective date, or up to the attainment of normal pension age, if earlier, assuming they leave service at the end of that period. For the purpose of this guidance, the scheme's normal pension age is defined as the earliest age at which an unreduced pension would be payable as of right.

16. For the purpose of the comparison:

- a) the member's scheme pension would be payable from the scheme's normal pension age;
- b) assume the member leaves pensionable service three years from the effective date;
- c) the pension under the test scheme would be payable from the appropriate age specified for the scheme;
- d) the test scheme provides for revaluation, in accordance with requirements in section 84(1) of the Pension Schemes Act 1993 (the final salary method); and

- e) the test scheme applies indexation to the pensions in payment, in accordance with the requirements in section 51 of the Pensions Act 1995.
17. Based on the details in paragraph 15 above, the comparison is then made between the scheme benefits that would accrue to the members and those that would have accrued under the test scheme.
18. If the member's actual benefits include an explicit lump sum benefit at retirement (other than by the commutation of the pension), then the value of this lump sum benefit can be taken into consideration, as a member's benefit, in determining whether the equivalence test is satisfied. However, no account may be taken of:
- a) death benefits;
 - b) money purchase benefits;
 - c) contracted-out benefits in relation to jobholders who are in employment that is contracted-out of the State Second Pension scheme;
 - d) discretionary benefits (apart from discretionary revaluation);
 - e) survivors' benefits;
 - f) pension credit benefits; and
 - g) benefits in relation to people who are not jobholders or participating in the employer duty
19. Where the actuary needs to compare the actuarial values of the scheme's benefits against those under the test scheme, the actuarial assumptions set out in the scheme's Statement of Funding Principles (as defined in the Pensions Act 2004) must be employed, together with such further assumptions as are necessary to enable the comparison to be made. If, for a particular matter, no assumption is set out in the Statement of Funding Principles, the actuary is free to make any suitable assumption, provided, that overall, the assumptions are reasonable and consistent. In the circumstances where a scheme does not have, or is not required to have, a Statement of Funding Principles, then the actuary must use actuarial assumptions which he or she thinks are reasonable and consistent. The actuary must use the same assumptions to place a value on the scheme's benefits, as he or she uses to place a value on the benefits under the test scheme.
- People not accruing benefits over part or all of the 3 year period**
20. Where a member is not accruing benefits over part or all of the three year period because the member's length of service is such that the member

has accrued the maximum pension, under the provisions of the scheme, then the member shall be included in the tests of equivalence on the basis that the maximum scheme pension accrues uniformly over the member's potential pensionable service in the scheme, subject to a maximum of 40 years. The annual rate of the benefit by way of pension for which that service has qualified him or her is not less than one third of the pensionable earnings on which it is calculated.

Newly established schemes

21. If a scheme which is being established needs to be certified, then the scheme must be tested on the basis of its anticipated membership. The actuary must review the scheme's ability to pass the test upon receipt of data on the actual membership. This review must be carried out no later than the completion of the scheme's first formal actuarial valuation after its establishment.

Career average schemes

22. Career average schemes can qualify to be used to fulfil an employer's enrolment duties provided that the earnings on which the pension is based are revalued.

In the regulations we have asked a consultation question on whether career average schemes providing discretionary revaluation should qualify. If so, on what basis eg should the discretion be only exercisable by the trustees or should the scheme be required to make provision for revaluation in the Statement of Funding Principles?

Review

23. Employers will need to ensure that the scheme that they have chosen to fulfil the enrolment duties meets the quality requirement on the date that the enrolment duties are staged in and thereafter. There is no requirement for employers or actuaries routinely to re-certify their schemes. However, the employer should keep a scheme's ability to satisfy the test of equivalence under review and should review the scheme as a minimum following every triennial actuarial valuation.
24. The employer can make the relevant adjustments to the scheme and re-certify, if the outcome of the review identifies that the scheme no longer qualifies provided that no actuarial comparisons are needed in the determination of broad equivalence. Refer to "who may determine whether a scheme meets the test scheme standard" in the introduction. Changes that could significantly affect the scheme's ability to pass the test should prompt a review earlier than at the next actuarial valuation. Such changes could relate to -
 - a. the benefit structure;

- b. scheme pension age ;
- c. the definition of pensionable pay;
- d. scheme membership;
- e. the pay structure (such as a move from basic pay to non-pensionable variable pay items); and/or
- f. the ratio of pensionable pay to qualifying earnings.

Part 2A Hybrid Schemes

Legislation or authority

1. The Pensions Act (PA) 2008, the Occupational and Personal Pensions Schemes (Automatic Enrolment) Regulations 2010, and the Hybrid Schemes Quality Requirement Rules 2010

Introduction

2. To be used to fulfil the employer duties in chapter 1 of part 1 of the Pensions Act 2008, a hybrid scheme must comply with the requirements in section 24 of the Pensions Act 2008 which cross refer to:
 - a) the quality requirements for money purchase schemes which are set out in section 20 of the Pensions Act 2008 or a prescribed modification in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.
 - b) the quality requirements for defined benefits schemes which are set out in section 21-23 of the Pensions Act 2008 or a prescribed modification in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.
3. An employer may choose to certify a hybrid scheme, to which the money purchase quality requirements apply, in accordance with section 28 of the Pensions Act 2008, in which case the guidance on the certification of the money purchase scheme and the Occupational and Personal Pension Schemes (OPPS) (Automatic Enrolment) Regulations 2010 apply.
4. Rules issued by the Secretary of State will determine which quality requirement applies to particular descriptions of schemes and whether the requirement is to be applied with or without any modification prescribed in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.
5. The purpose of this part of the guidance is to assist actuaries in determining whether a hybrid scheme with members in employment that is not contracted-out of the State Second Pension Scheme satisfies the relevant quality requirement. Much of the guidance on the certification of defined benefits schemes in Part 2 will apply to hybrid schemes, where this is not the case: for cash balance schemes, final salary lump sum schemes and combination hybrids, the relevant test of equivalence has been modified and this guidance applies that modification.
6. For ease of reference the common type of hybrid are set out in a table below. The table refers to the legislation (both regulations and rules) and supporting guidance to be used in the applying relevant quality requirements -

The Hybrid Schemes Quality Requirement Rules 2010 set out the quality requirements for hybrid schemes:

Hybrid scheme type	Rule	Quality requirement	Application
A hybrid schemes that is contracted out	Rule 3	A contracting-out certificate in relation to the scheme	Section 21(1) and (4) of the Pensions Act 2008 and see paragraph 7 below
Final salary schemes and career average schemes with ancillary money purchase benefits	Rule 4	Defined benefits quality requirements in section 24(1)(b) of the PA 2008	Part 2 of this guidance and paragraph 10 below
Money purchase schemes with ancillary defined benefits	Rule 4	Money purchase quality requirements referred to in section 24(1)(a) of the (PA) 2008	Section 20 of the Pensions Act 2008 but see paragraph 3 above. Also see paragraph 8 below
Underpin schemes (provides the better of a money purchase or	Rule 4	Money purchase quality requirements referred to in section 24(1)(a) of PA 2008 or the defined benefits quality requirements referred to in section 24(1)(b) of PA 2008	Section 20 of the Pensions Act 2008 and paragraph 3 above or Part 2 of this guidance. See also paragraph 12 below
Sequential hybrid schemes (some times referred to as nursery schemes)	Rule 5	Money purchase quality requirements referred to in section 24(1)(a) of PA 2008 and defined benefits quality requirements referred to in section 24(1)(b) of PA 2008	Section 20 of the Pensions Act 2008 and paragraph 3 above and Part 2 of this guidance. See also paragraphs 13-15 below
Self-annuitising hybrid schemes (some times referred to as self-annuitising money purchase schemes)	Rule 6	Money purchase quality requirements referred to in section 24(1)(a) of PA 2008	Section 20 of the Pensions Act 2008 but see paragraph 3 above. See also paragraph 8 below
Cash balance	Rule 7	Defined benefits	See paragraphs

Hybrid scheme type	Rule	Quality requirement	Application
schemes		quality requirements referred to in section 24(1)(b) of PA 2008 (the test scheme standard), subject to the prescribed modification in the OPPS (Automatic Enrolment) Regulations 2010	16-23 below
Final salary lump schemes	Rule 8	Defined benefits quality requirements referred to in section 24(1)(b) of the PA 2008 (test scheme standard) subject to the prescribed modification in OPPS (Automatic Enrolment) Regulations 2010	See paragraphs 16-23 below
Combination hybrid scheme (some time referred to as top-up schemes)	Rule 9	Depending on structure of the scheme but generally a combination of the defined benefits schemes quality requirements referred in sections 24(1)(b) of PA 2008 and the money purchase quality requirements referred to in section 24(1)(a) of the PA 2008. These requirements may be subject to prescribed modifications in the OPPS (Automatic Enrolment) Regulations 2010	For the money purchase provision Section 20 of the Pensions Act 2008 and paragraph 3 above and for the defined benefits provision Part 2 of this guidance See paragraphs 24 -30 below

Contracted-out schemes

7. A contracted-out hybrid scheme will qualify in relation to jobholders in contracted-out employment on the basis of its contracting-out certificate which is taken as evidence that it satisfies the reference scheme test.

Money purchase schemes falling within the definition of a hybrid scheme

8. Money purchase schemes falling within the definition of a hybrid scheme are:
 - a) money purchase schemes holding ancillary defined benefits. Ancillary defined benefits will generally be benefits that are not payable on the retirement of the member in normal health therefore they may be in the form of lump sum death benefits or life insurance cover. However, some may be in the form of rights that accrued prior to 6 April 1997. They will be separate from the main package of money purchase benefits.
 - b) self-annuitising hybrids (money purchase schemes), in which before retirement members' benefits accrue in much the same way as in a money purchase scheme but at retirement the member's fund is used to secure a pension that is paid directly from the scheme's resources rather than purchased from an insurance company.
9. In both cases section 20 of the Pensions Act 2008 will apply or the employer may be able to certify under section 28.

Final salary schemes falling within the definition of a hybrid scheme

10. Part 2 of this guidance will apply to final salary schemes or career average schemes that hold ancillary money purchase benefits. The ancillary benefits will generally be benefits that are voluntary additions to the main scheme benefit (defined benefit) or subsidiary benefits payable other than on the member's retirement in normal health. Such ancillary benefits may be in the form of transfer payments, voluntary contributions or life insurance benefits held separately from the main defined benefits package.

Schemes with a money purchase and defined benefits pension section and/or underpin .

11. Schemes providing money purchase and defined benefits pensions simultaneously are:
 - a) underpin schemes that provide for the better of a money purchase pension or a defined benefits pension; and
 - b) sequential hybrid pension schemes (sometimes referred to as nursery schemes).

Underpin schemes

12. Schemes with a money purchase or defined benefits underpin will apply the quality requirements that most suit the nature and structure of the scheme:
 - a) money purchase schemes with a defined benefits underpin will apply the money purchase quality requirements in section 20 of the Pensions Act 2008 or an employer may able to certify in accordance with section 28 of the Pensions Act 2008, or
 - b) defined benefits schemes with a money purchase underpin will apply the defined benefits quality requirements set out in part 2 of this guidance.

Consultation question 4: if a money purchase scheme operates on a notional basis: that is where a member is credited with an amount or a contribution and the liabilities of the scheme do not match the contributions being paid in, we would welcome views on whether an actuary should apply a test of equivalence similar to the alternative for cash balance schemes -based on a credit of 8 per cent of qualifying earnings and annual increase of 3.5 per cent in real terms (over and above deferred pension revaluations)

Sequential hybrid pension schemes

13. Part 2 of this guidance applies to the section of the scheme that provides for defined benefits pensions.
14. Section 20 of the Pensions Act 2008 applies to the section of the scheme that provides for money purchase pensions unless the employer certifies, in accordance with section 28 of the 2008 Act.
15. Where a sequential hybrid operates with an underpin, see guidance on underpin schemes above. Each section will only have to meet the money purchase quality requirements or the defined benefits quality requirements, in accordance with the benefit structure.

Schemes in which a member accrues a lump sum rather than a pension

16. Schemes where the member accrues a lump sum which is used to provide for a pension from the scheme or to purchase an annuity from an insurance company:
 - a) Cash balance schemes; and
 - b) Final salary lump sum schemes
17. The test of equivalence for cash balance schemes and final salary lump sum schemes is similar to that for final salary or career average schemes

except that the test scheme is modified. The test of equivalence is between the lump sum accrued in the actual scheme and that which would be provided by the test scheme subject to the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.

18. The actuary need not automatically look at the lump sum accrued to each individual member, in order to be satisfied that the test of equivalence is satisfied; it is a matter of professional judgement for each actuary as to the amount of investigation that is necessary. If a scheme has a benefit structure which provides for a lump sum equal to or better than the modified test scheme in every respect, including the earnings definition, the actuary can provide a certificate without further investigation.
 19. Where further investigation is required, in order to certify broad equivalence, it will be necessary to compare the lump sum that would be earned by jobholder members with that which would be provided under the test scheme. In certain circumstances, it will be necessary to make a comparison between the actuarial values of the respective lump sums.
20. For the purpose of the comparison:
- a) assume the member leaves pensionable service three years from the effective date
 - b) the test scheme is one in which a lump sum accrues at 16 per cent of qualifying earnings with an allowance for annual increases in the earnings on which it is based in accordance with chapter 2 of part 4 of the Pension Schemes Act 1993 the increases for deferred pensions – limited price indexation capped at 2.5 per cent [or the test scheme is one in which the member is credited with 8 per cent of qualifying earnings with allowance for annual increases based on a 3.5 per cent return in real terms which means over and deferred pensions revaluation in chapter 2 of part 4 of the Pension Schemes Act];
 - c) for a final salary lump sum scheme only, the test scheme is one in which a lump sum accrues at 16 per cent of [final] qualifying earnings with annual increases in line with 2.5 per cent for deferred pensions;

In the regulations we have said that we would welcome views whether the modified test scheme should be based on 16% annual accruals of qualifying earnings and annual increases based on deferred pension revaluation: limited price indexation capped at 2.5% or an 8% annual accrual of qualifying earnings with annual increases of 3.5% (over and above deferred pensions revaluations limited price indexation capped at 2.5%).

21. The scheme benefits to be compared will be those that are expected to accrue to the members in the three years following the effective date, or up to up to the attainment of normal pension age, if earlier, assuming they leave service at the end of that period. The scheme's normal pension age is defined as the earliest age at which an unreduced pension would be payable as of right.
22. In determining whether the equivalence test is satisfied. However, no account may be taken of:
 - a) death benefits;
 - b) money purchase benefits (held separately from the cash balance benefits or final salary lump sum benefits);
 - c) discretionary benefits¹;
 - d) contracted-out benefits in relation to jobholders who are in employment that is contracted-out of the State Second Pension scheme;
 - e) pension credit benefits;
 - f) survivors' benefits; or
 - g) benefits in relation to people who are not jobholders or participating in the employer duty

People not accruing benefits over part or all of the 3 year period

23. Where a member is not accruing benefits over part or all of the three year period because the member's length of service is such that the member has accrued the maximum benefit under the provisions of the scheme. then the member shall be included in the tests of equivalence on the basis that the maximum lump sum accrues uniformly over the member's potential pensionable service in the scheme, subject to a maximum of 40 years.

Schemes providing for combination of money purchase and defined benefit pension

24. Combination hybrids (or top up schemes) provide for pensions made up of a money purchase benefit and a defined benefit in the proportions set out in the scheme rules. The money purchase quality requirements apply to the money purchase component of the pension and the defined benefits quality requirements apply to the defined benefits component. However, the minimum contribution rate and the accrual rate for defined

¹ We are consulting on whether discretionary revaluation can count towards satisfying the test and will amend this guidance in line with the consultation response.

benefits schemes are modified so that they can be applied and satisfied proportionately.

25. However, a combination hybrid that satisfies the money purchase quality requirements in section 20 of the Pensions Act 2008 or the defined benefits quality requirements in sections 21-23 of the Pensions Act 2008 in full has met the quality requirements and any top-up does not need to be taken into consideration. Otherwise, the quality requirements can be either be applied first to the defined benefits or the money purchase benefits.

Approach 1 - Starting with money purchase benefit

26. In the same way as the earnings for calculating the pension in the Test Scheme Standard, project the amount of contributions that would be payable over the next three years and this is then compared with the contributions that would be payable under the money purchase requirements in section 20 of the Pensions Act 2008. The comparison would then show what percentage of the money purchase quality requirements is met for each member: this percentage will vary from member to member because the earnings definition is not the same as qualifying earnings. This percentage might be called X1 for member 1, X2 for member 2 etc.
27. The percentage of the test scheme standard that needs to be satisfied is therefore $(100 - X_1)$ for member 1, $(100 - X_2)$ for member 2 etc. The test against the Test Scheme Standard in Part 1 can then be carried out in the normal way, except that the accrual rate would be adjusted by the factor of $(100 - X_1)$, $(100 - X_2)$ etc, which means that the test would be different for each member.

Approach 2 - Starting with the defined benefits

28. The alternative approach is to look at the defined benefit first. A comparison is made between the test scheme's benefit and the actual scheme benefit, assuming the member leaves service in three years. The comparison would then show what percentage of the test scheme standard is met for each member: this percentage will vary from member to member because the earnings definition is not the same as qualifying earnings. This percentage might be called Y1 for member 1, Y2 for member 2 etc.
29. The percentage of the money purchase test that needs to be satisfied is therefore $(100 - Y_1)$ for member 1, $(100 - Y_2)$ for member 2 etc. This part of the test might be done in the same way as for Approach 1: a comparison is made between the actual scheme contributions and the contributions required under the money purchase quality requirements, adjusted by the relevant percentage ($(100 - Y_1)$ etc), over three years.

30. Where a combination hybrid satisfies the Test Scheme Standard, in full no more 10 per cent of members can fail the test of equivalence. However, if a scheme satisfies a combination of the test scheme standard and money purchase quality requirements, no more than 10 per cent of members can have an aggregated pension of less than 100 per cent.

Part Three –Guidance note for employers

Part 3 Defined benefits schemes

Legislation or authority

1. The Pensions Act 2008, the Occupational and Personal Pensions Schemes (Automatic Enrolment) Regulations 2010.

Introduction

2. Employers can self-certify that their scheme meets the test scheme standard, where actuarial comparisons are not required. See under “who may determine whether a scheme meets the test scheme standard” in the introduction. Employers can delegate the actual calculations to anyone competent to undertake them. However, the employer remains responsible for ensuring that the scheme meets the relevant quality requirements arising under the Pensions Act 2008.
3. Where a defined benefits scheme with members in employment that is not contracted-out of the State Second Pension Scheme (a non-contracted-out scheme) is used to fulfil any of the enrolment duties, arising under the Pensions Act 2008, the scheme must satisfy the test scheme standard. Part 3 of this guidance is to assist employers in determining whether their scheme meets this test.

The test scheme standard

4. To satisfy the test scheme standard, a scheme’s pensions must be broadly equivalent to or better than those provided under a hypothetical scheme called “the test scheme”. To assess whether a scheme meets this benchmark, the pensions are compared against those that would be provided by the “test scheme”. This is sometimes referred to as “the test of equivalence”.
5. The key features of the test scheme against which the comparison is made are set out in section 23 of the Pensions Act 2008. The test scheme’s pensions are calculated by reference to:
 - a) 1/120th annual accruals of qualifying earnings averaged over the last three tax years preceding the end of pensionable service,
 - b) multiplied by a maximum of 40 years pensionable service; and
 - c) a pension age of 65 gradually increasing to 68.
6. If a scheme has a benefit structure which provides pensions equal to or better than the test scheme in every respect, including qualifying earnings, an employer may self-certify without further investigation.

7. However, where further investigation is required, the comparison has been simplified for employers and the test of equivalence that they need to undertake is between their scheme's definition of pensionable pay on which the pensions are calculated and the definition of qualifying earnings averaged over the last three tax years¹. The table below can be used as a simplified way to check that the scheme satisfies the test scheme standard based on the scheme's definition of pensionable pay and the accrual rate for the scheme's pensions. Employers can offset a more generous pension accrual rate against a definition of pensionable pay less than qualifying earnings and vice versa.

The effective date

8. To make the comparison, an employer chooses a date. This is referred to as the effective date. It is likely to be prior to the date on which the actual calculations and comparisons are made. It should be in advance of the enrolment duty being staged (the employer duty will go-live for different employers at different times). The choice of the effective date means that the comparison is based on a "snapshot" of the scheme on that date.

Those who need to be included in the test

9. The simplified test of equivalence is to be carried out in respect of jobholders who have not opted out of the employer duty and who were active members of the scheme at the effective date.

Remuneration data and other data

10. To undertake the comparison, the following data will need to be available:
 - a) details of the pensionable pay on which pensions would be based for all relevant jobholders, assuming that they left pensionable service at the effective date;:
 - b) details of qualifying earnings in the three tax years prior to the effective date;
 - c) the scheme's accrual rate which is likely to be set out in the rules of the scheme or other documentation.
11. However, if the period leading up to the effective date is not typical of normal remuneration patterns, the data may be adjusted to make it more representative of future patterns. Any such adjustments should be applied consistently to pensionable pay and qualifying earnings.

Conducting the test of equivalence

12. When conducting the simplified test of equivalence, assume the jobholders leave pensionable service at the effective date. Calculate the

¹ A band of earnings between £5,035 and £33,540

earnings on which their pension would be based (final pensionable pay) and the band of final qualifying earnings in the three tax years preceding the effective date (final qualifying earnings). The ratio of these two figures is then calculated and checked against the table below.

The scheme accrual rate	Required ratio of final pensionable pay to final qualifying earnings
1/40th	33.3%
1/50th	41.7%
1/60th	50.0%
1/70th	58.3%
1/80th	66.7%
1/90th	75.0%
1/100th	83.3%
1/110th	91.7%
1/120th	100.0%

13. The ratios of final pensionable pay to final qualifying earnings for no more than 10 per cent of jobholders can be less than the percentage in the right hand column of the table. If more than 10 per cent fail, the employer cannot certify the scheme as having met the test scheme standard. **There is a step by step guide in the annex.**

Different benefit scales

14. If the scheme has more than one benefit scale available to members (for example there may be different accrual rates for different scheme members and the different rates might be available at the choice of members) then the simplified test must be carried out separately for each scale. If having checked and applied the table, one scale passes, and another does not, the one that does not pass cannot be used to fulfil the employer duties. In this context, ‘benefit scale’ means the accrual rate and the definition of pensionable pay.

Schemes with more than one employer and employers with more than one scheme

15. In a scheme with more than one participating employer, each employer must ensure that they meet the test scheme standard in relation to the jobholders that they employ.
16. If an employer is using more than one scheme to fulfil the duty, the simplified test must be applied and satisfied in respect of each scheme.

Newly established schemes

17. If a scheme which is being established needs to be certified, an employer can undertake the simplified test on the basis of the earnings of the

anticipated membership. However, the employer must review the scheme's ability to pass the test when there is data available on the actual membership. This review must be carried out no later than at the completion of the scheme's first formal actuarial valuation, after its establishment. However, where the initial certification of a scheme which is being established, requires actuarial comparisons or assumptions, it should be undertaken by the actuary.

Career average schemes

18. An employer can only self-certify a career average scheme that provides at least for the rate of revaluation required under section 84(1) of the Pension Schemes Act 1993. That is revaluation for deferred pensions using the final salary method. **The step by step guide in the annex has been modified to accommodate career average schemes.**

Schemes that do not satisfy the simplified test

19. If a scheme does not satisfy the simplified test, the employer must either make the necessary adjustments to the scheme to enable the test to be met or refer the scheme to an actuary for further investigation.

Review

20. Employers will need to ensure that the scheme that they have chosen to fulfil the enrolment duties meets the quality requirement on the date that the enrolment duties are staged in and thereafter. There is no requirement for employers or actuaries routinely to re-certify their schemes. However, the employer should keep a scheme's ability to satisfy the test of equivalence under review and should review the scheme as a minimum following every triennial actuarial valuation.
21. The employer can make the relevant adjustments to the scheme and re-certify, if the outcome of the review identifies that the scheme no longer qualifies provided that no actuarial comparisons are needed in the determination of broad equivalence. Refer to "who may determine whether a scheme meets the test scheme standard" in the introduction. Changes that could significantly affect the scheme's ability to pass the test should prompt a review earlier than at the next actuarial valuation. Such changes could relate to -
 - a) the benefit structure;
 - b) scheme pension age ;
 - c) the definition of pensionable pay;
 - d) scheme membership;

- e) the pay structure (such as a move from basic pay to non-pensionable variable pay items); and/or
- f) the ratio of pensionable pay to qualifying earnings.

Annex: Step by Step guide to simplified test of equivalence for Final Salary Schemes and Defined Benefits schemes

Step 1:	Choose a date which may be prior to one on which the actual calculations and comparison are made. This will be the effective date and will be the date by reference to which the comparison is made.
Step 2:	Identify the relevant scheme members to whom the test will apply. These are jobholders of the same employer who are in employment that is not contracted-out of the State Second Pension Scheme and who are active members of the scheme at the effective date of the test.
Step 3:	Obtain historical earnings data in the year before the effective date
Step 4:	Based on the earnings data, identify and calculate the earnings that would have been used to calculate each member's scheme pension, assuming that they left service at the effective date. Calculate the total pensionable earnings for all the relevant scheme members.
Step 5:	Again for each member and using the published earnings data, calculate the average qualifying earnings over the last three tax-years preceding the effective date. Calculate the average total qualifying earnings for all of the relevant members.
Step 6:	The sum of the amounts in step 4 (the pensionable earnings) divided by the sum of the amounts in step 5 (qualifying earnings averaged over the last years preceding the effective date) must be at least equal to the percentage in the right hand column of the table below, according to the rate of pension accrual in the scheme. (The rate of pension accrual is the amount of pension that a member earns for each year of pensionable service, expressed as a fraction of pensionable earnings (as defined for the purposes of the scheme). Where the rate of pension accrual varies for different periods of pensionable service, it should be the rate that applies for the period starting on the effective date.)
Step 7:	Provided the test in step 6 is satisfied, a check should then be made that for no more than 10 per cent of the relevant members identified in step 2 , the amount in Step 4 divided by the amount in step 5 is less than the percentage in the table.
Step 8:	Provided the tests at Steps 6 and 7 are satisfied, the employer can certify that the scheme meets the requirements to be a qualifying scheme.
Step 9:	Retain records of the calculations for at least 6 years.

For career average schemes the calculation in steps 3, 4 and 6 are modified:

Step 3:	Obtain historical earnings data for the three tax years preceding the effective date rather just the one year.
Step 4:	Based on the historical earnings data in the three tax years preceding the effective date calculate the average earnings
Step 6:	The sum of the amounts in step 4 (the average earnings over the three tax years preceding the effective date) divided by the sum of the amounts in step 5 (qualifying earnings averaged over the last years preceding the effective date) must be at least equal to the percentage in the table below, according to the rate of pension accrual in the scheme. (The rate of pension accrual is the amount of pension that a member earns for each year of pensionable service, expressed as a fraction of pensionable earnings (as defined for the purposes of the scheme). Where the rate of pension accrual varies for different periods of pensionable service, it should be the rate that applies for the period starting on the effective date.)

Required percentage in Steps 6 and 7

T The scheme accrual rate	Minimum value of the amount in Step 4 divided by the amount in Step 5
1/40th	33.3%
1/50th	41.7%
1/60th	50.0%
1/70th	58.3%
1/80th	66.7%
1/90th	75.0%
1/100th	83.3%
1/110th	91.7%
1/120th	100.0%

Part 3A Hybrid Schemes

Legislation or authority

1. The Pensions Act (PA) 2008, the Occupational and Personal Pensions Schemes (Automatic Enrolment) Regulations 2010, and the Hybrid Schemes Quality Requirement Rules 2010

Introduction

2. To be used to fulfil the employer duties in chapter 1 of part 1 of the Pensions Act 2008, a hybrid scheme must comply with the requirements in section 24 of the Pensions Act 2008 which cross refer to:
 - a) the quality requirements for money purchase schemes which are set out in section 20 of the Pensions Act 2008 or a prescribed modification in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.
 - b) the quality requirements for defined benefits schemes which are set out in sections 21-23 of the Pensions Act 2008 or a prescribed modification in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.
3. An employer may choose to certify a hybrid scheme, to which the money purchase quality requirements apply, in accordance with section 28 of the Pensions Act 2008, in which case the guidance on the certification of money purchase schemes and the Occupational and Personal Pension Schemes (OPPS) (Automatic Enrolment) Regulations 2010 apply.
4. Rules issued by the Secretary of State will determine which quality requirement applies to particular descriptions of schemes and whether the requirement is to be applied with or without any modification prescribed in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.
5. The purpose of this part of the guidance is to assist employers in determining whether a hybrid scheme with members in employment that is not contracted-out of the State Second Pension Scheme satisfies the relevant quality requirement. Much of the guidance on the certification of defined benefits schemes in Part 3 will apply to hybrid schemes, where this is not the case: for cash balance schemes, final salary lump sum schemes and combination hybrids, the relevant test of equivalence has been modified and this guidance applies that modification.
6. For ease of reference the common type of hybrid are set out in a table below. The table refers to the legislation (both regulations and rules) and supporting guidance to be used in the applying relevant quality requirements -

The Hybrid Schemes Quality Requirement Rules 2010 set out the quality requirements for hybrid schemes:

Hybrid scheme type	Rule	Quality requirement	Application
A hybrid schemes that is contracted out	Rule 3	A contracting-out certificate in relation to the scheme	Section 21(1) and (4) of the Pensions Act 2008 and paragraph 7 below
Final salary schemes and career average schemes with ancillary money purchase benefits	Rule 4	Defined benefits quality requirements in section 24(1)(b) of the PA 2008	Part 3 of this guidance and paragraph 10 below
Money purchase schemes with ancillary defined benefits	Rule 4	Money purchase quality requirements referred to in section 24(1)(a) of the (PA) 2008	Section 20 of the Pensions Act 2008 but see paragraph 3 above. Also see paragraph 8 below
Underpin schemes (provides the better of a money purchase or	Rule 4	Money purchase quality requirements referred to in section 24(1)(a) of PA 2008 or the defined benefits quality requirements referred to in section 24(1)(b) of PA 2008	Section 20 of the Pensions Act 2008 and paragraph 3 above or Part 3 of this guidance. See also paragraph 18 below.
Sequential hybrid schemes (some times referred to as nursery schemes)	Rule 5	Money purchase quality requirements referred to in section 24(1)(a) of PA 2008 and defined benefits quality requirements referred to in section 24(1)(b) of PA 2008	Section 20 of the Pensions Act 2008 and paragraph 3 above and Part 3 of this guidance. See also paragraphs 19-21 below.
Self-annuitising hybrid schemes (some times referred to as self-annuitising money purchase schemes)	Rule 6	Money purchase quality requirements referred to in section 24(1)(a) of PA 2008	Section 20 of the Pensions Act 2008 but see paragraph 3 above. See also 8 below.
Cash balance schemes	Rule 7	Defined benefits quality requirements referred to in section 24(1)(b) of PA 2008	Part 3A of this guidance – paragraphs 11-16 below

Hybrid scheme type	Rule	Quality requirement	Application
		(the test scheme standard), subject to the prescribed modification in the OPPS (Automatic Enrolment) Regulations 2010	
Final salary lump schemes	Rule 8	Defined benefits quality requirements referred to in section 24(1)(b) of the PA 2008 (test scheme standard) subject to the prescribed modification in OPPS (Automatic Enrolment) Regulations 2010	Part 3A of this guidance – paragraphs 11-16 below
Combination hybrid scheme (some time referred to as top-up schemes)	Rule 9	Depending on structure of the scheme but generally a combination of the defined benefits schemes quality requirements referred in sections 24(1)(b) of PA 2008 and the money purchase quality requirements referred to in section 24(1)(a) of the PA 2008. These requirements may be subject to prescribed modifications in the OPPS (Automatic Enrolment) Regulations 2010	For the money purchase provision Section 20 of the Pensions Act 2008 and paragraph 3 above and for the defined benefits provision Part 3 of this guidance Part 3A of this guidance - paragraphs 22-24 of the guidance

Contracted-out schemes

7. A contracted-out hybrid scheme will qualify in relation to jobholders in contracted-out employment on the basis of its contracting-out certificate which is taken as evidence that it satisfies the reference scheme test.

Money purchase schemes falling within the definition of a hybrid scheme

8. Money purchase schemes falling within the definition of a hybrid scheme are:

- a) money purchase schemes holding ancillary defined benefits. Ancillary defined benefits will generally be benefits that are not payable on the retirement of the member in normal health therefore they may be in the form of lump sum death benefits or life insurance cover. However, some may be in the form of rights that accrued prior to 6 April 1997. They will be separate from the main package of money purchase benefits.
 - b) self-annuitising hybrids (money purchase schemes), in which before retirement members' benefits accrue in much the same way as in a money purchase scheme but at retirement the member's fund is used to secure a pension that is paid directly from the scheme's resources rather than purchased from an insurance company.
9. In both cases section 20 of the Pensions Act 2008 will apply or the employer may be able to certify under section 28.

Final salary schemes falling within the definition of a hybrid scheme

10. Part 3 of this guidance will apply to final salary schemes or career average schemes that hold ancillary money purchase benefits. The ancillary benefits will generally be benefits that are voluntary additions to the main scheme benefit (defined benefits) or subsidiary benefits payable other than on the member's retirement in normal health. Such ancillary benefits may be in the form of transfer payments, voluntary contributions or life insurance benefits held separately from the main defined benefits package.

Schemes in which a member accrues a lump sum rather than a pension

11. The test scheme standard has been modified to accommodate cash balance schemes and final salary lump sum schemes in which a member accrues a lump sum with which to purchase an annuity from an insurance company or secure a pension from the scheme.

Cash balance schemes

12. The key features of the test scheme against which the comparison is made have been modified in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2008. The test scheme's benefits are calculated by reference to:
- a) annual accruals of 16 or 8 per cent of qualifying earnings averaged over the last 3 tax years preceding the end of pensionable service,¹
 - b) multiplied by a maximum 40 years pensionable service; and
 - c) a pension age of 65 gradually increasing to 68

¹ We are consulting on the two alternative quality requirements.

In the period after leaving pensionable service up to retirement, the test scheme accrual is increased in line with the rate of deferred pension revaluations required under Section 84(1) of the Pension Schemes Act 1993. For the accrual based on 8 per cent of qualifying earnings, the accrual must be increased by a further 3.5 per cent a year after leaving pensionable service, in addition to the revaluation under Section 84(1).

Final salary lump sum schemes

13. The key features of the test scheme against which the comparison is made have been modified in the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2008. The test scheme's benefits are calculated by reference to:

- a) annual accruals of 16 per cent averaged over the last 3 tax years preceding the end of pensionable service,
- b) multiplied by a maximum 40 years pensionable service; and
- c) a pension age of 65 gradually increasing to 68

In the period after leaving pensionable service up to retirement, the test scheme accrual is increased in line with the rate of deferred pension revaluations required under Section 84(1) of the Pension Schemes Act 1993.

14. If a scheme has a benefit structure which provides pensions equal to or better than the test scheme in every respect, including qualifying earnings, an employer may self-certify without further investigation. This is very unlikely in the case of cash balance schemes because such schemes have a wide range of benefit structures, which will not generally match the test scheme. Therefore, in most cases they will need to be certified by an actuary because actuarial comparisons will be required.

15. However, should employers be using schemes with a definition of annual accruals and pensionable pay equal to or better than the test scheme, they use the simplified test below than the test scheme. More generous accruals can offset against the definition of qualifying earnings

16. Employers can undertake a simplified check on whether their scheme satisfies the test scheme standard, as modified above, for:

- a) final salary lump sum schemes, and
- b) cash balance schemes that provide for their accruals to be increased at least in line with the revaluations specified above in the test scheme after leaving pensionable service

This simplified check involves calculating the average of the scheme's definition pensionable pay on which the lump sum accrued over the 3 years to the effective date, and the average of qualifying earnings over the last 3 tax years before the effective date. The ratio of these two figures is then

calculated and checked against the following table. This approach allows employers to offset a more generous rate of accrual against a definition of pensionable pay less than qualifying earnings.

Accrual of the lump sum as a percentage of qualifying earnings	Required ratio of pensionable pay used to calculate the accrual of lump sum to qualifying earnings over last three tax years
16.0%	100.0%
19.2%	83.3%
24.0%	66.7%
32.0%	50.0%

Schemes with a money purchase and defined benefits pension section and/or underpin.

17. Schemes providing money purchase and defined benefits pensions simultaneously are:
- a) underpin schemes that provide for the better of a money purchase pension or a defined benefits pension; and
 - b) sequential hybrid pension schemes (sometimes referred to as nursery schemes).

Underpin schemes

18. Schemes with a money purchase or defined benefits underpin will apply the quality requirements that most suit the nature and structure of the scheme:
- a) money purchase schemes with a defined benefits underpin will apply the money purchase quality requirements in section 20 of the Pensions Act 2008 or an employer may able to certify in accordance with section 28 of the Pensions Act 2008, or
 - b) defined benefits schemes with a money purchase underpin will apply the defined benefits quality requirements set out in part 3 of this guidance.

Sequential hybrid pension schemes

19. Part 3 of this guidance applies to the section of the scheme that provides for defined benefits pensions.
20. Section 20 of the Pensions Act 2008 applies to the section of the scheme that provides for money purchase pensions unless the employer certifies, in accordance with section 28 of the 2008 Act.

21. Where a sequential hybrid operates with an underpin, see guidance on underpin schemes above. Each section will only have to meet the money purchase quality requirements or the defined benefits quality requirements, in accordance with the benefit structure.

Schemes providing for combination of money purchase and defined benefit pension

22. Combination hybrids (or top up schemes) provide for pensions made up of a money purchase benefit and a defined benefit in the proportions set out in the scheme rules. The money purchase quality requirements apply to the money purchase component of the pension and the defined benefits quality requirements apply to the defined benefits component. However, the minimum contribution rate and the accrual rate for defined benefits schemes are modified so that they can be applied and satisfied proportionately.
23. However, a combination hybrid that satisfies the money purchase quality requirements in section 20 of the Pensions Act 2008 or the defined benefits quality requirements in sections 21-23 of the Pensions Act 2008 in full has met the quality requirements and any top-up does not need to be taken into consideration. Otherwise, the quality requirements can be either be applied first to the defined benefits or the money purchase benefits.
24. Employers can only certify where the scheme meets the money purchase or defined benefits quality requirements in full and the top-up is an addition that does not need to count towards satisfying the relevant quality requirements. Therefore, the money purchase quality requirements in section 20 apply (unless the employer certifies in accordance with section 28 or the defined benefits quality requirements apply in part 3 of this guidance).

Annex

Step1:	To make the comparison, an employer chooses a date. This is referred to as the effective date. It is likely to be prior to the date on which the actual calculations and comparisons are made. It should be in advance of the enrolment duty being staged (the employer duty will go-live for different employers at different times).
Step 2:	<p>Identify the relevant scheme members to whom the test will apply. These are jobholders of the same employer who are in employment that is not contracted-out of the State Second Pension Scheme and who are active members of the scheme at the effective date of the test</p> <p>Exclude members who are not jobholders or those that have opted out of the employer duty</p>
Step 3:	Obtain historical earnings data for the years preceding the effective date.
Step4:	Based on the historical earnings data, calculate the average of the member's pensionable pay on which the accrual of the scheme benefits was based over the 3 years before the effective date.
Step5:	Again for each member and using the historical earnings data, calculate the average qualifying earnings over the last three tax-years preceding the effective date.
Step 6	<p>Calculate the sum across all relevant members of the amounts in step 4 and call this amount A</p> <p>Calculate the sum across all relevant members of the amounts in step 5 and call this amount B</p> <p>Calculate A divided by B and multiply by 100. Call this percentage C.</p> <p>Check that C is at least equal to the percentage in the table below, according to the rate of lump sum accrual in the scheme.</p> <p>The rate of lump sum accrual is the amount of a lump sum that a member earns for each year of pensionable service, expressed as a percentage of pensionable pay (as defined for the purposes of the scheme). Where the rate of lump sum accrual varies for different periods of pensionable service, it should be the rate that applies for the period starting on the effective date.</p>
Step 7:	Provided the test in step 6 is satisfied, a check should then be made that for no more than 10 per cent of the relevant members identified in step 2 , the amount in Step 4 divided by the amount in step 5 multiplied by 100 is less than the percentage in the table.
Step 8:	Provided the tests at Steps 6 and 7 are satisfied, the employer can certify the scheme meets the requirements to be a qualifying scheme.
Step9:	Retain records of the calculations for at least 6 years.

Required percentage in step 6

Accrual of the lump sum as a percentage of qualifying earnings	Accrual terms in pension	Earnings used to calculate the accrual of lump sum as a percentage of qualifying earnings over last three tax years
16.0%	1/120th	100.0%
19.2%	1/100th	83.3%
24.0%	1/80th	66.7%
32.0%	1/60th	50.0%

Guidance for person(s) certifying money purchase, personal pension schemes and/or certain hybrid schemes in accordance with section 28 of Pensions Act 2008 (certification)

Legislation

Section 20, 26 and 24 of the Pensions Act 2008

Section 28 of the Pensions Act 2008

The Pensions (Automatic Enrolment) Regulations 2008

[Northern Ireland legislation]

Definitions

Acceptable level of shortfall - the maximum level of a shortfall in contributions set out in regulation 53 of part 12 of the Pensions (Automatic Enrolment) Regulations 2010.

Effective date - date on which the employer decides that the certification period should start.

Minimum contributions – the minimum rate of contributions required by sections 20, 24, 26 or 29 of the Pensions Act 2008

Purpose

1. The purpose of this guidance note is to advise employers¹ of the processes and the issues that they need to consider when determining whether a scheme meets the quality requirements in section 28 of Pensions Act 2008

Application

2. Employers who are confident that their schemes are on course to meet the relevant quality requirements can certify their schemes under section 28 of the Pensions Act 2008. Employers who mis-certify their schemes may be in breach of section 2 – continuity of scheme membership and/or their enrolment duties in section 3, 5 or 7 of the 2008 Act. The Pensions Regulator has enforcement powers which include imposing financial penalties. Certification under section 28 is only available to employers using money purchase, personal pension or hybrid schemes with their main administration within the UK.

3. Employer do not have to use certification to comply with the quality requirements for money purchase schemes or hybrid schemes in which case they would simply comply with section 20 or 26 of the Pensions Act 2008. This would apply where an employer was paying an eight percent contribution on a definition of pensionable pay equivalent to or better than qualifying earnings, for example, paying from £1on total earnings (which would include bonuses, commission overtime etc)
4. Alternatively, contributions can be calculated using an annual pay reference period or for occupational schemes the trustees and the employer can make changes to the scheme, using the modification powers in section 32 of the Pensions Act 2008 to comply with the quality requirements for UK money purchase schemes (section 20 of the Pensions Act 2008) and the quality requirements for the money purchase part of a UK hybrid scheme (subsection (1)(a) of section 24 of the Pensions Act 2008 or some modification thereof). Modifications made by the trustees under section 32 are limited to increasing the contribution rate by changing the basis on which it is calculated and/or its frequency. However, if an employer chooses to certify the scheme, the person giving the certificate must be of the opinion that the scheme is able to comply with the quality requirements for UK money purchase schemes (including the extent to which it applies to hybrid schemes) or for UK personal pensions schemes (section26).

Introduction

5. The Pensions Act 2008 introduces new duties for employers: principally to automatically enrol eligible jobholders into a qualifying workplace pension scheme and to maintain active scheme membership for those already enrolled into qualifying provision. A qualifying scheme is one that meets the basic standards set out in sections 16, 18 and 19 of the Pensions Act 2008. In addition, qualifying schemes used for automatic enrolment have to meet the requirements in section 17 of the Pensions Act 2008.
6. Schemes also have to satisfy specific quality requirements, in accordance with scheme type (sections 20-27 of the Pensions Act 2008). To qualify to be used to fulfil the employer duty, a UK money purchase scheme, a UK personal pension scheme or a UK hybrid scheme must comply with –
 - a) Section 20 of the Pensions Act 2008: quality requirements for occupational money purchase pension schemes that requires schemes to provide for -
 - i. an employer contribution equivalent to at least three percent of qualifying earnings, in the relevant pay reference period; and
 - ii. a total contribution equivalent to at least eight percent of qualifying earnings in the relevant pay reference period.

- b) Section 26 of the Pensions Act 2008: quality requirements for personal pension schemes, requires there to be agreements between the employer, the jobholder and the provider requiring:
 - i an employer contribution equivalent to at least three percent of qualifying earnings in the relevant pay reference period; and
 - ii a jobholder contribution equivalent to at least to the difference between the rate of the employer contribution (three percent) and total contributions (eight per cent) of qualifying earnings in the relevant pay reference period (i.e. five percent of qualifying earnings).
 - c) rules made under section 24 and guidance will direct certain hybrid schemes to the money purchase scheme quality requirements in section 20.
7. The definition of qualifying earnings is set out in section 13 of the Pensions Act 2008 and includes the following earnings:
- a) salary, wages, commission, bonuses
 - b) statutory sick pay¹
 - c) statutory maternity pay²
 - d) ordinary statutory paternity pay or additional statutory paternity pay³
 - e) statutory adoption pay⁴

Persons who may certify under section 28

8. An employer may certify a scheme, in accordance with Section 28. An employer is defined in section 88 of the Pensions Act 2008 as the person by whom the worker is employed. This person could be an individual, the members of a partnership or a legal person such as a company. In practice, each different type of employer will have different mechanisms to determine who can bind, the company, the partnership etc. An employer can delegate the actual checking, review and calculations to anyone competent to undertake these tasks but only a person capable of binding the employer can sign the certificate. As an illustration, in the following cases the person signing the certificate should be:
- in a limited company, a director or officer of the company;
 - in a partnership a senior partner;
 - for a sole trader, the business owner;
 - in a Government Department, a member of the executive team or the permanent secretary;

¹ See part 11 of the Social Security Contributions and Benefits Act 1992

² See part 12 of the Social Security Contributions and Benefits Act 1992

³ See part 12ZA of the Social Security Contributions and Benefits Act 1992

⁴ See part 12ZB of the Social Security Contributions and Benefits Act 1992

- in a Local Authority the chief executive;
- in a Government Agency, the chief executive;
- in public body, the chief executive;
- in an academic institution, the Dean or Principle
- in a National Health Service Trust – the chief executive, and
- with regards to charities, societies and clubs check the constitution

Consultation question: This list is merely meant to illustrative. However, we would welcome views on any business structures that you feel it is important for clarity that we clearly state in guidance who should sign the certificate and on whether in the above cases we have identified the right people to sign the certificate.

Employers with more than one scheme

9. There will be one certificate which could cover one or many schemes. The details of each scheme will need to be included in the certificate.

Schemes with more than one employer

10. In a scheme where more than one employer participates and one or more employers choose to use certification, each employer will be required to hold a certificate in respect of the jobholders that they employ.

Workplace personal pension schemes

11. The definition of a workplace personal pension covers group personal pensions, stakeholder pensions and group self invested personal pensions. Group personal pensions and group self invested personal pensions are a series of independent contracts between the jobholder and a provider to which an employer makes a contribution, stakeholder pensions can also be offered on this group basis. For the purpose of the certification process a group of workplace personal pension schemes administered by a single provider on similar terms and conditions can be treated as if they were a single scheme. Personal pension schemes to which an employer contributes but fall outside of these grouped arrangements will be treated as a single scheme.

Persons covered by the certificate.

12. A scheme used to fulfil an employer's enrolment duties has to qualify in relation to the jobholders employed by that employer, so a certificate will need to relate to jobholders who are or were active members of the scheme.

The initial certification

13. An employer using certification will need to choose a start date for the certificate. During the implementation period of the Pensions Act 2008,

this would normally be linked to the date on which the duties apply in relation to the employer. The employer will need to determine whether the scheme meets the relevant quality requirements for money purchase schemes, personal pension schemes or certain hybrid schemes¹. This determination will be based on the previous year's remuneration data, the contribution rate and the typical reward structure for the workforce.

14. The extent to which the checking of individual records is required will depend on the pay and reward structure and on the contribution rate required by the scheme; and is a matter of judgement for the employer. If the employer is satisfied that the scheme will satisfy the relevant quality requirements in respect of the jobholders who are active members of the scheme on the effective date of the certificate, s/he will have three months from that date to sign the certificate.
15. A certificate template is provided in schedule 2 to the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 and in Annex C of this guidance. The employer should retain a copy of the signed certificate and should attach a copy to the payment schedule which will be forwarded to the scheme or the provider. For personal pension schemes where there is no schedule a copy of the certificate should be retained by the employer. Providers will also retain a copy of the certificate.

Certification period

16. A certificate can be in force for a maximum of 12 months or some shorter period. While a certificate is in force, if a significant change in circumstances occurs in relation to a scheme or an employer that in the opinion of the employer means that the scheme can no longer satisfy the relevant quality requirement, or if the scheme is wound up, the certificate expires on the date that the employer forms the opinion or the scheme is wound up. Examples of significant changes would be:

- corporate transactions such mergers, acquisitions and transfers under the Transfer of Undertakings (Protection of Employment) (TUPE);
- changes to a scheme's benefit structure;
- change to the contribution rate;
- change to the pay and reward structure;

Review and Determination at the end of the certification period.

17. When a certificate expires, the employer will need to consider whether the scheme(s) have met the quality requirements in relation to jobholders who were active members at any time during the period for which the certificate was in force, even if they are no longer active members of the scheme or jobholders.

¹ See sub-section (4) of section 28 of the Pensions Act 2008.

18. The extent to which the checking of individual records is required will depend on the pay and reward structure and the contribution rate required by the scheme; and is a matter of judgement for the employer. If a scheme does not satisfy the requirements regarding certification (section 28 of the Pensions Act 2008) the employer could be in breach of section 2 – continuity of membership and the enrolment duties in sections 3, 5, and 7 of the Pensions Act 2008.
19. However, in order to determine whether a scheme has met the quality requirements in relation to jobholders who were active members during the certification period, an employer may choose to sample check categories of jobholder with different remuneration structures, and specifically to sample within a category of jobholders that the employer judged to be at risk of falling short of the quality requirements. Any sample needs to be representative of the jobholders in that particular category and should be sufficient to give a reasonable indication of the extent to which the test has been met in relation to that category of jobholder.
20. Annex B sets out a guide to sample sizes. Employers can undertake checks based on a different sampling model provided that it is robust enough to provide a reasonable indication of the extent to which the scheme has met the quality requirements. However, sample checks are estimates and are therefore simply a tool assist to employers in determining the extent to which their jobholders have received the minimum contributions required under the legislation without necessarily having to check every single contribution record. If sample checking shows unexpected shortfall amounts, or shortfalls occurring for jobholders for whom the employer did not expect a shortfall to occur, this should act as an indication to the employer that further and more rigorous checking is necessary.

Consultation question 1: we understand from our stakeholders that employers do not want to undertake detailed checks of individual contribution levels. Risk focused sample checks could provide a viable alternative. We would be interested to hear views on how we can ensure that sample checking is robust enough to give a reasonable indication of the extent to which a scheme meets the relevant quality requirements. We have included a table of sample sizes in Annex B.

Pay reference period for reconciliation

21. The pay reference period for the checking and reconciliation of contributions is the certification period: 12 months or any shorter period covered by the certificate.
22. Where a jobholder joins and/or leaves the scheme during the course of a certificate, the minimum contributions payable are pro-rated over the period for which the certificate was in force (*length of pensionable service divided by the period covered by the certificate times the contribution*

rate). For further guidance on the certification process, **see the step by step guide to certification in Annex A.**

The acceptable level of shortfall

23. A scheme will be treated as having **not** met the relevant quality requirement; if following the review/determination:

- a) an individual jobholder experiences a shortfall greater than five per cent of the minimum contributions required under the legislation in the total contributions paid into the scheme on their behalf.
- b) more than 10 per cent of the jobholders in the workforce of an employer experience any shortfall in the contributions paid into the scheme on their behalf; or
- c) an individual experiences a shortfall more than once in a consecutive 24 month period starting on the date of the first certificate in the contributions paid into the scheme on their behalf.

Making good a shortfall

24. A scheme will be treated as having met the relevant quality requirements, if the employer:

- a) makes good a shortfall in the contributions payable on behalf of an individual jobholder up to at least the minimum required under the legislation, in a case where the individual experiences a shortfall in their contributions that did not meet the conditions in Regulation [50] of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 i.e. exceeded the acceptable level of shortfall;
- b) makes good a shortfall in the contributions payable on behalf of each individual jobholder up to at least the minimum rate of contributions required by the legislation, if more than 10 percent of the jobholders in the workforce of an employer experience any shortfall; and
- c) makes good a shortfall in the contributions payable on behalf of a jobholder to at least the minimum rate of contributions required by the legislation where that individual experiences a shortfall more than once in a 24 month period starting on the date of the first certificate.

Comment [91]: Check

Paying backdated contributions:

25. Employers will have three months from the end date of the certificate to make up any shortfall identified, following the review/determination. The scheme will not be a qualifying scheme unless any necessary payments are made. In addition, the employer will not be able to sign a new certificate until any outstanding contributions have been paid

Phasing in contributions

26. Employers and jobholders will be able to phase in their contributions over two transitional periods: a total of two percent in the first period and five percent in the second period. The acceptable level of shortfall referred to in paragraph 21 of this guidance will be proportionately reduced to reflect the lower rate of minimum contributions payable over the transitional period. Also see regulation 50 of the Pensions (Automatic Enrolment) Regulations 2010.

Money purchase quality requirements modified for certain hybrid schemes

27. Where the minimum contribution rate in section 20 is modified for certain hybrid schemes, the acceptable level of shortfall in paragraph 21 will be in proportion to minimum contribution payable in relation that scheme.

Postponement

28. Employers offering higher quality schemes may postpone the automatic enrolment duty for three months after the automatic enrolment date. A higher quality scheme, in relation to which jobholders are subject to a postponement of their automatic enrolment date, could use certification, but the minimum contribution against which the scheme would be measured would always be the minimum required for UK money purchase schemes (modified for certain hybrid schemes) or for UK personal pensions schemes.

Jobholders' right to ask an employer to make up contributions.

29. Any shortfall in a jobholder's contributions which does not comply with the conditions set out in the cases contained in regulation 50, will be evidence that the scheme does not meet the quality requirements imposed by the Act. This could invalidate the certificate and effectively the employer would be in breach of section 2 of the Pensions Act 2008 – continuity of scheme membership with the possibility of a compliance response from the Pensions Regulator. Where any shortfall in excess of the conditions set out in the cases contained in regulation 50 is identified, it should be investigated and put right immediately.

ANNEX A – A STEP BY STEP GUIDE

The initial certification of a scheme

Step 1 – choose a date from which the certificate will start – the effective date (normally the date when the duty is staged) and the period that the certificate will cover.

Step 2 - consider your scheme(s)'s provision e.g.

- (i) the type of scheme(s) on offer;
- (ii) jobholder contribution levels under the scheme(s);
- (iii) the level of pay on which contributions are based;
- (iv) earnings thresholds at which point contributions are payable (e.g. £1 or higher),
- (v) remuneration data from the previous year and the typical reward structure for staff;

Step 3 – identify any non-jobholders and those not participating in the employer duty and remove their records from any checking process.

Step 4 – for a large workforce consider dividing the jobholders into the risk profiles based on the likelihood of those jobholders not receiving minimum contributions. Assuming that pension contributions are calculated on basic pay, jobholders whose basic pay is low in comparison with their gross pay because of variables such as non-pensionable overtime, commission and bonuses are likely to be most at risk of contributions falling below the minimum in legislation. Jobholders whose basic pay is generally similar to their gross pay would be at less risk of not receiving minimum level contributions.

Step 5 - using the above information in **steps 2 and 4**, consider whether the scheme(s) to be certified is/are capable, in relation to the jobholders who are active members, of meeting the qualifying requirements throughout the certification period. Focus the most detailed checks on the profile of jobholders most at risk of not receiving minimum contributions.

Step 5 – identify cases where the pay structures of the jobholder and the contribution structure of the scheme mean that the scheme is *at risk* of not meeting the quality requirements in relation to the jobholder or a category of jobholders, and take action to rectify this.

Step 6 – if the employer is confident that all jobholders are on track to receive minimum level contribution, s/he may certify the scheme by signing the certificate within three months of the effective date of the certificate.

Step 7 – retain original certificate but a copy attach the certificate to the payment schedule and pass to the scheme or provider or simply forward it to the provider if there is no payment schedule.

Review (determination)/re-certification

Step 1 – at the expiry date of the certificate, obtain the remuneration data, contribution rate of the scheme and reward structure for the period for which the certificate was in force.

Step 2 – consider the jobholders who were active members of the scheme during the certification period, determine whether the scheme(s) have met the quality requirements in relation to those jobholders during the period for which the certificate was in force.

Step 3 – in order to make the determination in **step 2**, consider whether sample checks are appropriate/necessary, focusing the more detailed checks on jobholders in the highest risk profiles. Ensure that the sample chosen is representative and gives a reasonable indication of whether the minimum contribution requirements have been met in relation to the jobholders in that profile. **See Annex B for sample sizes.**

Step 4 - if you identify that the scheme requirements and jobholder and employer contribution levels mean that the scheme(s) have not met the quality requirements in respect of some of the jobholders who are or were active members and any shortfall is within acceptable parameters, you will not need to make any back payments. Note any jobholders that had any shortfall in their contributions, as they only can have a shortfall once in any 24 month period, starting from the date of the first certificate and will need to be identifiable should you decide to re-certify the scheme.

Step 5 - where jobholders have not received contributions within the acceptable level of shortfall, the employer makes up the employer and employee contributions to the level imposed by the relevant quality requirement. Pay any outstanding contributions to the scheme within three months of the end of the certificate.

Step 6 - retain documents relating to the steps that you have taken to determine whether the scheme met the relevant quality requirements and the payment of contributions.

Step 7 – based on the data in **step 2 of the initial certification** process, re-certify scheme and start the cycle again. The effective date of the new certificate will be the day after the day on which the previous certification expired or was terminated.

Annex B

Sample sizes required (proportion=10%, confidence interval $\pm 5\%$, confidence level=95%)¹

Size of at risk profile	Required Sample Size
1+	5
6+	10
12+	15
18+	30
39+	45
57+	60
79+	75
166+	90
260+	105
442+	120
930+	125
1347+	130
2300+	135
6663+	138

This table is meant to serve as a tool to assist employers in determining the number of random sample checks necessary to give a representative sample of their at risk profile. This will enable them to determine the extent to which their scheme meets the relevant quality requirements in relation to its jobholders. The table is only a guide. If sample checking shows that the quality requirements have been met for less than 90% of jobholders then further and more rigorous checking is necessary.

If unexpected shortfall amounts are found, or shortfalls occur for jobholders for whom the employer did not expect a shortfall to occur, this should also act as an indication to the employer that further and more rigorous checking is necessary

¹ This means that if an employer conducted sample checks 100 times 95 times out of 100 you would expect to find that between 5% and 15% of jobholders received contribution lower than the minimum level set out in the legislation

Annex C – a copy of the certificate

**SCHEDULE 2 TO THE PENSIONS (AUTOMATIC
ENROLMENT) REGULATIONS 2010**

Form of certificate

**Certificate given for the purposes of section 28 of the Pensions Act
2008**

Name of scheme(s):

Pension Schemes Registry Number(s) (PSR) (if available):

Name and Address of employer(s):

Effective Date:

Certification period:

Quality Requirement:

Satisfaction of the relevant quality requirement

I certify that, in my opinion, the above scheme(s) is/are able to satisfy the quality requirement identified above throughout the certification period in relation to the jobholders I employ who are active members of those scheme(s).

In giving this certificate, I confirm that I have complied with the requirements contained in the Pensions (Automatic Enrolment) Regulations 2010 and have had regard to the current Guidance on Certification issued by the Secretary of State for Work and Pensions under section 28(6)(d) of the Pensions Act 2008.

Signature:

Name:

Position:

Date:

Annex H – List of organisations consulted

Adecco
Aegon
Age Concern
Allen & Overy LLP
Aon Consulting UK
Arc Benefits Limited
Association of British Insurers
Association of Chartered Certified Accountants
Association of Consulting Actuaries
Association of Corporate Trustees
Association of Independent Financial Advisors
Association of Members-Directed Pension Schemes
Association of Pension Lawyers
Aviva
Barclays Bank
Bluefin
British Broadcasting Company
British Chambers of Commerce
Building and Civil Engineering Benefits Scheme
Buck Consultants Ltd
Business and Sports Leisure
Capital Hartshead
Chartered Institute of Personnel Development
Clarks International
Confederation of British Industry
Department of Business Innovation and Skills
Department for Social Development Northern Ireland
Engineering Employers Federation
Eversheds LLP
Federation of Small Businesses
Fidelity
First Actuarial
Financial Services Authority
Friends Provident
Gissings Consultancy Services
GMB
Hamish Wilson
Help the Aged
Hewitt Associates Limited
HM Revenue & Customs
HM Treasury
Hyman Robertson
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants of Scotland
Institute of Directors
Investment and Life Assurance Group
Investment Managers Association

Law Debenture
Law Society of England and Wales
Law Society of Scotland
Legal & General
Lloyds Group
Local Government Employers
Logica
Lovells LLP
Marks and Spencers plc
Mayer Brown International
Mercer Limited
Navy, Army and Air Force Institutes
National Association of Pension Funds
National Farmers Union
Northern Rock plc
Office of Fair Trading
Pension Protection Fund
Pensions Management Institute
Pensions Ombudsman
Pensions Policy Institute
Personal Accounts Delivery Authority
PriceWaterhouseCoopers LLP
Professional Contractors Group
Prudential
Punter Southall
Recruitment and Employment Confederation
Resolution
Sainsbury
Saul Trustee Company
Scottish Public Pension Agency
Scottish Office
Society of Pension Consultants
Tax Incentivised Savings Association
Tesco
The Actuarial Profession
The Co-operative Group
The Institute of Payroll Professionals
The Pensions Advisory Service
The Pensions Regulator
The Scottish Government
The Society of Pension Consultants
The Welsh Assembly Government
Trades Union Congress
Wales Office
Watson Wyatt
Whitbread Group
Which?
Zurich

Annex I – Glossary of terms

19 day rule

The prescribed period outlined in the Occupational Pension Schemes (Scheme Administration) Regulations 1996 and the Personal Pensions (Payments to Employers) Regulations 2000 that sets the due date for worker contributions deducted from salary to be paid over to the scheme. Currently this is 19 days from the beginning of the month following deduction.

Active membership

The definition will be in accordance with individual scheme rules. Each scheme will have a defining action that will create active membership for a member. For personal pensions active membership will be achieved once the contract is deemed (see deeming the contract below). For the purposes of re-enrolment active membership is defined by regulation 14(4).

Automatic enrolment

Employers will be required to make arrangements by which eligible jobholders become active members of an automatic enrolment scheme with effect from the automatic enrolment date. Automatic enrolment is not applicable if the jobholder is an active member of a qualifying scheme on that date.

Automatic enrolment date

The automatic enrolment date will be the start date of the joining window, which also becomes the effective date of active membership, once the joining process has been completed. The automatic enrolment date will be triggered by:

- The employer's staging date during implementation;
- The first day on which the jobholder starts work and meets the jobholder criteria (post implementation);
- Meeting the jobholder criteria whilst in work by either:
 - reaching age 22 (in receipt of qualifying earnings); or
 - having qualifying earnings for the first time (aged 22 to pensionable age)

Automatic enrolment scheme

A qualifying scheme (see below) where the rules have no restrictions on membership and does not require the jobholder to express a choice or provide information in order to become or remain an active member.

Automatic re-enrolment

Requires employers every three years from the employer's staging date to repeat the automatic enrolment process in respect of eligible jobholders who after staged implementation have opted out of pension saving during the one month opt out period or at any stage after the end of that period left pension saving. There are exceptions to the minimum three years.

Certification

A process by which employers offering money purchase schemes and some hybrid schemes under the employer duty can assure themselves that their scheme meets the necessary quality requirements.

Common Commencement Dates (CCD)

Bringing in new legislation affecting business in April and October of every year.

Compliance regime

A set of powers and processes exercisable by the Pensions Regulator, which have the ultimate goal of maximising compliance with the employer duties and employment safeguards set out in the Pensions Act 2008.

Continuity of scheme membership

Employers are required to maintain a jobholder's active membership of a qualifying scheme, while they are in that employment unless the jobholder chooses to end their membership.

Contributions cliff-edge

Where an employer deducts multiple back-dated pension contributions from one week's or month's salary.

Day one / Day one duty

See automatic enrolment date.

Deeming the contract

The process an employer must use if they are automatically enrolling a jobholder into a workplace personal pension to meet the obligations under the employer duty. This process will not require a signature from the jobholder. .

Defined benefit scheme

An occupational pension scheme under which all of the benefits that may be provided accrue at a defined rate and total benefits can be calculated in advance of drawdown. .

Defined contribution scheme

Occupational or personal pension schemes where contributions made into the scheme are invested into one or more investment funds. Some times known as money purchase schemes (see the definition of money purchase schemes for more details).

Due date

To be able to issue an Unpaid Contributions Notice TPR must be of the opinion that the contributions have not been paid by the due date. This due date is separate from any due date on a pension scheme's schedule of contributions or payment schedule and is to be set in regulations.

Employers

Employer in relation to a worker, means the person by whom the worker is employed (see full definition in section 88 of Pensions Act 2008).

Employee representatives

A recognised independent trades union or body representing employees.

Enrolment information

Factual information which the employer must give to a jobholder who is enrolled into a pension scheme about the effects of the employer duty.

Escalating penalty notice

Where a person remains non-compliant despite having received warnings and compliance notices TPR may issue an escalating penalty notice to them requiring them to pay a daily penalty until they do become compliant.

Fixed penalty notice

TPR may issue a fixed penalty notice to an employer who has contravened certain regulations or failed to do what was required of them under a compliance notice. The penalty notice will require the payment of £X (£500 is proposed) by a specified time and may warn that escalating penalties could become due if the non-compliance continues.

Group Personal Pensions (GPP)

An arrangement made by employer for workers to participate in a personal pension arrangement. Each worker has an individual contract with the pension provider. Currently, the employer may or may not make a contribution on behalf of the worker. The employer may also pay the worker's contribution direct from his salary through direct payment arrangement.

Group Self Invested Personal Pension (GSIPP)

A group personal pension where the contracts are SIPPAs rather than personal pensions (see SIPP definition).

Hybrid schemes

An occupation pension scheme that is not purely defined benefit or purely define contribution. Rules and guidance will help employers to identify and apply the appropriate quality requirements.

Impact Assessment

Impact assessment is part of the policy making process that sets out the rationale for a proposed Government intervention of a regulatory nature and identifies the future economic and social consequences in the public, private and third sectors.

Implementation

Implementation refers to staging and the transitional arrangements following the launch of automatic enrolment, to help employers and the delivery authorities to adjust gradually to the new reforms.

Inducements

An inducement occurs where an employer does something to try and force or encourage their workers to leave membership of a pension scheme. This behaviour will be unlawful in 2012.

Inducement time limits

These are the periods within which compliance action can be taken by TPR.

Where a complaint about inducements has been made to TPR we propose it must be made within 6 months of the inducement; or

Where TPR has initiated an investigation itself we propose it will be able to look back for a period of up to 12 months from the date of the inducements.

Jobholders

A worker who is working or ordinarily works in Great Britain under a contract of employment, who is aged at least 16 and under 75 and has gross earnings over £5,035 (in 2006/07 terms).

Information on the terms and conditions

The information that pension providers will need to include in the scheme specific information for personal pension schemes used for automatic enrolment under the employer duty. The exact requirements are defined in the automatic enrolment regulations.

Money purchase scheme

Benefits provided under a pension scheme, the rate or amount of which is calculated by reference to an amount available for the provision of benefits to or in respect of the member. Sometimes referred as a defined contribution scheme.

Non-UK pension scheme

A pension scheme, either defined benefit, defined contribution or hybrid, that has its main administration somewhere other than in the UK.

Occupational pension scheme

A person scheme set up in trust by an employer for their staff. Can be either defined benefit, hybrid or defined contribution.

Opt in

A new right under the Pensions Act 2008. A jobholder who is not eligible for automatic enrolment may by notice require the employer to arrange for them to become an active member of a scheme.

Opt out

Once active membership has been achieved and the jobholder is in receipt of the enrolment information, the jobholder has a right to 'opt out' of active membership and will be treated as having never been a member of the scheme.

Opt out period

A jobholder who has been automatically enrolled into a qualifying scheme may give notice to opt out of membership within one month from the completion of the joining processes.

Pay reference period

The period of pay that an employer uses to identify whether a scheme is a qualifying scheme, to calculate contribution rates or to decide whether the automatic enrolment duty is triggered for an individual.

Pensions (Automatic Enrolment) Regulations

The draft Pensions (Automatic Enrolment) Regulations set out the prescribed practical arrangements underpinning automatic enrolment, including information flows between employers, pension schemes and jobholders, the arrangements for postponement of automatic enrolment and the arrangements should a jobholder choose to opt out (including the refund rules). These have now been subsumed within the draft Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010.

Pensions Regulator (TPR)

UK regulator of work-based pension schemes.

Pensionable pay

The pay on which pension contributions are calculated.

Personal Accounts Delivery Authority (PADA)

The Personal Accounts Delivery Authority (PADA) is a non-departmental public body (NDPB) accountable to Parliament and reporting, through a Board, to the Secretary of State for the Department for Work and Pensions. It is responsible for setting up the national, trust-based pension scheme called 'personal accounts'.

personal accounts (PA) scheme

A new simple, low-cost, defined contribution, occupational pension scheme. To be established by the Secretary of State under section 67 of the Pensions Act 2008 to enable employers, who wish to use it, to fulfill their new duty.

Personal Pension

A contractual arrangement between an individual and a pension provider (such as an insurance company) which enables the individual to make provision for a pension on a defined contribution basis.

Phasing

The gradual introduction of employer contribution costs. For employers staged in on October 2012, they will have 3 years at 1%, until the end of staging, when everyone goes up to 2% in Oct 2015 and to 3% a year later which will be steady state. Jobholders may choose to contribute more, although

employers will not be required to match any voluntary contributions. Phasing contributions is not appropriate for defined benefit schemes, which must comply with minimum funding requirements at all times.

Postponement of automatic enrolment

Employers offering pension provision with an employer contribution equal to or more than 6% of qualifying earnings will be allowed to postpone auto enrolment for 3 months.

Qualifying earnings

An earnings band of £5,035 to £33,540 per annum (in 2006/07 earnings terms), on which pensions contributions will be calculated for money purchase schemes. Earning qualifying earnings (i.e. above £5,035) is a criterion of "jobholders" and is a factor in determining whether a worker is to be automatically enrolled.

Qualifying schemes

Qualifying schemes are pension schemes that meet a minimum standard for the level of contributions made to the scheme or the level of benefit provided. There are different quality standards depending on whether the scheme is defined benefit, defined contribution, or hybrid.

Registration

The formal process by which employers will provide information to TPR about how they have met their enrolment duties.

Re-registration

The process by which employers will provide information to TPR every three years following initial registration.

Record keeping

Records that need to be kept by employers, the trustees and managers of occupational schemes and pension providers, to enable TPR to check compliance.

Self-invested Personal Pension (SIPP)

An arrangement which forms all or part of a personal pension scheme, which gives the member the power to direct specifically how some or all of the member's contributions are invested (as opposed to simply choosing a fund or funds).

Staging

The employer duty will be implemented in stages over a period rather than from a single launch date.

Staging group

During the staging process employers will be divided by size into groups. Each group of employers will be brought under the new duties at a different date over the 3 year staging period.

Staging date

This is the date on which a particular group of employers will be brought under the new duties during the implementation period.

Stakeholder Pension

Stakeholder pensions are a type of personal pension. They have to meet certain government standards to ensure they are flexible and have a limit on annual management charges.

Tax registered

For a pension scheme to qualify for tax relief it must be registered and approved by HM Revenue & Customs (HMRC).

Third party notices

It's not just employers who have responsibilities under the pension reforms. Third parties, e.g. trustees or managers of a pension scheme, payroll administrators, accountants or pension scheme administrators all may be required to do things as well. And TPR will have the power to issue compliance notices to them in certain circumstances. These formally require them to do something or face the possibility of having to pay penalties.

Third party penalty

This term (not actually present in the Regulations) describes (i) the penalty that can become payable for failure to comply with a third party compliance notice [see above], or (ii) the penalty that can become payable where an employer duty applies to the third party directly (eg. obligation on a scheme to provide information to jobholders) or there is a failure to comply with a compliance notice in such circumstances. Both fixed and daily escalating penalties may come to apply to a third party.

Transitional period: Defined Benefit schemes

The period in which defined benefit schemes (and hybrid schemes) are exempt from phasing in contributions or activating membership of existing members for a period prescribed in regulations

Transitional period: Defined Contribution schemes

See phasing.

Worker

An individual who has entered into work under a contract of employment or any other contract by which the individual undertakes to do work or perform services personally for another party to the contract.

Worker without qualifying earnings

A individual who is ordinarily working in Great Britain under a contract, who is aged at least 16 and under 75 and has gross earnings less than £5,035 (in 2006/07 terms).

WPP (workplace personal pension)

An umbrella term covering Group Personal Pensions, Group Self-Invested Personal Pensions and Stakeholder Pensions.

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