



2008 CHAPTER 13

PART 1

PENSION SCHEME MEMBERSHIP FOR JOBHOLDERS

CHAPTER 7

APPLICATION AND INTERPRETATION

Workers

“Employer”, “worker” and related expressions

70.—(1) This section applies for the purposes of this Part.

(2) “Contract of employment” means a contract of service or apprenticeship whether express or implied, and (if it is express) whether oral or in writing.

(3) “Worker” means an individual who has entered into or works under—

(a) a contract of employment, or

(b) any other contract by which the individual undertakes to do work or perform services personally for another party to the contract.

(4) But a contract is not within subsection (3)(b) if the status of the other party is by virtue of the contract that of a client or customer of a profession or business undertaking carried on by the individual concerned.

(5) For the purposes of subsection (3)(b), it does not matter whether the contract is express or implied or (if it is express) whether it is oral or in writing.

(6) Any reference to a worker's contract is to be read in accordance with subsections (3) to (5).

Changes to legislation: Pensions (No. 2) Act (Northern Ireland) 2008, Cross Heading: Workers is up to date with all changes known to be in force on or before 09 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(7) “Employer”, in relation to a worker, means the person by whom the worker is employed (subject to sections 37(5) and 38(6)).

(8) “Employment” in relation to a worker, means employment under the worker's contract.

Commencement Information

II S. 70 in operation at 30.6.2012 by S.R. 2012/266, art. 2, **Sch. Pt. 2**

Agency workers

71.—(1) This section applies to an individual (“the agency worker”)—

- (a) who is supplied by a person (“the agent”) to do work for another person (“the principal”) under a contract or other arrangements made between the agent and the principal,
- (b) who is not, as respects that work, a worker, because of the absence of a worker's contract between the individual and the agent or the principal, and
- (c) who is not a party to a contract under which the agency worker undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer of a profession or business undertaking carried on by the individual.

(2) Where this section applies, the other provisions of this Part have effect—

- (a) as if there were a worker's contract for the doing of the work by the agency worker, made between the agency worker and the relevant person under subsection (3), and
- (b) as if that person were the agency worker's employer.

(3) The relevant person is—

- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work, or
- (b) if neither the agent nor the principal is responsible for doing so, whichever of them pays the agency worker in respect of the work.

Modifications etc. (not altering text)

C1 S. 71 applied by 1993 c. 49, s. 119(2A) (as inserted (16.7.2015) by [Pensions Act \(Northern Ireland\) 2015 \(c. 5\)](#), **ss. 41(2)(c)**, 53(1); S.R. 2015/307, art. 2(1)(f))

Commencement Information

I2 S. 71 in operation at 30.6.2012 by S.R. 2012/266, art. 2, **Sch. Pt. 2**

Changes to legislation: Pensions (No. 2) Act (Northern Ireland) 2008, Cross Heading: Workers is up to date with all changes known to be in force on or before 09 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Directors

72.—(1) A person who holds office as a director of a company is not, by virtue of that office or of any employment by the company, a worker for the purposes of this Part, unless—

- (a) the person is employed by the company under a contract of employment, and
 - (b) there is at least one other person who is employed by the company under a contract of employment.
- (2) In this section, “company” includes any body corporate.

Commencement Information

I3 S. 72 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

Crown employment

73.—(1) This Part has effect in relation to employment by or under the Crown as it has effect in relation to other employment.

(2) For the purposes of the application of the provisions of this Part in accordance with subsection (1)—

- (a) references to a worker are to be construed as references to a person employed by or under the Crown;
- (b) references to a worker's contract are to be construed as references to the terms of employment of a person employed by or under the Crown.

(3) This section does not impose criminal liability on the Crown.

(4) But on the application of the Regulator the High Court may declare unlawful a failure by the Crown to comply with any of the duties mentioned in section 45(1).

Commencement Information

I4 S. 73 in operation at 30.6.2012 by [S.R. 2012/266](#), art. 2, [Sch. Pt. 2](#)

Armed forces

74.—(1) A person serving as a member of the naval, military or air forces of the Crown is not, by virtue of that service, a worker for the purposes of this Part.

(2) A member of any of the forces specified in subsection (3) who assists the activities of any of those forces is not, by virtue of anything done in assisting those activities, a worker for the purposes of this Part.

(3) The forces are—

Changes to legislation: Pensions (No. 2) Act (Northern Ireland) 2008, Cross Heading: Workers is up to date with all changes known to be in force on or before 09 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (a) the Combined Cadet Force;
- (b) the Sea Cadet Corps;
- (c) the Army Cadet Force;
- (d) the Air Training Corps.

Commencement Information

I5 S. 74 in operation at 30.6.2012 by [S.R. 2012/266, art. 2, Sch. Pt. 2](#)

Police

75 This Part has effect in relation to a person who—

- (a) (subject to such exceptions as may be prescribed), holds the office of constable as a police officer or an appointment as a police trainee or police reserve trainee under section 39 or 40 of the Police (Northern Ireland) Act 2000 (c. 32) or as a police cadet under section 42 of that Act, and
- (b) does not hold that office or appointment under a contract of employment,

as if the person were employed by the Chief Constable under a worker's contract.

Commencement Information

I6 S. 75 partly in force; s. 75 in force for certain purposes at Royal Assent see s. 118(2)

I7 S. 75 in operation at 30.6.2012 by [S.R. 2012/266, art. 2, Sch. Pt. 2](#)

Persons working on vessels

76.—(1) Subject to regulations under section 96 of the Pensions Act 2008 (c. 30), a person employed or engaged in any capacity on board a ship is not, by virtue of that employment or engagement, a worker for the purposes of this Part.

(2) In this section, “ship” includes—

- (a) a hovercraft within the meaning of the Hovercraft Act 1968 (c. 59), and
- (b) every description of vessel used in navigation.

Commencement Information

I8 S. 76 in operation at 30.6.2012 by [S.R. 2012/266, art. 2, Sch. Pt. 2](#)

Changes to legislation: Pensions (No. 2) Act (Northern Ireland) 2008, Cross Heading: Workers is up to date with all changes known to be in force on or before 09 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

Extension of definition of worker

77 The Department may by regulations make provision for this Part to apply with or without modifications—

- (a) as if any individual of a prescribed description (who would not otherwise be a worker) were a worker,
- (b) as if there were in the case of any such individual a worker's contract of a prescribed description under which the individual works, and
- (c) as if a person of a prescribed description were the employer under that contract.

Commencement Information

19 S. 77 partly in force; s. 77 in force for certain purposes at Royal Assent see s. 118(2)

Changes to legislation:

Pensions (No. 2) Act (Northern Ireland) 2008, Cross Heading: Workers is up to date with all changes known to be in force on or before 09 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 24(1)(c) inserted by [2016 c. 1 \(N.I.\) Sch. 2 para. 39\(2\)\(d\)](#)