

2010 No. 4

PENSIONS

The Employers' Duties (Implementation) Regulations 2010

Made - - - - *5th January 2010*

Laid before Parliament *12th January 2010*

Coming into force - - *1st September 2012*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 12, 29(2) and (4), 30(8), 99 and 144(2) and (4) of the Pensions Act 2008(a):

Citation, commencement and interpretation

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

(2) In these Regulations—

“the Act” means the Pensions Act 2008;

“employer” has the meaning given by—

(a) section 88(7) of the Act; and

(b) regulation 2(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(b);

“PAYE reference number” means a number issued by HMRC to a corresponding PAYE scheme, enabling an employer to pay over amounts deducted to HMRC;

“PAYE scheme” means the HMRC record allocated to an employer who—

(a) employs; or

(b) intends to employ,

a worker or workers to whom PAYE income is payable;

“scheme administrator” has the same meaning as in section 270 of the Finance Act 2004(c); and

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

(a) 2008 c.30. Section 99 is cited because of the meaning it gives to “prescribed” and “regulations”.

(b) 2003 c.1. Section 683 has been amended but not in a way material to these Regulations.

(c) 2004 c.12.

Application of the employers' duties to employers

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

(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); or
- (b) meets any other description contained in the first column of the table in regulation 4 (including having no PAYE scheme).

(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 1st April 2012.

(5) Where—

- (a) the employers' duties first apply to an employer in accordance with the table in regulation 4; and
- (b) for any reason, an employer has another PAYE scheme (or schemes),

the employers' duties apply to that employer in respect of the scheme (or schemes) mentioned in subparagraph (b) from the staging date applicable in relation to subparagraph (a) (and this is so even where the staging date mentioned in the table for any such scheme (or schemes) is later than the staging date referred to in subparagraph (a)).

(6) Any employer who first pays PAYE income in respect of a worker between—

- (a) 1st April 2012; and
- (b) up to (but not including) 1st April 2016,

is to be treated as a new employer in accordance with the relevant entry in the first column of the table in regulation 4.

(7) Where paragraph (6) applies, the employers' duties do not apply to such an employer until PAYE income is first payable in respect of any worker and then only in accordance with the table in regulation 4.

(8) Where—

- (a) an employer pays PAYE income in respect of any worker from 1st April 2016; and
- (b) the employers' duties do not already apply to that employer,

the employers' duties apply to that employer from the day on which PAYE income is payable.

Early automatic enrolment

3.—(1) Where the conditions in paragraphs (3) and (4) are both satisfied, the employers' duties apply to an employer from—

- (a) any date in the final column of the table in regulation 4 which is earlier than the staging date corresponding to that employer's description; or
- (b) 1st December 2012,

and for the purposes of this regulation that date is the early automatic enrolment date.

(2) Where the condition in paragraph (3) is satisfied but the condition in paragraph (4) is not satisfied, the employers' duties apply to an employer from the staging date corresponding to that employer's description, as prescribed in the final column of the table in regulation 4.

(3) The first condition is that an employer must fall within any description in the first column of the table in regulation 4.

(4) The second condition is that an employer has chosen an early automatic enrolment date within the meaning of paragraph (1) for the employers' duties to apply, which is earlier than the date mentioned in the final column of that table corresponding to that employer, and has—

- (a) contacted a pension scheme which it considers could be used to comply with the employers' duties;
- (b) secured the agreement of the trustee or manager (or scheme administrator or provider) of that scheme that that scheme was to be used by the employer to comply with those duties from that early automatic enrolment date; and
- (c) notified the Regulator accordingly in writing, at any time before either—
 - (i) where paragraph (1)(a) applies, the date specified in the second column of the table in regulation 4 corresponding to that earlier date, or
 - (ii) where paragraph (1)(b) applies, 1st November 2012.

Staging of the employers' duties

4.—(1) The table in this regulation sets out the application of the employers' duties.

(2) Where a date prescribed in the second column of the following table falls on a day which is not a working day, 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).

(3) In this regulation, "bank holiday" means a day specified in paragraphs 1 and 2 of Schedule 1 to the Banking and Financial Dealings Act 1971(a).

Table

<i>Employer (by PAYE scheme size or other description)</i>	<i>Date before which notification to automatically enrol early must be sent</i>	<i>Staging date</i>
120,000 or more	1st September 2012	1st October 2012
50,000-119,999	1st October 2012	1st November 2012
30,000-49,999	1st December 2012	1st January 2013
20,000-29,999	1st January 2013	1st February 2013
10,000-19,999	1st February 2013	1st March 2013
6,000-9,999	1st March 2013	1st April 2013
4,100-5,999	1st April 2013	1st May 2013
4,000-4,099	1st May 2013	1st June 2013
3,000-3,999	1st June 2013	1st July 2013
2,000-2,999	1st July 2013	1st August 2013
1,250-1,999	1st August 2013	1st September

(a) 1971 c.80. Paragraph 2 was amended by the St. Andrew's Day Bank Holiday (Scotland) Act 2007 (2007 asp 2), section 1.

<i>Employer (by PAYE scheme size or other description)</i>	<i>Date before which notification to automatically enrol early must be sent</i>	<i>Staging date</i>
		2013
800-1,249	1st September 2013	1st October 2013
500-799	1st October 2013	1st November 2013
350-499	1st December 2013	1st January 2014
250-349	1st January 2014	1st February 2014
Less than 50 with the last 2 characters in their PAYE reference numbers 92, A1-A9, AA-AZ, B1-B9, BA-BY, M1-M9, MA-MZ, Z1-Z9 or ZA-ZZ	1st February 2014	1st March 2014
240-249	1st March 2014	1st April 2014
150-239	1st April 2014	1st May 2014
90-149	1st May 2014	1st June 2014
50-89	1st June 2014	1st July 2014
Less than 50 with the last 2 characters in their PAYE reference numbers BZ	1st July 2014	1st August 2014
Less than 50 with the last 2 characters in their PAYE reference numbers 00-01	1st August 2014	1st September 2014
Less than 50 with the last 2 characters in their PAYE reference numbers 02-04	1st September 2014	1st October 2014
Less than 50 with the last 2 characters in their PAYE reference numbers 05-07, 0A-0Z, C1-C9, CA-CZ, D1-D9 or DA-DZ	1st October 2014	1st November 2014
Less than 50 with the last 2 characters in their PAYE reference numbers 08-11, 1A-1Z, E1-E9 or EA-EZ	1st December 2014	1st January 2015
Less than 50 with the last 2 characters in their PAYE reference numbers 12-15, 2A-2Z, F1-F9, FA-FZ, G1-G9 or GA-GZ	1st January 2015	1st February 2015
Less than 50 with the last 2 characters in their PAYE reference numbers 16-20, 3A-3Z, H1-H9 or HA-HZ	1st February 2015	1st March 2015
Less than 50 with the last 2 characters in their PAYE reference numbers I1-I9, IA-IZ	1st March 2015	1st April 2015
Less than 50 with the last 2 characters in their PAYE reference numbers 21-25, 4A-4Z, J1-J9 or JA-JZ	1st April 2015	1st May 2015
Less than 50 with the last 2 characters in their PAYE reference numbers 26-31, 5A-5Z, K1-K9 or KA-KZ	1st May 2015	1st June 2015
Less than 50 with the last 2 characters in their PAYE reference numbers 32-38, 6A-6Z, L1-L9 or LA-LZ	1st June 2015	1st July 2015

<i>Employer (by PAYE scheme size or other description)</i>	<i>Date before which notification to automatically enrol early must be sent</i>	<i>Staging date</i>
Less than 50 with the last 2 characters in their PAYE reference numbers N1-N9 or NA-NZ	1st July 2015	1st August 2015
Less than 50 with the last 2 characters in their PAYE reference numbers 39-47, 7A-7Z, O1-O9, OA-OZ, P1-P9 or PA-PZ	1st August 2015	1st September 2015
Less than 50 with the last 2 characters in their PAYE reference numbers 48-57, 8A-8Z, Q1-Q9, QA-QZ, R1-R9, RA-RZ, S1-S9, SA-SZ, T1-T9 or TA-TZ	1st September 2015	1st October 2015
Less than 50 with the last 2 characters in their PAYE reference numbers 58-69, 9A-9Z, U1-U9, UA-UZ, V1-V9, VA-VZ, W1-W9, WA-WZ	1st October 2015	1st November 2015
Less than 50 with the last 2 characters in their PAYE reference numbers 70-83, X1-X9, XA-XZ, Y1-Y9 or YA-YZ	1st December 2015	1st January 2016
Less than 50 with the last 2 characters in their PAYE reference numbers 84-91 or 93-99	1st January 2016	1st February 2016
(a) Less than 50 unless otherwise described or (b) no PAYE scheme	1st January 2016	1st February 2016
New employer (PAYE income first payable between 1st April 2012 and 31st March 2013)	1st February 2016	1st March 2016
New employer (PAYE income first payable between 1st April 2013 and 31st December 2013)	1st April 2016	1st May 2016
New employer (PAYE income first payable between 1st January 2014 and 30th September 2014)	1st May 2016	1st June 2016
New employer (PAYE income first payable between 1st October 2014 and 30th June 2015)	1st July 2016	1st August 2016
New employer (PAYE income first payable between 1st July 2015 and 31st March 2016)		1st September 2016

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 four years, beginning with the coming into force of section 20 (quality requirement: UK money purchase schemes); and
- (b) the second transitional period is one 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 four years, beginning with the day on which section 3 (automatic enrolment) comes into force.

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

5th January 2010

Angela Eagle
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision as to how sections 2 to 9 of the Pensions Act 2008 ('the employers' duties) apply to employers. Those duties include the duty on an employer (under section 3 of that Act) to make prescribed arrangements by which jobholders become active members of automatic enrolment pension schemes. These Regulations also set the transitional periods for money purchase and personal pension schemes (in regulation 5) and for defined benefits and hybrid schemes (in regulation 6).

Regulation 2 makes provision for the application of the employers' duties to employers.

Regulation 3 provides how the employers' duties apply to an employer earlier than the date on which they otherwise would have applied to that employer, where an employer satisfies certain conditions.

Regulation 4 and the table in it provide how the employers' duties apply to employers over a period from 1st October 2012 to 1st September 2016.

Regulation 5 sets the length of the two transitional periods during which the quality requirement for UK money purchase and personal pension schemes is less than what is provided for in sections 20 and 26 of the Pensions Act 2008. At the expiry of the two transitional periods, the quality requirement for those types of scheme will be what is provided for in that Act.

Regulation 6 prescribes the length of the transitional period for defined benefits and hybrid schemes. Where the conditions in section 30(2) of the Pensions Act 2008 are satisfied and continue to be satisfied during that transitional period, an employer is under a duty to make arrangements for jobholders to become active members of an automatic enrolment scheme from the end of that period.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Work and Pensions, ERSP, Level 7, Caxton House, Tothill Street, London SW1H 9NA and is annexed to the Explanatory Memorandum which is available alongside this instrument on the OPSI website.

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STATUTORY INSTRUMENTS

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£5.50