
STATUTORY RULES OF NORTHERN IRELAND

2005 No. 581

The Occupational Pension Schemes (Cross-border Activities) Regulations (Northern Ireland) 2005

Citation and commencement

1. These Regulations may be cited as the Occupational Pension Schemes (Cross-border Activities) Regulations (Northern Ireland) 2005 and shall come into operation on 30th December 2005.

Interpretation

“the Order” means the Pensions (Northern Ireland) Order 2005(1) and any reference to a numbered Article is a reference to the Article of the Order bearing that number;

“accrued European rights” means—

- (a) in relation to a European member of the scheme—
 - (i) any rights which have accrued to or in respect of that European member to future benefits under the scheme rules, or
 - (ii) any entitlement to the present payment of a pension or other benefit under the scheme rules,
to the extent that those rights or entitlement result from the periods when that European member was—
 - (aa) both employed by a European employer and a qualifying person, or
 - (bb) a qualifying self-employed person, and
- (b) in relation to a European survivor, any entitlement to benefits, or right to future benefits, under the scheme rules in respect of a European member to the extent that that right or entitlement results from the periods when that European member was—
 - (i) both employed by a European employer and a qualifying person, or
 - (ii) a qualifying self-employed person;

“actuarial valuation” shall be construed in accordance with Article 203 (actuarial valuations and reports), and includes an actuarial valuation obtained by the trustees or managers of a scheme for any purpose, including that of making an application under Article 264 (general authorisation to accept contributions from European employers) or 265 (approval in relation to particular European employer);

“the commencement date” is the date referred to in regulation 1;

“cross-border scheme” means a scheme which applies to European members or in relation to which there are European survivors;

“the effective date” shall be construed in accordance with Article 203(2);

(1) Part IV of the Pensions (Northern Ireland) Order 2005 is modified in its application to occupational pension schemes undertaking cross-border activities by [S.R. 2005 No. 568](#)

“employment” includes any trade, business, profession, office or vocation and “employed” shall be construed accordingly;

“European employer” has the meaning given in regulation 3(1);

“European member” means a member of a scheme who is, or was—

- (a) a qualifying person in respect of whom contributions were made to the scheme by a European employer, or
- (b) a qualifying self-employed person who has made contributions to the scheme;

“European survivor” means a survivor of a European member of the scheme who is entitled to benefits, or has a right to future benefits, under the scheme rules in respect of that European member;

“host member State”, in relation to a European employer, has the meaning given in regulation 3(5);

“multi-employer scheme” shall be construed in accordance with Article 280(4) (modification of the Order in relation to certain categories of schemes)(2);

“new scheme” means a scheme—

- (a) which does not have any members—
 - (i) in relation to whom there are any rights which have accrued to or in respect of the members in question to future benefits under the scheme rules, or
 - (ii) who have any entitlement to the present payment of a pension or other benefit under the scheme rules, and
- (b) in relation to which there are not any survivors of any members of the scheme who are entitled to benefits, or have a right to future benefits, under the scheme rules in respect of those members;

“new section” means a section of a segregated multi-employer scheme—

- (a) which does not have any members—
 - (i) in relation to whom there are any rights which have accrued to or in respect of the members in question to future benefits under the scheme rules, or
 - (ii) who have any entitlement to the present payment of a pension or other benefit under the scheme rules, and
- (b) in relation to which there are not any survivors of any members of the scheme who are entitled to benefits, or have a right to future benefits, under the scheme rules in respect of those members;

“notice of intention” shall be construed in accordance with Article 265(1);

“pay-as-you-go scheme” means a scheme under which there is no requirement for assets to be set aside in advance for the purpose of providing benefits under the scheme (disregarding any requirements relating to additional voluntary contributions);

“pre-23rd September 2005 scheme” means a scheme—

- (a) which—
 - (i) has its main administration in the United Kingdom, and
 - (ii) is not a pay-as-you-go scheme, and
- (b) in relation to which—

(2) The Pensions (Northern Ireland) Order 2005 is modified in its application to multi-employer schemes by [S.R. 2005 No. 91](#) as amended by [S.R. 2005 No. 357](#)

- (i) the trustees or managers were accepting contributions on 22nd September 2005 from any person who, had Article 263(6) been in operation on that date, would have been a European employer, or
- (ii) any such person was under a liability to pay contributions to the trustees or managers on 22nd September 2005;

“qualifying person” means a person who is employed under a contract of service and whose place of work under that contract is sufficiently located in a member State other than the United Kingdom so that his relationship with his employer is subject to the social and labour law relevant to the field of occupational pension schemes of that member State, but, for the purposes of this definition, a seconded worker is not to be regarded as being so sufficiently located in a member State other than the United Kingdom;

“qualifying self-employed person” means a self-employed person whose place of work is sufficiently located in a member State other than the United Kingdom so that his employment in that member State is subject to the social and labour law relevant to the field of occupational pension schemes of that member State;

“register” means the register of occupational and personal pension schemes compiled and maintained under section 59 of the Pensions Act 2004(3);

“registrable information” shall be construed in accordance with Article 55(1);

“scheme” means an occupational pension scheme;

“seconded worker” means a person—

- (a) who—
 - (i) is employed under a contract of service by an employer established in the United Kingdom and whose habitual place of work under that contract is located in the United Kingdom, or
 - (ii) immediately before the commencement of the period of secondment was employed under a contract of service by an employer established in the United Kingdom and whose habitual place of work under that contract was located in the United Kingdom,
- (b) who—
 - (i) was posted before the commencement date for a limited period which had not expired before that date, or
 - (ii) is posted on or after the commencement date for a limited period, to a member State other than the United Kingdom for the purpose of providing services on behalf of his employer, and
- (c) who—
 - (i) at the time when that posting began expected to return to the United Kingdom to work for the employer described in paragraph (a)(i) or (ii) after the expiry of that period, or
 - (ii) expects to retire from employment immediately after the expiry of that period;

“segregated multi-employer scheme” means a multi-employer scheme which is divided into two or more sections where—

- (a) any contributions payable to the scheme by an employer in relation to the scheme or by a member are allocated to that employer’s or that member’s section, and

- (b) a specified part or proportion of the assets of the scheme is attributable to each section of the scheme and cannot be used for the purposes of any other section;
- “statutory funding objective” shall be construed in accordance with Article 201;
- “the survivor”, in relation to a member of a scheme, means a person who—
- (a) is the widow, widower or surviving civil partner of the member, or
 - (b) has survived that member and has any entitlement to benefit, or right to future benefits under the scheme in respect of that member.

In these Regulations—

(2) In these Regulations, “employer”, in relation to a scheme which has no active members, includes every person who was the employer of persons in the description of employment to which the scheme relates immediately before the time at which the scheme ceased to have any active members in relation to it.

(3) Where a scheme is a segregated multi-employer scheme, these Regulations, except regulations 4 to 8, apply as if each section of the scheme were a separate scheme.

Meaning of “European employer” and “host member State” in Part VII of the Order

3.—(1) Subject to paragraphs (2) to (4), in Part VII of the Order “European employer”, in relation to a scheme, means a person who either—

- (a) employs qualifying persons, or
- (b) is a qualifying self-employed person, and

is making (or proposes to make) contributions to that scheme either in respect of a qualifying person or in respect of himself as a qualifying self-employed person.

(2) An employer is not to be regarded as a European employer in relation to any persons whom he employs who are not qualifying persons.

(3) Where—

- (a) the Regulator has approved the trustees or managers of a scheme in relation to a European employer, and
- (b) benefits are, or will become, payable under the scheme rules to or in respect of any member who is or was a qualifying person in relation to that European employer, or to or in respect of any member who is or was a qualifying self-employed person,

“European employer” shall include the persons specified in paragraph (4).

(4) The persons referred to in paragraph (3) are—

- (a) in a case where the approval was granted in relation to a body corporate which has since ceased to be an employer of qualifying persons, that body corporate,
- (b) in a case where—
 - (i) the approval was granted in relation to a European employer who is not a body corporate, and
 - (ii) that European employer has ceased to be an employer of qualifying persons, the person who was the employer of qualifying persons who were, in accordance with that approval, members of the scheme immediately before the time at which the scheme ceased to have any such active members, and
- (c) in a case where the approval was granted in relation to a qualifying self-employed person who has ceased to be such a person, that person.

(5) In Part VII of the Order “host member State”, in relation to a European employer, means—

- (a) where that European employer is specified in a notice of intention, any member State other than the United Kingdom where—
 - (i) that European employer has employees who are qualifying persons, or
 - (ii) that European employer is a qualifying self-employed person, or
- (b) where the Regulator has approved the trustees or managers of a scheme in relation to that European employer, the member State or States other than the United Kingdom where—
 - (i) that European employer has or had employees who are or were members of the scheme, or
 - (ii) in the case of a self-employed person who is or was a member of the scheme, that self-employed person is or was a qualifying self-employed person.

Applications for general authorisation to accept contributions from European employers: established schemes which are not carrying on cross-border activity

- 4.—(1) This regulation applies to all schemes other than—
- (a) a scheme which is a new scheme on the date on which the trustees or managers make an application for authorisation under Article 264, or
 - (b) a scheme which is a pre-23rd September 2005 scheme.
- (2) Where the trustees or managers of a scheme apply to the Regulator for authorisation under Article 264, the application shall be made—
- (a) in the case of a money purchase scheme, in a form which provides the information described in paragraphs 2 and 3 of Schedule 1, or
 - (b) in the case of a scheme which is not a money purchase scheme, in a form which provides the information described in paragraphs 2 and 4 of that Schedule.

Applications for general authorisation to accept contributions from European employers: established schemes which are carrying on cross-border activity

- 5.—(1) This regulation applies where—
- (a) a scheme is a pre-23rd September 2005 scheme, and
 - (b) the trustees or managers of that scheme apply, within the period of three months beginning on the commencement date, to the Regulator for authorisation under Article 264.
- (2) Such an application shall be made—
- (a) in the case of a money purchase scheme, in a form which provides the information described in paragraphs 2 and 3 of Schedule 1, or
 - (b) in the case of a scheme which is not a money purchase scheme, in a form which provides the information described in paragraphs 2 and 5 of that Schedule.

Applications for general authorisation to accept contributions from European employers: new schemes

- 6.—(1) This regulation applies to schemes which are new schemes on the date on which the trustees or managers make an application for authorisation under Article 264.
- (2) Where the trustees or managers of a scheme apply to the Regulator for authorisation under Article 264, the application shall be made—
- (a) in the case of a money purchase scheme, in a form which provides the information described in paragraphs 2 and 3 of Schedule 1, or

- (b) in the case of a scheme which is not a money purchase scheme, in a form which provides the information described in paragraph 2 of that Schedule.

Conditions for general authorisation to accept contributions from European employers

7.—(1) Where the Regulator receives an application for authorisation under regulation 4, 5 or 6, it shall, before granting the authorisation, be satisfied that the applicant meets the conditions described in paragraph (2).

- (2) The conditions to be met under paragraph (1) are—
- (a) that the scheme is registered in the register,
 - (b) that the matters set out in Article 9(1)(b) to (f) of the Directive are satisfied,
 - (c) that the trustees or managers of the scheme have ensured that the scheme will be operated in a way which is consistent with the requirements of the law relating to schemes, and
 - (d) in the case of a scheme which is not a money purchase scheme—
 - (i) where the application is made under regulation 4, that the scheme meets the statutory funding objective;
 - (ii) where the application is made under regulation 5, that the scheme will, in the opinion of the Regulator, meet the statutory funding objective by 22nd September 2008, or
 - (iii) where the application is made under regulation 6, that the scheme will, in the opinion of the Regulator, meet the statutory funding objective by the expiry of the period of two years beginning on the date on which the application was made.

Criteria for revocation of general authorisation to accept contributions from European employers

8.—(1) The Regulator may revoke an authorisation granted under Article 264 where it is satisfied by the trustees or managers of that scheme that—

- (a) the scheme does not have any European members who have any accrued European rights, and
- (b) there are not in relation to the scheme any survivors of a European member of the scheme who have any accrued European rights.

(2) The Regulator may revoke an authorisation granted under Article 264 where it is satisfied that any of the criteria described in paragraph (3) are met in relation to the scheme.

(3) The criteria to be applied by the Regulator in reaching any decision relating to the revocation of an authorisation under paragraph (2) are the seriousness, frequency and persistence of any failure—

- (a) by the trustees or managers of the scheme to ensure that the scheme is operated in a way which is consistent with, or
- (b) by the scheme to comply with,

any of the requirements described in paragraph (4).

(4) The requirements for the purposes of paragraph (3) for the purposes of any decision by the Regulator relating to the revocation of an authorisation are—

- (a) the provisions (other than Article 16(3)) of the Directive,
- (b) the condition described in regulation 7(2)(c), and
- (c) in the case of a scheme which is not a money purchase scheme and to which—
 - (i) regulation 4 applies, the condition described in paragraph (5),

- (ii) regulation 5 applies, the condition described in regulation 7(2)(d)(ii) or, after 22nd September 2008, the condition described in paragraph (5), or
 - (iii) regulation 6 applies, the condition described in regulation 7(2)(d)(iii) or, after the expiry of the period of two years beginning on the date on which the application for the authorisation of the scheme was made, the condition described in paragraph (5).
- (5) The condition to be met under paragraph (4)(c)(i), (ii) or (iii) is that the scheme—
- (a) meets the statutory funding objective, or
 - (b) where—
 - (i) the trustees or managers of the scheme have obtained an actuarial valuation, and
 - (ii) it appears to them that the statutory funding objective was not met on the effective date of that valuation,the scheme will, in the opinion of the Regulator, meet the statutory funding objective within two years after that date.

Applications for approval in relation to particular European employer: established schemes which are not carrying on cross-border activity

- 9.—(1) This regulation applies to all schemes other than—
- (a) a scheme which is a new scheme on the date on which the trustees or managers make an application for approval under Article 265,
 - (b) a scheme which is a pre-23rd September 2005 scheme, or
 - (c) where the trustees or managers of a segregated multi-employer scheme have stated in the notice of intention relating to an application for approval under Article 265 that any contributions payable to the scheme by the European employer specified in that notice of intention will be allocated to a new section, that section (to which these Regulations apply as if that section were a separate scheme in accordance with regulation 2(3)).
- (2) Where the trustees or managers of a scheme apply to the Regulator for approval under Article 265 in relation to one or more European employers, the information to be contained in the notice of intention, in addition to the information specified in Article 265(1)(a) to (c), shall be determined—
- (a) in the case of a money purchase scheme, in accordance with the provisions of paragraph 6(1), (2), (3) and (7) of Schedule 1, or
 - (b) in the case of a scheme which is not a money purchase scheme, in accordance with the provisions of paragraph 6(1), (2), (4) and (7) of that Schedule.

Applications for approval in relation to particular European employer: established schemes which are carrying on cross-border activity

- 10.—(1) This regulation applies where—
- (a) a scheme is a pre-23rd September 2005 scheme, and
 - (b) the trustees or managers of that scheme make an application for approval under Article 265 in relation to one or more European employers within the period of three months beginning on the commencement date.
- (2) The information to be contained in the notice of intention relating to such an application, in addition to the information specified in Article 265(1)(a) to (c), shall be determined—
- (a) in the case of a money purchase scheme, in accordance with the provisions of paragraph 6(1), (2), (3) and (7) of Schedule 1, or

- (b) in the case of a scheme which is not a money purchase scheme, in accordance with the provisions of paragraph 6(1), (2), (5) and (7) of that Schedule.

Applications for approval in relation to particular European employer: new schemes and new sections of segregated multi-employer schemes

11.—(1) This regulation applies to—

- (a) a scheme which is a new scheme on the date on which the trustees or managers make an application for approval under Article 265, or
- (b) where the trustees or managers of a segregated multi-employer scheme have stated in the notice of intention relating to an application for approval under Article 265 that any contributions to the scheme by the European employer specified in that notice of intention will be allocated to a new section, that section.

(2) The information to be contained in the notice of intention relating to such an application, in addition to the information specified in Article 265(1)(a) to (c), shall be determined in accordance with the provisions of paragraph 6(1), (2), (6) and (7) of Schedule 1.

Conditions for approval in relation to particular European employer

12.—(1) Where the Regulator receives an application made under regulation 9, 10 or 11 for approval in relation to one or more European employers specified in the notice of intention it shall, before granting the approval in relation to any such European employer, be satisfied that persons giving the notice of intention meet the condition described in paragraph (2) in relation to that specified European employer.

(2) The condition to be met under paragraph (1) is that the Regulator has no reason to doubt that—

- (a) the administrative structure of the scheme,
- (b) the financial situation of the scheme, and
- (c) the repute and professional qualifications or experience of the persons running the scheme,

are compatible with the proposed operations of the scheme in the specified host member State.

Revocation of approval in relation to particular European employer

13.—(1) In this regulation “notified”, in relation to a requirement, means a requirement which was included in information which was received by the Regulator from the competent authority in the host member State in pursuance of Article 20(5) or (8) of the Directive and was forwarded by the Regulator—

- (a) in accordance with Article 266(1) (notification of legal requirements of host member State outside the United Kingdom) to the person who gave the notice of intention, or
- (b) in accordance with Article 266(2) to the trustees or managers of the scheme,

as the case may be.

(2) Where the Regulator has granted approvals under Article 265 to the trustees or managers of a scheme in relation to one or more specified European employers it may revoke any or all of those approvals where it is satisfied by the trustees or managers of the scheme that—

- (a) the scheme does not have any European members who have any accrued European rights, and
- (b) there are not in relation to the scheme any survivors of a European member of the scheme who have any accrued European rights.

(3) Where the Regulator has granted approvals under Article 265 to the trustees or managers of a scheme in relation to more than one specified European employer it may decide under paragraph (4) or (5) to revoke those approvals in relation to one or more such European employers.

(4) Where the Regulator has granted approvals under Article 265 to the trustees or managers of a scheme in relation to one or more specified European employers and those European employers are all located in the same host member State, the criteria to be applied by the Regulator in reaching any decision relating to the revocation of any such approval are the seriousness, frequency and persistence of any failure—

- (a) by the trustees or managers of the scheme to ensure that the scheme is operated in a way which is consistent with, or
- (b) by the scheme to comply with,

any of the requirements described in paragraph (5).

(5) The requirements for the purposes of paragraph (4) for the purposes of any decision by the Regulator relating to the revocation of an approval are—

- (a) the notified requirements of the social and labour law of that host member State,
- (b) the notified information requirements imposed by that host member State in pursuance of Article 20(7) of the Directive, or
- (c) the conditions described in regulation 12(2).

(6) Where the Regulator has granted approvals under Article 265 to the trustees or managers of a scheme in relation to more than one specified European employer and not all of those European employers are located in the same host member State, the criteria to be applied by the Regulator in reaching any decision relating to the revocation of any such approval are the seriousness, frequency and persistence of any failure—

- (a) by the trustees or managers of the scheme to ensure that the scheme is operated in a way which is consistent with, or
- (b) by the scheme to comply with,

any of the requirements described in paragraph (7).

(7) The requirements for the purposes of paragraph (6) for the purposes of any decision by the Regulator relating to the revocation of an approval are—

- (a) the notified requirements of the social and labour law of any of the host member States,
- (b) the notified information requirements imposed by any of those host member States in pursuance of Article 20(7) of the Directive, or
- (c) the conditions described in regulation 12(2).

Modifications of pensions legislation in relation to European members of cross-border schemes

14.—(1) Where a cross-border scheme is not a pre-23rd September 2005 scheme, the provisions of the Pension Schemes Act and the 1995 Order which are listed in paragraph 2, 3 or 4 of Schedule 2 shall be modified in their application to that scheme as if—

- (a) the European members of that scheme, and
- (b) any European survivors,

were excluded from the application of those provisions in respect of any accrued European rights.

(2) Where a cross-border scheme is a pre-23rd September 2005 scheme, the provisions of the Pension Schemes Act and the 1995 Order which are listed in paragraph 2 or 4 of Schedule 2 shall be modified in their application to that scheme as if—

- (a) the European members who were such members of that scheme on the commencement date, and
 - (b) any European survivors of such European members,
- were excluded from the application of those provisions in respect of any accrued European rights.

(3) Where a cross-border scheme is a pre-23rd September 2005 scheme, the provisions of the Pension Schemes Act and the 1995 Order which are listed in paragraph 2, 3 or 4 of Schedule 2 shall be modified in their application to that scheme as if—

- (a) the European members who became such members of the scheme after the commencement date, and
 - (b) any European survivors of such European members,
- were excluded from the application of those provisions in respect of any accrued European rights.

Ring-fencing of assets

15.—(1) For the purposes of this regulation, the assets and liabilities of a scheme shall be determined in accordance with Part IV of the Order and regulations made under that Part.

(2) Where the trustees or managers of a scheme receive contributions to the scheme from a European employer, the Regulator may issue a notice (“a ring-fencing notice”) to the trustees or managers of that scheme where it has reasonable grounds for believing that—

- (a) a person has done or will do any act which constitutes a misuse or misappropriation of the assets of the scheme, or
 - (b) a situation exists which amounts to a material threat to the interests of the members of the scheme who are or have been qualifying persons or qualifying self-employed persons in relation to any European employer.
- (3) A ring-fencing notice may direct the trustees or managers of the scheme—
- (a) to notify the Regulator, within three months of the date of the issue of the notice, of the details of the assets and liabilities of the scheme attributable to each European employer—
 - (i) from whom the trustees or managers have received or are receiving contributions, and
 - (ii) in relation to whom the ring-fencing notice is given, or
 - (b) for so long as the Regulator has reasonable grounds for believing that there is a material threat to the interests of the members of the scheme who are or have been qualifying persons in relation to any such European employer or who are or have been such a European employer, to divide the scheme into two or more sections and ensure that—
 - (i) any contributions payable to the scheme by any such European employer in relation to the scheme or by any such member are allocated to a separate section, and
 - (ii) a specified part or proportion of the assets of the scheme is attributable to that section and cannot be used for the purposes of any other section.

Relevant legal requirements for the purposes of Article 269

16. Where a UK employer has made, makes, or proposes to make, contributions to a European pensions institution in respect of persons who are not qualifying persons, the relevant legal requirements for the purposes of Article 269 are, in relation to such persons and their survivors, those requirements of the law relating to schemes as it applies in Northern Ireland which are listed in paragraph 2, 3 or 5 of Schedule 2.

Manner of applying to the Regulator under regulations 4 to 6 and 9 to 11

17.—(1) In this regulation, “electronic communications network” shall be construed in accordance with Article 277 (notification and documents in electronic form).

(2) An application to the Regulator by the trustees or managers of a scheme for authorisation under Article 264 or for approval under Article 265 shall be made in writing or, where any requirements imposed by or under Article 277 are complied with, may be made by transmitting it to the Regulator—

- (a) by means of an electronic communications network, or
- (b) by other means but in a form that nevertheless requires the use of apparatus by the Regulator to render it intelligible.

(3) A notification by the Regulator under Article 265(2)(a)(i) or (b) to the persons who gave a notice of intention shall be made in writing or, where any requirements imposed by or under Article 277 are complied with, may be made by transmitting it to those persons—

- (a) by means of an electronic communications network, or
- (b) by other means but in a form that nevertheless requires the use of apparatus by those persons to render it intelligible.

Amendment of the Occupational Pension Schemes (Trust and Retirement Benefits Exemption) Regulations

18.—(1) The Occupational Pension Schemes (Trust and Retirement Benefits Exemption) Regulations (Northern Ireland) 2005(4) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 1(2) (interpretation) after the definition of “relevant statutory scheme” there shall be added the following definition—

““scheme undertaking cross-border activities” means a scheme in relation to which the trustees or managers are—

- (a) authorised under Article 264 of the Order (general authorisation to accept contributions from European employers), or
- (b) approved under Article 265 of the Order in relation to a European employer;”.

(3) After regulation 1 there shall be inserted the following regulation—

“Application

1A. With the exception of regulation 2(a), these Regulations do not apply to any scheme undertaking cross-border activities.”.

Sealed with the Official Seal of the Department for Social Development on 20th December 2005.

L.S.

John O'Neill
A senior officer of the
Department for Social Development