

2018 No. 182

PENSIONS

**The Occupational Pension Schemes (Cross-border Activities)
(Amendment) Regulations (Northern Ireland) 2018**

Made - - - - - *23rd October 2018*

Coming into operation - *13th January 2019*

The Department for Communities(a), being a Department designated(b) for the purposes of section 2(2) of the European Communities Act 1972(c) in relation to personal and occupational pensions, makes the following Regulations in exercise of the powers conferred by that section and Articles 55(2)(h) and 88(2)(q) of the Pensions (Northern Ireland) Order 2005(d).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Cross-border Activities) (Amendment) Regulations (Northern Ireland) 2018 and shall come into operation on 13th January 2019.

(2) The Interpretation Act (Northern Ireland) 1954(e) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Pensions (Northern Ireland) Order

2.—(1) Part 7(f) of the Pensions (Northern Ireland) Order 2005 (cross-border activities within European Union) is amended in accordance with paragraphs (2) to (7).

(2) In Article 263(4)(a)(g) (occupational pension scheme receiving contributions from European employer) for “two months” substitute “six weeks”.

(3) In Article 265(2)(b)(h) (approval in relation to particular European employer) after “so approved” insert “, stating the reasons for not so approving them”.

(4) In Article 266(i) (notification of legal requirements of host EEA state outside United Kingdom)—

(a) in paragraph (1)(b) for “Article 20(5)”, in both places where it occurs, substitute “Article 11(7)”;

(b) in paragraph (2)(b) for “Article 20(8)” substitute “Article 11(9)”.

(a) See section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))
(b) See Schedule 2 to the European Communities (Designation) (No. 7) Order 2004 (S.I. 2004/3328)
(c) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c. 7)
(d) S.I. 2005/255 (N.I. 1)
(e) 1954 c. 33 (N.I.)
(f) Part 7 was amended by S.R. 2007 No. 457
(g) Article 263 was amended by regulation 5(4) of S.R. 2007 No. 457
(h) Article 265 was amended by regulation 5(5) of S.R. 2007 No. 457
(i) Article 266 was amended by regulation 5(6) of S.R. 2007 No. 457

(5) In Article 269(a) (functions of Regulator in relation to institutions administered in other EEA states)—

- (a) in paragraph (1) for “Article 20” substitute “Article 11”;
- (b) in paragraph (2)—
 - (i) for “Article 20(4)” substitute “Article 11(4)”;
 - (ii) for “two months” substitute “six weeks”;
- (c) in paragraph (8) in the definition of “European pensions institution” for “Article 6(a)” substitute “Article 6(1)”.

(6) In Article 270(6)(b) (stopping disposal of assets of institutions administered in other EEA states) in the definition of “UK-held assets” for “Article 19(3)” substitute “Article 33(4)”.

(7) In Article 271(c) (interpretation of Part)—

- (a) in the definition of “the Directive” for “2003/41/EC” substitute “(EU) 2016/2341(d)”;
- (b) in the definition of “social and labour law” for “Article 20” substitute “Article 11”.

Amendment of the Occupational Pension Schemes (Cross-border Activities) Regulations

3.—(1) The Occupational Pension Schemes (Cross-border Activities) Regulations (Northern Ireland) 2005(e) are amended in accordance with paragraphs (2) to (7).

(2) In regulation 2(1) (interpretation)—

- (a) after the definition of “the commencement date” insert—

““cross-border activity” means operating a pension scheme (as defined under section 1(5)(f) of the Pension Schemes Act) where the relationship between the employer, and the members and beneficiaries concerned, is governed by the social and labour law of an EEA state other than the EEA state in which the pension scheme is registered or authorised and in which its main administration is located;”;
- (b) after the definition of “cross-border scheme” insert—

““cross-border transfer” means the transfer of all or part of the liabilities, technical provisions and other obligations and rights, and the corresponding assets or their cash equivalent, from one pension scheme (as defined under section 1(5) of the Pension Schemes Act) to another pension scheme that is registered or authorised in a different EEA state;”;
- (c) after the definition of “the effective date” insert—

““EIOPA” means the European Insurance and Occupational Pensions Authority;”.

(3) In regulation 7(2)(g) (conditions for general authorisation to accept contributions from European employers)—

- (a) after sub-paragraph (a) insert—

“(aa) that the register specifies the EEA state in which the scheme operates;”;
- (b) in sub-paragraph (b) for “the matters set out in Article 9(1)(b) to (f)” substitute “the requirements to be satisfied by the scheme pursuant to Articles 10(1), 13(4) and 22(1) and Title IV”.

(4) In regulation 8 (criteria for revocation of general authorisation to accept contributions from European employers)—

- (a) in paragraph (4)(a) for “Article 16(3)” substitute “Article 14(3)”;

(a) Article 269 was amended by regulation 5(8) of S.R. 2007 No. 457

(b) Article 270 was amended by regulation 5(9) of S.R. 2007 No. 457

(c) Article 271 was amended by regulation 5(10) of S.R. 2007 No. 457

(d) O.J. No. L354, 23.12.16, p.37

(e) S.R. 2005 No. 581; relevant amending Regulations are S.R. 2007 Nos. 185 and 457

(f) Section 1(5) was inserted by Article 216(4) of the Pensions (Northern Ireland) Order 2005

(g) Regulation 7(2) was amended by regulation 16(5) of S.R. 2007 No. 185

- (b) after paragraph (5) add—
 - “(6) The Regulator must notify EIOPA of a revocation made pursuant to this regulation.”.
- (5) In regulation 13(a) (revocation of approval in relation to particular European employer)—
 - (a) in paragraph (1) for “Article 20(5) or (8)” substitute “Article 11(7) or (9)”;
 - (b) in paragraphs (5)(b) and (7)(b) for “Article 20(7)” substitute “Article 11(6)”;
 - (c) after paragraph (7) add—
 - “(8) The Regulator must notify EIOPA of a revocation made pursuant to this regulation.”.
- (6) After regulation 13 insert—

“Register of occupational and personal pension schemes

13A. In accordance with Article 9(3) of the Directive, the Regulator must send to EIOPA the information from the register.”.

- (7) After regulation 19(b) (treatment of overseas residents: Article 66A of the 1995 Order) add—

“Cross-border transfers: requirements for receiving schemes

20.—(1) The trustees or managers of an occupational pension scheme (“the receiving scheme”) must not accept a cross-border transfer from a pension scheme (“the transferring scheme”) unless—

- (a) the cross-border transfer has been approved by a majority of members and a majority of beneficiaries of the transferring scheme who will become members or beneficiaries of the receiving scheme, or by a majority of their representatives,
- (b) the cross-border transfer has been approved by any employer of the members in sub-paragraph (a),
- (c) the trustees or managers of the receiving scheme have applied to the Regulator for authorisation of the cross-border transfer in a form which includes the information set out in paragraph (4),
- (d) the Regulator—
 - (i) has authorised the cross-border transfer, or
 - (ii) has not informed the trustees or managers of the receiving scheme of its decision on the application within three months and seven weeks from the day on which the Regulator received the application, and
- (e) the costs of the cross-border transfer will be incurred by persons other than—
 - (i) any remaining members or beneficiaries of the transferring scheme;
 - (ii) any existing members of the receiving scheme.
- (2) The conditions under Article 263(c) are deemed to be met where—
 - (a) the Regulator has authorised the cross-border transfer,
 - (b) the cross-border transfer results in cross-border activity, and
 - (c) the trustees or managers of the receiving scheme are not already authorised or approved under Part VII of the Order.
- (3) The Regulator may only authorise a cross-border transfer where the competent authority of the EEA state in which the transferring scheme is registered or authorised has given its consent to the cross-border transfer.

(a) Regulation 13 was amended by regulation 12(5) of S.R. 2007 No. 457
 (b) Regulation 19 was added by regulation 16(8) of S.R. 2007 No. 185
 (c) Article 263 was amended by regulation 5(4) of S.R. 2007 No. 457

- (4) An application made under paragraph (1)(c) must contain the following information—
- (a) the written agreement between the transferring scheme and the receiving scheme setting out the conditions of the cross-border transfer,
 - (b) a description of the main characteristics of the receiving scheme,
 - (c) a description of the liabilities, technical provisions and other obligations and rights, and the corresponding assets or their cash equivalent to be transferred,
 - (d) the names and locations of the main administrations of the transferring scheme and the receiving scheme and the EEA state in which each scheme is registered or authorised,
 - (e) the name of any employer of the members in paragraph (1)(a) and the location of its main administration,
 - (f) evidence that the cross-border transfer has been approved in accordance with subparagraphs (a) and (b) of paragraph (1),
 - (g) where applicable, the names of the EEA states whose social and labour law relevant to the field of occupational pension schemes is applicable to the transferring scheme concerned.
- (5) On receipt of an application under paragraph (1)(c), the Regulator must without delay send a copy of the application to the competent authority of the EEA state in which the transferring scheme is registered or authorised.
- (6) In considering an application under paragraph (1)(c), the Regulator must only assess whether—
- (a) the receiving scheme has provided all the information referred to in paragraph (4),
 - (b) the administrative structure and financial situation of the receiving scheme and the good repute or professional qualifications or experience of the persons running it are compatible with the proposed cross-border transfer,
 - (c) the long-term interests of the members and beneficiaries of the receiving scheme, and those whose rights are being transferred to the receiving scheme, are adequately protected during and after the cross-border transfer,
 - (d) the technical provisions of the receiving scheme are fully funded at the date of the cross-border transfer, where the cross-border transfer results in cross-border activity, and
 - (e) the assets or cash equivalent to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred.
- (7) Within three months of the day on which the Regulator received the application under paragraph (1)(c), the Regulator must—
- (a) inform the trustees or managers of the receiving scheme whether the cross-border transfer is authorised, and
 - (b) if the cross-border transfer is not authorised, inform the trustees or managers of the reasons for the refusal.
- (8) Within two weeks of the day on which the Regulator decided the application under paragraph (1)(c), the Regulator must send a copy of the decision to the competent authority of the EEA state in which the transferring scheme is registered or authorised.
- (9) Where—
- (a) the cross-border transfer results in cross-border activity,
 - (b) the competent authority of the EEA state in which the transferring scheme is registered or authorised received a copy of the Regulator's decision under paragraph (8), and

- (c) the competent authority informs the Regulator of—
 - (i) the requirements of that EEA state’s social and labour law under which the receiving scheme must be operated, and
 - (ii) the information requirements of the host EEA state referred to in Title IV of the Directive that apply to the cross-border activity concerned,

the Regulator must communicate the information in sub-paragraph (c) to the trustees or managers of the receiving scheme within one week of the day on which the Regulator received it.

(10) The power to grant authorisation of an application made under paragraph (1)(c) is prescribed as a regulatory function for the purposes of Article 88(a) (the Regulator’s procedure in relation to its regulatory functions).

Cross-border transfers: requirements for transferring schemes

21.—(1) The trustees or managers of an occupational pension scheme (“the transferring scheme”) must not make a cross-border transfer to another pension scheme (“the receiving scheme”) unless—

- (a) the cross-border transfer has been approved by a majority of members and a majority of beneficiaries of the transferring scheme who will become members or beneficiaries of the receiving scheme, or by a majority of the trustees or managers of the transferring scheme,
- (b) the cross-border transfer has been approved by any employer of the members in sub-paragraph (a),
- (c) where there is a cross-border transfer of accrued rights which are not relevant money purchase rights within the meaning of regulation 12(11)(b) of the 1991 Regulations (transfer of member’s accrued rights without consent), the condition under paragraph (3)(c) of regulation 12 of the 1991 Regulations, as modified by paragraph (2) of this regulation, is satisfied,
- (d) the cross-border transfer has been authorised by the competent authority of the EEA state in which the receiving scheme is registered or authorised, or the time period set in accordance with Article 12(11) of the Directive has expired, and
- (e) the costs of the cross-border transfer will be incurred by persons other than—
 - (i) any remaining members or beneficiaries of the transferring scheme,
 - (ii) any existing members of the receiving scheme.

(2) For the purposes of paragraph (1)(c) of this regulation, paragraph (3) of regulation 12 of, and Schedule 3(d) (actuary’s certificate) to, the 1991 Regulations are to be read as if—

- (a) references to “receiving scheme” and “transferring scheme” were references to “receiving scheme” and “transferring scheme” as defined in this regulation, and
- (b) sub-paragraphs (b) and (c) of paragraph (3) of regulation 12 of the 1991 Regulations were omitted.

(3) If it receives a copy of an application for authorisation of a cross-border transfer from the competent authority of another EEA state in which a receiving scheme is registered or authorised, the Regulator must only assess whether—

- (a) in the case of a partial transfer of the transferring scheme’s liabilities, technical provisions, and other obligations and rights, as well as the corresponding assets or

(a) Article 88 was amended by paragraph 17 of Schedule 4 to the Public Service Pensions Act (Northern Ireland) 2014 (c. 2 (N.I.))
 (b) Paragraph (11) was added by regulation 2(6) of S.R. 2018 No. 54
 (c) Paragraph (3) was substituted by regulation 3(2)(a) of S.R. 2011 No. 89
 (d) Schedule 3 was added by regulation 3(3) of S.R. 2011 No. 89

their cash equivalent, the long-term interests of the members and beneficiaries of the remaining part of the transferring scheme are adequately protected,

- (b) the individual entitlements of the members and beneficiaries are at least the same after the cross-border transfer,
- (c) the assets or cash equivalent to be transferred are sufficient and appropriate to cover the liabilities, technical provisions and other obligations and rights to be transferred, and
- (d) where there is a cross-border transfer of accrued rights which are not relevant money purchase rights within the meaning of regulation 12(11) of the 1991 Regulations, the condition under paragraph (3) of regulation 12 of the 1991 Regulations, as modified by paragraph (2) of this regulation, is satisfied.

(4) The Regulator must notify its refusal, or granting, of consent to the cross-border transfer on the basis of the assessment in paragraph (3) of this regulation to the competent authority of the EEA state in which the receiving scheme is registered or authorised within eight weeks of the day on which the Regulator received a copy of the application from the competent authority of another EEA state.

(5) Where the cross-border transfer is authorised by the competent authority of the EEA state in which the receiving scheme is registered, and the cross-border transfer results in cross-border activity, then within four weeks of the day on which the Regulator receives notification of the authorisation of the cross-border transfer from the competent authority, the Regulator must inform the competent authority of the EEA state in which the receiving scheme is registered or authorised of—

- (a) the requirements of social and labour law under which the receiving scheme must be operated, and
- (b) the information requirements referred to in Title IV of the Directive that apply to the cross-border activity concerned.

(6) In this regulation, “the 1991 Regulations” means the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991(a).”.

Amendment of the Occupational Pension Schemes (Preservation of Benefit) Regulations

4.—(1) The Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991 are amended in accordance with paragraphs (2) and (3).

(2) In regulation 1(2) (interpretation) omit the definition of “European pensions institution”(b).

(3) Omit regulation 11B(c) (further alternative to short service benefit – transfer to a European pensions institution without consent).

Amendment of the Register of Occupational and Personal Pension Schemes Regulations

5. In regulation 3(1) of the Register of Occupational and Personal Pension Schemes Regulations (Northern Ireland) 2005(d) (registrable information)—

- (a) in sub-paragraph (h)(e) for “governance), and” substitute “governance);”;
- (b) in sub-paragraph (i) for “apply.” substitute “apply, and”
- (c) after sub-paragraph (i) add—

(a) S.R. 1991 No. 37

(b) The definition of “European pensions institution” was inserted by regulation 2(2) of S.R. 2013 No. 72

(c) Regulation 11B was inserted by regulation 2(3) of S.R. 2013 No. 72

(d) S.R. 2005 No. 93; relevant amending Regulations are S.R. 2015 No. 309

(e) Sub-paragraphs (h) and (i) were added by regulation 24(c) of S.R. 2015 No. 309

“(j) in the case of an occupational pension scheme where the trustees or managers are approved under Article 265 of the 2005 Order, the host EEA state as defined under Article 263(6) of the 2005 Order.”.

Sealed with the Official Seal of the Department for Communities on 23rd October 2018

(L.S.)

Anne McCleary
A senior officer of the Department for Communities

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the requirements relating to cross-border activity and cross-border transfers in Articles 6, 9, 11, 12, 33 and 48 of the European Union Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision (O.J. No. L354, 23.12.16, p.37) (“the Directive”). The Directive is a recast of the original EU Directive 2003/41/EC on the same subject matter (O.J. No. L235, 23.9.03, p.10).

Regulation 2 amends Part 7 of the Pensions (Northern Ireland) Order 2005 to implement changes made by the Directive in relation to the procedure for authorisation and approval of cross-border activity.

Regulation 3 amends the Occupational Pension Schemes (Cross-border Activities) Regulations (Northern Ireland) 2005 to implement changes made by the Directive in relation to the regime and procedure for authorisation and approval for cross-border activity. It also implements the requirement under Article 9(3) of the Directive for the Pensions Regulator to communicate information from the register (compiled and maintained by the Pensions Regulator under section 59 of the Pensions Act 2004 (c. 35)) to the supranational Regulator, the European Insurance and Occupational Pensions Authority. It also implements the requirements under Article 12 of the Directive in relation to cross-border transfers.

Regulation 4 omits regulation 11B of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991 (which made provision for transfers to a European pensions institution without consent) in consequence of the requirements which now govern cross-border transfers.

Regulation 5 adds to the list of registrable information in the Register of Occupational and Personal Pension Schemes Regulations (Northern Ireland) 2005 so that where there is cross-border activity, the name of the host EEA state will also be registered. This is in accordance with Article 9(2) of the Directive.

As these Regulations, in so far as they are made under the Pensions (Northern Ireland) Order 2005, make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement to consult under Article 289(1) of that Order does not apply by virtue of paragraph (2)(e) of that Article.

An assessment of the impact of these Regulations is detailed in a Regulatory Impact Assessment, copies of which, together with a Transposition Note, are laid in the Business Office and the Library of the Northern Ireland Assembly. Copies are annexed to the Explanatory Memorandum which is available alongside this Statutory Rule on the website: <http://www.legislation.gov.uk/nisr>. Copies are also available from the Department for Communities, Social Security Policy and Legislation Division, Level 8, Causeway Exchange, 1-7 Bedford Street, Belfast BT2 7EG or on the website: <https://www.communities-ni.gov.uk/articles/pension-information>.

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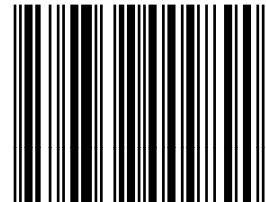
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty’s Stationery Office being the Government Printer for Northern Ireland and the Officer appointed to print Acts of the Northern Ireland Assembly.

£6.90

NI201810231014 10/2018 19585

<http://www.legislation.gov.uk/id/nisr/2018/182>

ISBN 978-0-33-800989-0



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