STATUTORY RULES OF NORTHERN IRELAND

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(**1**), being a Department designated(**2**) for the purposes of section 2(2) of the European Communities Act 1972(**3**) 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(**4**).

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(**5**) 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(**6**) 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)(**7**) (occupational pension scheme receiving contributions from European employer) for "two months" substitute "six weeks".

(3) In Article 265(2)(b)(**8**) (approval in relation to particular European employer) after "so approved" insert ", stating the reasons for not so approving them".

(**1**) *See* section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))
(**2**) *See* Schedule 2 to the European Communities (Designation) (No. 7) Order 2004 (S.I. 2004/3328)
(**3**) 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)
(**4**) S.I. 2005/255 (N.I. 1)
(**5**) 1954 c. 33 (N.I.)
(**6**) Part 7 was amended by S.R. 2007 No. 457
(**7**) Article 263 was amended by regulation 5(4) of S.R. 2007 No. 457
(**8**) Article 265 was amended by regulation 5(5) of S.R. 2007 No. 457

(4) In Article 266(**9**) (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)".

(5) In Article 269(**10**) (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)(**11**) (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(**12**) (interpretation of Part)—

(a) in the definition of "the Directive" for "2003/41/EC" substitute "(EU) 2016/2341(**13**)";

(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(**14**) 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)(**15**) 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;".

(**9**) Article 266 was amended by regulation 5(6) of S.R. 2007 No. 457
(**10**) Article 269 was amended by regulation 5(8) of S.R. 2007 No. 457
(**11**) Article 270 was amended by regulation 5(9) of S.R. 2007 No. 457
(**12**) Article 271 was amended by regulation 5(10) of S.R. 2007 No. 457
(**13**) O.J. No. L354, 23.12.16, p.37
(**14**) S.R. 2005 No. 581; relevant amending Regulations are S.R. 2007 Nos.185 and 457
(**15**) Section 1(5) was inserted by Article 216(4) of the Pensions (Northern Ireland) Order 2005

(3) In regulation 7(2)(**16**) (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)";

(b) after paragraph (5) add—

"(6) The Regulator must notify EIOPA of a revocation made pursuant to this regulation.".

(5) In regulation 13(**17**) (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(**18**) (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

(**16**) Regulation 7(2) was amended by regulation 16(5) of S.R. 2007 No. 185
(**17**) Regulation 13 was amended by regulation 12(5) of S.R. 2007 No. 457
(**18**) Regulation 19 was added by regulation 16(8) of S.R. 2007 No. 185

(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(**19**) 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.

(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 sub-paragraphs (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,

(**19**) Article 263 was amended by regulation 5(4) of S.R. 2007 No. 457