STATUTORY RULES OF NORTHERN IRELAND

2005 No. 581

PENSIONS

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

Made - - - -	*20th December 2005*
Coming into operation	*30th December 2005*

The Department for Social Development, in exercise of the powers conferred on it by Articles 2(5)(a), 263(6), 264, 265(1), (2) and (4), 267(2), 268(1), 269(8) and 287(2) and (3) of the Pensions (Northern Ireland) Order 2005(**1**), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

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(**2**) 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

(**1**) S.I.2005/255 (N.I. 1)

(**2**) 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

(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);

"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)(**3**);

"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

(**3**) 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

(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—

(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(**4**);

"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—

(**4**) 2004 c. 35

(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.