

2007 No. 457

PENSIONS

**The Occupational Pension Schemes (EEA States) Regulations
(Northern Ireland) 2007**

Made - - - - - *31st October 2007*

Coming into operation - *26th November 2007*

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The Department for Social Development, being a Department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to personal and occupational pensions, makes the following Regulations in exercise of the powers conferred by that section.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (EEA States) Regulations (Northern Ireland) 2007 and shall come into operation on 26th November 2007.

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

(a) See Schedule 2 to the European Communities (Designation) (No. 7) Order 2004 (S.I. 2004/3328)

(b) 1972 c. 68; section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51)

(c) 1954 c. 33 (N.I.)

Amendment of the Pension Schemes (Northern Ireland) Act 1993

2.—(1) The Pension Schemes (Northern Ireland) Act 1993(a) shall be amended in accordance with paragraphs (2) to (5).

(2) In section 1(1)(b) (categories of pension schemes) in the definition of “occupational pension scheme”(c) for “member States” substitute “EEA states”.

(3) In section 15(4)(a)(i)(d) (discharge of liability where guaranteed minimum pensions secured by insurance policies or annuity contracts) for “member State” substitute “EEA state”.

(4) In section 28A(2)(a)(i)(e) (discharge of protected rights on winding up: insurance policies) for “member State” substitute “EEA state”.

(5) In section 176(1) (general interpretation) after the definition of “earnings factors” insert—

““EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;

“EEA state”, in relation to any time, means—

- (a) a state which at that time is a member State, or
- (b) any other state which at that time is a party to the EEA agreement;”.

Amendment of the Pensions (Northern Ireland) Order 1995

3. In Article 49(8A) of the Pensions (Northern Ireland) Order 1995(f) (other responsibilities of trustees, employers, etc.) in the definition of “Deposit taker” in paragraph (c) for “a member state” substitute “an EEA state”.

Amendment of the Welfare Reform and Pensions (Northern Ireland) Order 1999

4. In paragraph 6(2)(a) of Schedule 5 to the Welfare Reform and Pensions (Northern Ireland) Order 1999(g) (pension credits: mode of discharge: qualifying arrangements) for “member State” substitute “EEA state”.

Amendment of the Pensions (Northern Ireland) Order 2005

5.—(1) The Pensions (Northern Ireland) Order 2005(h) shall be amended in accordance with paragraphs (2) to (10).

(2) In Article 230(1) and (6) (non-European scheme to be trust with UK-resident trustee) for “member States” substitute “EEA states”.

(3) In Article 231(1) (representative of non-European scheme to be treated as trustee) for “member States” substitute “EEA states”.

(4) In Article 263(6) (occupational pension scheme receiving contributions from European employer)—

- (a) for ““host member State”” substitute ““host EEA state””;
- (b) for “a member State” substitute “an EEA state”.

(a) 1993 c. 49

(b) Section 1 became section 1(1) by virtue of Article 216(2) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))

(c) The definition of “occupational pension scheme” was substituted by Article 216(3) of the Pensions (Northern Ireland) Order 2005

(d) Section 15(4) was amended by Article 129(2) of S.I. 2001/3649

(e) Section 28A was inserted by Article 143(1) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) and amended by Article 19 of S.I. 2002/1555

(f) S.I. 1995/3213 (N.I. 22); Article 49(8A) was inserted by Article 154(5) of S.I. 2001/3649

(g) S.I. 1999/3147 (N.I. 11); paragraph 6 was amended by Article 160 of S.I. 2001/3649

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

(5) In Article 265(1)(c) and (2)(a)(i) (approval in relation to particular European employer) for “host member State” substitute “host EEA state”.

(6) In Article 266 (notification of legal requirements of host member State outside United Kingdom) in the heading and in paragraphs (1)(a) and (b) and (2)(b) for “host member State” substitute “host EEA state”.

(7) In Article 267 (duty of trustees or managers to act consistently with law of host member State) in the heading and in paragraph (1) for “host member State” substitute “host EEA state”.

(8) In Article 269 (functions of Regulator in relation to institutions administered in other member States)—

- (a) in the heading for “member States” substitute “EEA states”;
- (b) in paragraph (1) for “host member State” substitute “host EEA state”;
- (c) in paragraph (2) for “another member State” substitute “another EEA state”;
- (d) in paragraph (4)(b) for “member State” substitute “EEA state”;
- (e) in paragraph (8) in the definition of “European pensions institution” for “a member State” substitute “an EEA state”.

(9) In Article 270 (stopping disposal of assets of institutions administered in other member States)—

- (a) in the heading for “member States” substitute “EEA states”;
- (b) in paragraph (1)—
 - (i) for “a member State” substitute “an EEA state”;
 - (ii) for “that member State” substitute “that EEA state”.

(10) In Article 271 (interpretation of Part VII)—

- (a) in the definitions of “competent authority” and “social and labour law” for “a member State” substitute “an EEA state”;
- (b) in the definition of “host member State” for ““host member State”” substitute ““host EEA state””.

Amendment of the Occupational Pension Schemes (Contracting-out) Regulations

6. In regulation 1(2) of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996^(a) (interpretation)—

- (a) after the definition of “earnings period” insert—
 - ““EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;
 - “EEA state”, in relation to any time, means—
 - (a) a state which at that time is a member State, or
 - (b) any other state which at that time is a party to the EEA agreement;”;
- (b) in the definition of “overseas scheme”^(b) for “member States” substitute “EEA states”.

^(a) S.R. 1996 No. 493; relevant amending Regulations are S.R. 2007 No. 185

^(b) The definition of “overseas scheme” was substituted by regulation 4(2) of S.R. 2007 No. 185

Amendment of the Protected Rights (Transfer Payment) Regulations

7. In regulation 1(2) of the Protected Rights (Transfer Payment) Regulations (Northern Ireland) 1996(a) (interpretation)—

- (a) after the definition of “appropriate personal pension scheme” insert—
 - ““EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;
 - “EEA state”, in relation to any time, means—
 - (a) a state which at that time is a member State, or
 - (b) any other state which at that time is a party to the EEA agreement;”;
- (b) in the definition of “overseas scheme”(b) for “member States”, in both places where it occurs, substitute “EEA states”.

Amendment of the Contracting-out (Transfer and Transfer Payment) Regulations

8. In regulation 1(2) of the Contracting-out (Transfer and Transfer Payment) Regulations (Northern Ireland) 1996(c) (interpretation)—

- (a) after the definition of “earner” insert—
 - ““EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;
 - “EEA state”, in relation to any time, means—
 - (a) a state which at that time is a member State, or
 - (b) any other state which at that time is a party to the EEA agreement;”;
- (b) in the definition of “overseas scheme”(d) for “member States”, in both places where it occurs, substitute “EEA states”.

Amendment of the Pension Schemes (Categories) Regulations

9.—(1) The Pension Schemes (Categories) Regulations (Northern Ireland) 2005(e) shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 1 (interpretation) for paragraph (2) substitute—

- “(2) In these Regulations—
 - “the 1993 Act” means the Pension Schemes (Northern Ireland) Act 1993;
 - “EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;
 - “EEA state”, in relation to any time, means—
 - (a) a state which at that time is a member State, or
 - (b) any other state which at that time is a party to the EEA agreement.”.

(3) In regulation 2(2)(b) (prescription of certain pension schemes as occupational pension schemes) for “member States” substitute “EEA states”.

(a) S.R. 1996 No. 509; relevant amending Regulations are S.R. 2007 No. 185
(b) The definition of “overseas scheme” was substituted by regulation 5 of S.R. 2007 No. 185
(c) S.R. 1996 No. 618; relevant amending Regulations are S.R. 2007 No. 185
(d) The definition of “overseas scheme” was substituted by regulation 6 of S.R. 2007 No. 185
(e) S.R. 2005 No. 413 to which there are amendments not relevant to these Regulations

Amendment of the Occupational Pension Schemes (Scheme Funding) Regulations

10.—(1) The Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005(a) shall be amended in accordance with paragraphs (2) to (4).

- (2) In regulation 2(1) (interpretation) after the definition of “the commencement date” insert—
- ““EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;
- “EEA state”, in relation to any time, means—
- (a) a state which at that time is a member State, or
 - (b) any other state which at that time is a party to the EEA agreement;”.

(3) In regulation 17(1)(d)(i) (exemptions – general) for “member States” substitute “EEA states”.

(4) In paragraph 4(2)(b) and (d)(i) and (3)(a) of Schedule 2 (modifications of the Order and Regulations: schemes covering United Kingdom and foreign employment) for “member States”, in each place where it occurs, substitute “EEA states”.

Amendment of the Occupational Pension Schemes (Regulatory Own Funds) Regulations

11.—(1) The Occupational Pension Schemes (Regulatory Own Funds) Regulations (Northern Ireland) 2005(b) shall be amended in accordance with paragraphs (2) to (4).

- (2) In regulation 2(1) (interpretation) after the definition of “the commencement date” insert—
- ““EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;
- “EEA state”, in relation to any time, means—
- (a) a state which at that time is a member State, or
 - (b) any other state which at that time is a party to the EEA agreement;”.

(3) In regulation 10(8)(c) (postponement) for ““host member State”” substitute ““host EEA state””.

(4) In regulation 15(1)(d)(i) (exemptions) for “member States” substitute “EEA states”.

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

12.—(1) The Occupational Pension Schemes (Cross-border Activities) Regulations (Northern Ireland) 2005(d) shall be amended in accordance with paragraphs (2) to (6).

- (2) In regulation 2(1) (interpretation)—
- (a) after the definition of “cross-border scheme” insert—
- ““EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;
- “EEA state”, in relation to any time, means—
- (a) a state which at that time is a member State, or
 - (b) any other state which at that time is a party to the EEA agreement;”;
- (b) in the definition of “host member State” for ““host member State”” substitute ““host EEA state””;

(a) S.R. 2005 No. 568 to which there are amendments not relevant to these Regulations

(b) S.R. 2005 No. 570 as amended by S.R. 2007 No. 185

(c) Regulation 10(8) was amended by regulation 15(2) of S.R. 2007 No. 185

(d) S.R. 2005 No. 581; relevant amending Regulations are S.R. 2007 No. 185

- (c) in the definition of “qualifying person”—
 - (i) for “a member State”, in both places where it occurs, substitute “an EEA state”;
 - (ii) for “that member State” substitute “that EEA state”;
 - (d) in the definition of “qualifying self-employed person”—
 - (i) for “a member State” substitute “an EEA state”;
 - (ii) for “that member State”, in both places where it occurs, substitute “that EEA state”;
 - (e) in the definition of “seconded worker” in paragraph (b) for “a member State” substitute “an EEA state”.
- (3) In regulation 3 (meaning of “European employer” and “host member State” in Part VII of the Order)—
- (a) in the heading for ““host member State”” substitute ““host EEA state””;
 - (b) in paragraph (1)(a)—
 - (i) for “host member State” substitute “host EEA state”;
 - (ii) for “that member State”, in both places where it occurs, substitute “that EEA state”;
 - (c) in paragraph (5)—
 - (i) for ““host member State”” substitute ““host EEA state””;
 - (ii) for “any member State” substitute “any EEA state”;
 - (iii) for “the member State or States” substitute “any EEA state”.
- (4) In regulation 12(2) (conditions for approval in relation to particular European employer) for “host member State” substitute “host EEA state”.
- (5) In regulation 13 (revocation of approval in relation to particular European employer)—
- (a) in paragraphs (1), (4), (5) and (6) for “host member State”, in each place where it occurs, substitute “host EEA state”;
 - (b) in paragraph (7) for “host member States”, in both places where it occurs, substitute “host EEA states”.
- (6) In paragraph 6 of Schedule 1 (additional information to be contained in applications for authorisation or approval)—
- (a) in sub-paragraphs (2)(c) and (7)(b), (c), (f), (h) and (i) for “host member State” substitute “host EEA state”;
 - (b) in sub-paragraph (7)(a) for “member States” substitute “EEA states”.

Amendment of the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations

13.—(1) The Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006^(b) shall be amended in accordance with paragraphs (2) and (3).

- (2) In regulation 2 (interpretation) after the definition of “affected members” insert—
- ““EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;
 - “EEA state”, in relation to any time, means—
 - (a) a state which at that time is a member State, or
 - (b) any other state which at that time is a party to the EEA agreement;”.

(a) Paragraph (1) was substituted by regulation 16(3) of S.R. 2007 No. 185
 (b) S.R. 2006 No. 48 to which there are amendments not relevant to these Regulations

(3) In regulation 4(1)(e) (excluded employers: occupational pension schemes) for “member States” substitute “EEA states”.

Sealed with the Official Seal of the Department for Social Development on 31st October 2007

(L.S.)

John O'Neill

A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend various provisions in pensions legislation to take account of the coming into force on 12th April 2007 of the decision of the European Economic Area Joint Committee No. 88/2006 of 7th July 2006 to incorporate European Union Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision (OJ No. L 235, 23.9.03, p.10) (“the Directive”) into Annex IX to the European Economic Area agreement.

The extent to which Articles 6, 9(5), 14, 15, 17, 19 and 20 of the Directive is transposed by these Regulations is detailed in the Transposition Note, a copy of which has been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Note are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast BT7 2JA.