

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL PENSION SCHEMES
(CROSS-BORDER ACTIVITIES) (AMENDMENT)
REGULATIONS 2006

2006 No. 925

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 These Regulations amend the Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S.I. 2005/3381) so that schemes which make applications to the Pensions Regulator for authorisation and approval to operate cross-border on or before 29 March 2006 will be allowed to provide further material required to complete their application at a later date, provided it is received before 15 May 2006.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The JCSI will note that these Regulations breach the 21-day rule. The reasons for this are as follows.
- 3.2 The Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (“the Principal Regulations”) provide that schemes that currently carry out cross-border activity must apply for authorisation and approval by 29th March 2006. There is no provision in those Regulations for late applications. The Pensions Regulator has received a number of communications from schemes saying that they urgently need to request some sort of relaxation in the deadline, as they will not be able to provide all the required information in their applications by the deadline. If they do not apply by the deadline it will become unlawful for them to continue to carry out cross-border activity from 30th March 2006 onward.
- 3.3 The Principal Regulations were consulted on, and have been in the public domain since being laid before Parliament on 9th December 2005, so schemes have known about the deadline of 29th March 2006 for some time. However, at this late stage we are being told by the schemes that as a matter of fact they will be unable to meet the deadline. It has been decided therefore to amend the Principal Regulations to allow a small relaxation to the deadline: schemes must still apply by 29th March 2006, but will be able to submit an

incomplete application, as long as they provide the remaining information necessary to complete the application by 15th May. We feel this is a helpful and proportionate response to this urgent problem.

- 3.4 If we do not make any amendment to the Principal Regulations the members of the schemes concerned who are based in another member State will suffer, as the scheme will no longer be able lawfully to accept contributions in relation to those members. They will effectively no longer be able to accrue pension rights under that scheme.
- 3.5 The amendment in these Regulations needs to come into force before the expiry of the deadline, in order that there will be no gap in the law. In order to assist certain schemes and their members in this small way, it is necessary to breach the 21-day rule in these circumstances.

4. Legislative Background

- 4.1 The Principal Regulations came into force on 30 December 2005. These provisions, together with section 287 of the Pensions Act 2004, implement the cross-border provisions of the Occupational Pensions Directive 2003/41/EC (known as the IORP Directive) which allow a scheme based in one EU member State to be sponsored by an employer that has employees in another. Part of the cross-border process is that schemes should be authorised prior to operating cross-border. Although the Directive did not give an explicit transitional period for existing cross-border schemes, the regulations provided that such schemes could continue to operate whilst submitting an application for authorisation. The period for such applications was set at three months which was in line with other time periods set by the cross-border provisions of the Directive.
- 4.2 With the introduction of the cross-border requirements, existing cross-border schemes have been considering the consequences for their schemes. Schemes faced with the 29 March 2006 deadline for submitting applications to the Regulator have been trawling their records to determine whether they have any members based elsewhere in the EU and whether they are in fact cross-border schemes. An added difficulty has been that seconded workers based elsewhere in the EU are exempt from the Principal Regulations. Schemes have needed to determine whether their members can be considered to be seconded workers under the terms of the regulations, or whether they are permanent placements and therefore subject to those Regulations and this has taken considerable time. Although DWP and the Pensions Regulator have been advising schemes and their advisors, if they are uncertain whether they are covered by the requirements, to apply for authorisation there has continued to be delays.
- 4.3. The Government has become aware, via the Pensions Regulator, of a

number of schemes which are unlikely to comply with 29 March 2006 deadline for submitting completed applications on account of the fact that they have not managed to collate all the necessary information required. The effect of this is that, if these schemes do not meet the deadline, they will be unable to receive contributions in respect of their “European members” after 29 March 2006, as to do so would be in breach of cross-border pensions legislation.

4.4 The Government has therefore made an amendment to the Principal Regulations allowing partial applications to be made and the remaining necessary information to be supplied by 15th May 2006, whilst schemes continue to operate post 29 March 2006. This extension of the deadline (in relation to providing information to complete an application) was already in place for a certain category of cross-border scheme, known as “section 615 schemes”, so these Regulations operate to apply that extension to all existing cross-border schemes. The Government believes this action will protect the interests of schemes and members, allowing schemes to continue to operate whilst completing their applications.

4.5 A transposition note and brief scrutiny history is attached in an **Annex**.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 The IORP Directive is an important element of the Financial Services Action Plan and represents a first step towards a single market for occupational retirement provision. The cross-border elements of the IORP Directive seek to provide greater freedom for employers to decide where and in which pension schemes they wish to invest.

7.2 The cross-border elements of the IORP Directive seek to provide a standard procedure for occupational pension schemes established in one EU Member State wishing to be sponsored by employers with employees in other Member States, i.e. entering into cross-border activity. The Occupational Pensions (Cross-border Activities) Regulations 2005 implemented the cross-border provisions of the IORP Directive. The introduction of these Regulations has placed new requirements on existing cross-border schemes based in the UK with members based elsewhere in the EU.

7.3 If the Government were to ignore the difficulties which some

schemes are now in, it would place schemes and members at risk as they would be unable to receive contributions in respect of their European members after the absolute deadline of 29 March 2006. Therefore these Regulations amend the Principal Regulations to allow schemes which make an initial application for authorisation and approval which contains at least minimal information by 29 March 2006 a further 6 weeks beyond that date in which to provide all of the remaining necessary information.

- 7.4 Because these Regulations are being made within 6 months of the provisions of the Pensions Act 2004 by virtue of which they are made, a statutory consultation exercise is not required.

8. Impact

- 8.1 A regulatory impact assessment has not been prepared for this instrument as it has no impact on the costs of business, charities and the voluntary sector
- 8.2 The impact on the public sector is Nil.

9. Contact

Richard Jordan at the Department for Work and Pensions, Tel: 0207-962-8201 or e-mail: Richard.jordan1@dwp.gsi.gov.uk can answer any queries regarding the instrument.

Transposition Note

The Occupational Pension Schemes (Cross-border Activities) (Amendment) Regulations 2006

Transposing those parts of the European Union Directive 2003/41/EC on the Activities and Supervision of Institutions for Occupational Retirement Provision¹ (IORP Directive) which concern Occupational Pension Schemes wishing to enter into cross-border activity in other EU Member States

Article	Requirements	Implementation
9	Requirement for Member States(MSs) to ensure that: 5) Conditions of operation for cross-border activity shall be subject to authorisation by competent authorities.	(5) Regulation 2 amends regulations 5(3) (a) and 10(3)(a) of the Occupational Pension Schemes (Cross-border Activities) Regulations 2005 so that existing cross-border schemes are permitted to make partial applications for authorisation by 29 March 2006 provided that the remaining information is provided by 15 May 2006.

¹ (OJ No. L 235, 23.9.03, p.10)

SCRUTINY HISTORY

Doc Ref 13420/00, COM(200)507: Proposal for a Directive of the European Parliament and of the Council on the coordination of laws, Regulations and administrative provisions relating to institutions for occupational retirement provisions.

The Government submitted explanatory memoranda to Parliament dated 11 December 2000 and 16 May 2001.

The House of Commons European Scrutiny Committee reported on the proposal and the Governments explanatory memoranda in report no.2, Session 00/01 and in report no. 31, Session 01/02.

The proposal and explanatory memoranda were sifted to Sub-Committee A of the House of Lords European Union Committee and were cleared by that committee following correspondence with Ministers on 17 June 2002.