

2018 No. 1102

PENSIONS

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

<i>Made</i> - - - -	<i>22nd October 2018</i>
<i>Laid before Parliament</i>	<i>23rd October 2018</i>
<i>Coming into force</i> - -	<i>13th January 2019</i>

The Secretary of State, being a Minister 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 section 2(2) of that Act and sections 60(2)(h), 93(2)(q), and 318(1) of the Pensions Act 2004(c).

In accordance with section 317(2)(b) of the Pensions Act 2004, regulation 5 of these Regulations, and regulation 20(10) of the Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (as inserted by regulation 3(7) of these Regulations), have not been subject to consultation, because it appears to the Secretary of State that by reason of urgency consultation is inexpedient.

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Cross-border Activities) (Amendment) Regulations 2018.

(2) These Regulations come into force on 13th January 2019.

Amendment of the Pensions Act 2004

2.—(1) Part 7 of the Pensions Act 2004 (cross-border activities within European Union)(d) is amended as follows.

(2) In section 287 (occupational pension scheme receiving contributions from European employer), in subsection (4)(a), for “two months” substitute “six weeks”.

(3) In section 289 (approval in relation to particular European employer), in subsection (2)(b), at the end insert “, stating the reasons for not so approving them”.

(4) In section 290 (notification of legal requirements of host member State outside United Kingdom)—

(a) See article 2 of 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) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
(c) 2004 c. 35. Section 318(1) is cited because of the meaning it gives to “prescribed” and “regulations”.
(d) Part 7 of the Pensions Act 2004 was amended by S.I. 2007/3014; there are other amending Acts and instruments but none is relevant.

- (a) in subsection (1)(b), for “Article 20(5)” substitute “Article 11(7)” in both places where it occurs;
 - (b) in subsection (2)(b), for “Article 20(8)” substitute “Article 11(9)”.
- (5) In section 293 (functions of Regulator in relation to institutions administered in other member States)—
- (a) in subsection (1), for “Article 20” substitute “Article 11”;
 - (b) in subsection (2)—
 - (i) for “Article 20(4)” substitute “Article 11(4)”;
 - (ii) for “two months” substitute “six weeks”;
 - (c) in subsection (8), in the definition of “European pensions institution”, for “Article 6(a)” substitute “Article 6(1)”.
- (6) In section 294 (stopping disposal of assets of institutions administered in other member States), in subsection (6), in the definition of “UK-held assets”, for “Article 19(3)” substitute “Article 33(4)”.
- (7) In section 295 (interpretation of Part 7)—
- (a) in the definition of “the Directive”, for “2003/41/EC” substitute “(EU) 2016/2341(a)”;
 - (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 2005

3.—(1) The Occupational Pension Schemes (Cross-border Activities) Regulations 2005**(b)** are amended as follows.

(2) In regulation 2(1) (interpretation), in the appropriate places insert—

““cross-border activity” means operating a pension scheme (as defined under section 1(5) of the Pension Schemes Act 1993**(c)**) 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;”;

““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 1993) to another pension scheme that is registered or authorised in a different EEA state;”;

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

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

(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), insert—

(a) OJ No. L 354, 23.12.2016, p.37.

(b) S.I. 2005/3381; relevant amending instruments are S.I. 2007/814, 2007/3014.

(c) 1993 c.48; section 1 was amended by section 239 of the Pensions Act 2004 (c.35) and S.I. 2007/3014.

- “(6) A revocation made pursuant to this regulation must be notified to EIOPA.”.
- (5) In regulation 13 (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), insert—

“(8) A revocation made pursuant to this regulation must be notified to EIOPA.”.

- (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 compiled and maintained by the Regulator pursuant to section 59(1) of the Act.”.

- (7) After regulation 19 (treatment of overseas residents: section 66A of the Pensions Act 1995), insert—

“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 of 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 section 287 of the Act 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 7 of the Act.
- (3) The Regulator may only authorise a cross-border transfer where the competent authority of the EEA state where 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 subparagraphs (a) and (b) under 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 where 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 where 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 where 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 section 93.

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 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991^(a), the condition under paragraph (3) of regulation 12 of those 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 where 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 to, the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 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) 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 where 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 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 of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991, the condition under

(a) S.I. 1991/167; amended by S.I. 1993/1822, 2011/672, 2018/240; there are other amending instruments but none is relevant.

paragraph (3) of regulation 12 of those 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) to the competent authority of the EEA state where 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 where 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 where 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.”.

Amendment of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991

4.—(1) The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991(a) are amended as follows.

(2) In regulation 1(3) (citation, commencement and interpretation), omit the definition of “European pensions institution”.

(3) Omit regulation 11B (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 2005

5.—(1) Regulation 3 (registrable information) of the Register of Occupational and Personal Pension Schemes Regulations 2005(b) is amended as follows.

(2) In paragraph (1)—

- (a) at the end of sub-paragraph (h) omit “and”;
- (b) at the end of sub-paragraph (i) insert “; and”;
- (c) after sub-paragraph (i) insert—

“(j) in the case of an occupational pension scheme where the trustees or managers are approved under section 289 of the Act, the host EEA state as defined under subsection (6) of section 287 of the Act.”.

Signed by authority of the Secretary of State for Work and Pensions

Guy Opperman
Parliamentary Under Secretary of State
Department for Work and Pensions

22nd October 2018

(a) S.I. 1991/167; amended by S.I. 2013/459; the definition under section 293(8) of the Pensions Act 2004 (c. 35) was amended by S.I. 2007/3014; there are other amending instruments but none is relevant.

(b) S.I. 2005/597; amended by S.I. 2006/1733, 2015/879.

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 on the activities and supervision of institutions for occupational retirement provision (Directive (EU) 2016/2341) (OJ No. L 354, 23.12.2016, p.37) (“the Directive”). The Directive is a recast of the original EU Directive 2003/41/EC on the same subject matter (OJ No. L 235, 23.9.2003, p.10).

Regulation 2 amends Part 7 (cross-border activities within European Union) of the Pensions Act 2004 (c. 35) 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 2005 (S.I. 2005/3381) 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) to the supranational Regulator, the European Insurance and Occupational Pensions Authority. It also implements the new requirements under Article 12 of the Directive in relation to cross-border transfers.

Regulation 4 revokes regulation 11B of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (S.I. 1991/167), and an associated interpretative provision under regulation 1 of the same regulations. Regulation 11B made provision for transfers to a European pensions institution without consent. This revocation is made so that the new requirements under the Directive as implemented by these Regulations now govern cross-border transfers.

Regulation 5 adds to the list of registrable information in the Register of Occupational and Personal Pension Schemes Regulations 2005 (S.I. 2005/597) 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.

Another set of regulations, the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018 (S.I. 2018/1103) also implement the Directive.

An assessment of the impact of these Regulations on business, charities and the voluntary sector has been made and is published with the Explanatory Memorandum and Transposition Note which are available alongside these Regulations on www.legislation.gov.uk. Copies may be obtained from the Better Regulation Unit of the Department for Work Pensions, Caxton House, Tothill Street, London SW1 9NA.

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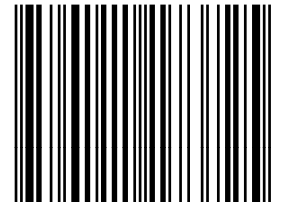
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