
DRAFT STATUTORY INSTRUMENTS

2005 No.

The Pensions (Northern Ireland) Order 2005

PART VII

CROSS-BORDER ACTIVITIES WITHIN EUROPEAN UNION

UK occupational pension scheme receiving contributions from European employer

Occupational pension scheme receiving contributions from European employer

263.—(1) The trustees or managers of an occupational pension scheme must not accept any contribution to the scheme from a European employer unless all the following conditions are met.

(2) Condition A is that the trustees or managers of the scheme are authorised by the Regulator under Article 264.

(3) Condition B is that the trustees or managers of the scheme are approved by the Regulator under Article 265 in relation to the European employer.

(4) Condition C is that either—

(a) the period of two months beginning with the date on which the Regulator notified the trustees or managers of the scheme under Article 265(2)(a)(ii) has expired, or

(b) before the end of that period, the trustees or managers have received information forwarded to them by the Regulator in accordance with Article 266(1).

(5) If the trustees or managers of a scheme fail to comply with paragraph (1), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(6) In this Part—

“European employer” has the prescribed meaning;

“host member State”, in relation to a European employer, means a member State determined in accordance with regulations.

General authorisation to accept contributions from European employers

264.—(1) An application by the trustees or managers of an occupational pension scheme for authorisation under this Article must be made to the Regulator in the prescribed form and in the prescribed manner.

(2) On receipt of the application, the Regulator must—

(a) where the Regulator is satisfied that the applicant meets prescribed conditions, grant the authorisation, and

(b) in any other case, refuse the authorisation.

(3) Regulations may make provision as to—

(a) the revocation by the Regulator of authorisation under this Article, and

- (b) the criteria to be applied by the Regulator in reaching any decision relating to the revocation of authorisation.

Approval in relation to particular European employer

265.—(1) An application by the trustees or managers of an occupational pension scheme for approval under this Article in relation to a European employer is made by the trustees or managers of the scheme giving the Regulator in the prescribed manner a notice (“the notice of intention”) in the prescribed form which—

- (a) specifies the European employer (“the specified employer”),
- (b) states their intention, subject to approval under this Article, to accept contributions from the specified employer,
- (c) specifies the host member State, and
- (d) contains other prescribed information.

(2) On receipt of the notice of intention, the Regulator must within three months—

- (a) where the Regulator is satisfied that the persons giving the notice of intention meet prescribed conditions—
 - (i) notify the competent authority of the host member State of the receipt by the Regulator of the notice of intention and of the contents of the notice, and
 - (ii) notify the persons who gave the notice of intention that they are approved for the purposes of this Article in relation to the specified employer, or
- (b) in any other case, notify the persons who gave the notification that they are not so approved.

(3) If the Regulator does not act under paragraph (2)(a) or (b) within the period of three months beginning with the day on which the notice of intention was received, the persons who gave the notice of intention are to be taken to have been approved for the purposes of this Article in relation to the specified employer at the end of the period.

(4) Regulations may make provision as to—

- (a) the revocation by the Regulator of approval under this Article, and
- (b) the criteria to be applied by the Regulator in reaching any decision relating to the revocation of approval.

Notification of legal requirements of host member State outside United Kingdom

266.—(1) Where—

- (a) the Regulator has notified the competent authority of the host member State under paragraph (2)(a)(i) of Article 265, and
- (b) in pursuance of Article 20(5) of the Directive, the Regulator receives information from the competent authority as to requirements of the social and labour law of the host member State and as to the other matters referred to in Article 20(5) of the Directive,

the Regulator must as soon as reasonably practicable forward that information to the person who gave the notice of intention under Article 265.

(2) Where—

- (a) the trustees or managers of an occupational pension scheme are approved under Article 265 in relation to a European employer, and

(b) in pursuance of Article 20(8) of the Directive, the Regulator receives information (“the new information”) from the competent authority of the host member State as to changes affecting any information previously forwarded under paragraph (1), the Regulator must as soon as reasonably practicable forward the new information to the trustees or managers.

Duty of trustees or managers to act consistently with law of host member State

267.—(1) Where the trustees or managers of an occupational pension scheme receive contributions to the scheme from a European employer, the trustees or managers must ensure that the scheme, so far as it relates to members who are or have been employed by the employer, is operated in a way which is consistent with the requirements of the social and labour law of the host member State.

(2) Regulations may modify any provision of pensions legislation in its application to members of an occupational pension scheme in respect of which the employer is a European employer.

(3) If the trustees or managers of a scheme fail to comply with paragraph (1), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(4) In this Article “pensions legislation” means—

- (a) the Pension Schemes Act,
- (b) Part II of the 1995 Order, other than Articles 62 to 66A of that Order (equal treatment),
- (c) Part II or Article 30 of the 1999 Order, or
- (d) this Order.

Power of Regulator to require ring-fencing of assets

268.—(1) Where the trustees or managers of an occupational pension scheme receive contributions to the scheme from a European employer, the Regulator may in prescribed circumstances issue a notice (“a ring-fencing notice”) to the trustees or managers of the scheme directing them to take, or refrain from taking, such steps of a prescribed description as are specified in the notice for the purpose of ring-fencing some or all of the assets or liabilities (or both) of the scheme.

(2) In paragraph (1), “ring-fencing” has the same meaning as in the Directive.

(3) If the trustees or managers of an occupational pension scheme fail to comply with a ring-fencing notice given to them, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.