



Pensions Act 2004

2004 CHAPTER 35

PART 7

CROSS-BORDER ACTIVITIES WITHIN EUROPEAN UNION

UK occupational pension scheme receiving contributions from European employer

287 Occupational pension scheme receiving contributions from European employer

- (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 section 288.
- (3) Condition B is that the trustees or managers of the scheme are approved by the Regulator under section 289 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 section 289(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 section 290(1).
- (5) If the trustees or managers of a scheme fail to comply with subsection (1), section 10 of the Pensions Act 1995 (c. 26) (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.

Status: This is the original version (as it was originally enacted).

288 General authorisation to accept contributions from European employers

- (1) An application by the trustees or managers of an occupational pension scheme for authorisation under this section 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 section, and
 - (b) the criteria to be applied by the Regulator in reaching any decision relating to the revocation of authorisation.

289 Approval in relation to particular European employer

- (1) An application by the trustees or managers of an occupational pension scheme for approval under this section 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 section, 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 section 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 subsection (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 section 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 section, and
 - (b) the criteria to be applied by the Regulator in reaching any decision relating to the revocation of approval.

290 Notification of legal requirements of host member State outside United Kingdom

(1) Where—

- (a) the Regulator has notified the competent authority of the host member State under subsection (2)(a)(i) of section 289, 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),

the Regulator must as soon as reasonably practicable forward that information to the person who gave the notice of intention under section 289.

(2) Where—

- (a) the trustees or managers of an occupational pension scheme are approved under section 289 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 subsection (1),

the Regulator must as soon as reasonably practicable forward the new information to the trustees or managers.

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

- (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 subsection (1), section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (4) In this section “pensions legislation” means—
 - (a) the Pension Schemes Act 1993 (c. 48),
 - (b) Part 1 of the Pensions Act 1995, other than sections 62 to 66A of that Act (equal treatment),
 - (c) Part 1 or section 33 of the Welfare Reform and Pensions Act 1999 (c. 30), or
 - (d) this Act.

292 Power of Regulator to require ring-fencing of assets

- (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

Status: This is the original version (as it was originally enacted).

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 subsection (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, section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.