



# 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.

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## **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

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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.

*European occupational pension scheme receiving contributions from UK employer*

**293 Functions of Regulator in relation to institutions administered in other member States**

- (1) Where a UK employer makes (or proposes to make) contributions to a European pensions institution, any function which Article 20 of the Directive requires or authorises to be exercised by the competent authorities of the host member State is exercisable by the Regulator.
- (2) If the Regulator receives a notification in pursuance of Article 20(4) of the Directive from the competent authority in another member State, the Regulator must within two months inform that authority of any relevant legal requirements.
- (3) Where there is a significant change in any relevant legal requirements, the Regulator must as soon as reasonably practicable inform any competent authority in relation to which it has provided information under subsection (2) of that change.
- (4) Where a UK employer makes contributions to a European pensions institution, the Regulator must—
  - (a) monitor the compliance of that institution with the relevant legal requirements, and
  - (b) if the Regulator becomes aware of any contravention by the institution of any relevant legal requirements, inform the competent authority of the member State in which the institution has its main administration of the failure.
- (5) If the Regulator is satisfied that a European pensions institution which receives contributions from a UK employer is contravening any relevant legal requirements, the Regulator may issue a notice to the UK employer directing him—
  - (a) to take or refrain from taking such steps as are specified in the notice in order to remedy the failure by the institution, or
  - (b) to cease to make further contributions to the institution.
- (6) Regulations may make further provision about the effect of a notice under subsection (5)(b), including provision conferring functions on the Regulator.
- (7) Section 10 of the Pensions Act 1995 (civil penalties) applies to any UK employer who, without reasonable excuse, fails to comply with a notice under subsection (5).
- (8) In this section—

“European pensions institution” means an institution for occupational retirement provision, as defined by Article 6(a) of the Directive, that has its main administration in a member State other than the United Kingdom;

“relevant legal requirements” means such requirements of the law relating to occupational pension schemes, as it applies in any part of the United Kingdom, as may be prescribed;

“UK employer” means an employer who—

- (a) in the case of a body corporate, is incorporated under the law of the United Kingdom or any part of the United Kingdom, or
- (b) in any other case, is resident in the United Kingdom.

#### *Assistance for other European regulators*

### **294 Stopping disposal of assets of institutions administered in other member States**

- (1) This section applies if the Regulator receives a request from the competent authority of a member State for assistance in prohibiting the free disposal of UK-held assets of a European pensions institution that has its main administration in that member State.
- (2) The court may on an application made by the Regulator with respect to UK-held assets of the institution grant—
  - (a) an injunction restraining a defendant, or
  - (b) in Scotland, an interdict prohibiting a defender (or, in proceedings by petition, a respondent),from disposing of, or otherwise dealing with, assets to which the application relates.
- (3) If the court grants an injunction or interdict under subsection (2), it may by subsequent orders make provision for such incidental, consequential and supplementary matters as it considers necessary to enable the competent authority that sent the request to perform any of its functions in relation to assets subject to the injunction or interdict.
- (4) If the institution is not a party to proceedings under subsection (2) or (3), the institution—
  - (a) has the same rights to notice of the proceedings as a defendant (or, in Scotland, as a defender or, as the case may be, as a respondent), and
  - (b) may take part as a party in the proceedings.
- (5) In deciding any question as to costs or expenses, a court before which any proceedings take place—
  - (a) may take account of any additional expense which it considers that any party to the proceedings has incurred as a result of the participation of the institution in pursuance of subsection (4)(b), and
  - (b) may award the whole or part of the additional expense as costs or (as the case may be) expenses to the party who incurred it (whatever the outcome of the Regulator’s application).
- (6) For the purposes of this section—

“European pensions institution” has the meaning given by section 293;

“UK-held assets” of a European pensions institution are assets of the institution held by a depositary or custodian located in the United Kingdom, and here “assets”, “depositary”, “custodian” and “located” have the same meaning as in Article 19(3) of the Directive.
- (7) The jurisdiction conferred by subsections (2) and (3) is exercisable by the High Court or the Court of Session.

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### *Interpretation*

## **295 Interpretation of Part**

In this Part—

“competent authority”, in relation to a member State other than the United Kingdom, means a national authority designated in accordance with the law of that State to carry out the duties provided for in the Directive;

“the Directive” means Directive [2003/41/EC](#) of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision;

“European employer” has the meaning given by section 287(6);

“host member State”, in relation to a European employer, has the meaning given by section 287(6);

“social and labour law”, in relation to a member State other than the United Kingdom, means the social and labour law (within the meaning of Article 20 of the Directive) of that State relevant to occupational pension schemes (within the meaning of that Article).