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STATUTORY INSTRUMENTS

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**2005 No. 3381**

**PENSIONS**

**The Occupational Pension Schemes (Cross-border Activities) Regulations 2005**

*Made - - - - 8th December 2005*  
*Laid before Parliament 9th December 2005*  
*Coming into force - - 30th December 2005*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 287(6), 288, 289(1), (2) and (4), 291(2), 292(1), 293(8), 315(2), (4) and (5) and 318(1) and (4)(a) of the Pensions Act 2004 <sup>M1</sup>.

These Regulations are made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which they are made <sup>M2</sup>.

**Marginal Citations**

- M1** 2004 c. 35. Section 318(1) is cited because of the meaning there given to “modifications”, “prescribed” and “regulations”.
- M2** See section 317 of the Pensions Act 2004 (“the Act”) which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8). This duty does not apply where regulations are made before the end of six months beginning with the coming into force of the provisions of that Act by virtue of which the regulations are made.

**Citation and commencement**

1. These Regulations may be cited as the Occupational Pension Schemes (Cross-border Activities) Regulations 2005 and shall come into force on 30th December 2005.

**Interpretation**

- 2.—(1) In these Regulations—  
“accrued European rights” means—  
(a) in relation to a European member of the scheme—

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- (i) any rights which have accrued to or in respect of that European member to future benefits under the scheme rules, or
  - (ii) any entitlement to the present payment of a pension or other benefit under the scheme rules,
- to the extent that those rights or entitlement result from the periods when that European member was—
- (aa) both employed by a European employer and a qualifying person, or
  - (bb) a qualifying self-employed person, and
- (b) in relation to a European survivor, any entitlement to benefits, or right to future benefits, under the scheme rules in respect of a European member to the extent that that right or entitlement results from the periods when that European member was—
- (i) both employed by a European employer and a qualifying person, or
  - (ii) a qualifying self-employed person;

“the Act” means the Pensions Act 2004 <sup>M3</sup> (unless the context otherwise requires, any reference to a numbered section being to the section so numbered in that Act);

“the 1993 Act” means the Pension Schemes Act 1993 <sup>M4</sup>;

“the 1995 Act” means the Pensions Act 1995 <sup>M5</sup>;

“the 1999 Act” means the Welfare Reform and Pensions Act 1999 <sup>M6</sup>;

“actuarial valuation” shall be construed in accordance with section 224 (actuarial valuations and reports), and includes an actuarial valuation obtained by the trustees or managers of a scheme for any purpose, including that of making an application under section 288 (general authorisation to accept contributions from European employers) or section 289 (approval in relation to particular European employer);

“the commencement date” is the date referred to in regulation 1;

“cross-border scheme” means a scheme which applies to European members or in relation to which there are European survivors;

“the effective date” shall be construed in accordance with section 224(2);

“employment” includes any trade, business, profession, office or vocation and “employed” shall be construed accordingly;

“European employer” has the meaning given in regulation 3(1);

“European member” means a member of a scheme who is, or was,—

- (a) a qualifying person in respect of whom contributions were made to the scheme by a European employer, or
- (b) a qualifying self-employed person who has made contributions to the scheme;

“European survivor” means a survivor of a European member of the scheme who is entitled to benefits, or has a right to future benefits, under the scheme rules in respect of that European member;

[<sup>F1</sup>“host EEA state”], in relation to a European employer, has the meaning given in regulation 3(5);

“multi-employer scheme” shall be construed in accordance with section 307(4) <sup>M7</sup> (modification of this Act in relation to certain categories of schemes);

“new scheme” means a scheme—

- (a) which does not have any members—

- (i) in relation to whom there are any rights which have accrued to or in respect of the members in question to future benefits under the scheme rules, or
  - (ii) who have any entitlement to the present payment of a pension or other benefit under the scheme rules, and
- (b) in relation to which there are not any survivors of any members of the scheme who are entitled to benefits, or have a right to future benefits, under the scheme rules in respect of those members;

“new section” means a section of a segregated multi-employer scheme—

- (a) which does not have any members—
  - (i) in relation to whom there are any rights which have accrued to or in respect of the members in question to future benefits under the scheme rules, or
  - (ii) who have any entitlement to the present payment of a pension or other benefit under the scheme rules, and
- (b) in relation to which there are not any survivors of any members of the scheme who are entitled to benefits, or have a right to future benefits, under the scheme rules in respect of those members;

“notice of intention” shall be construed in accordance with section 289(1);

“pay-as-you-go scheme” means an occupational pension scheme under which there is no requirement for assets to be set aside in advance for the purpose of providing benefits under the scheme (disregarding any requirements relating to additional voluntary contributions);

“pre-23rd September 2005 scheme” means an occupational pension scheme—

- (a) which—
  - (i) has its main administration in the United Kingdom, and
  - (ii) is not a pay-as-you-go scheme; and
- (b) in relation to which—
  - (i) the trustees or managers were accepting contributions on 22nd September 2005 from any person who, had section 287(6) been in force at that date, would have been a European employer, or
  - (ii) any such person was under a liability to pay contributions to the trustees or managers on 22nd September 2005;

“qualifying person” means a person who is employed under a contract of service and whose place of work under that contract is sufficiently located in [<sup>F2</sup>an EEA state] other than the United Kingdom so that his relationship with his employer is subject to the social and labour law relevant to the field of occupational pension schemes of [<sup>F3</sup>that EEA state], but, for the purposes of this definition, a seconded worker is not to be regarded as being so sufficiently located in [<sup>F2</sup>an EEA state] other than the United Kingdom;

“qualifying self-employed person” means a self-employed person whose place of work is sufficiently located in [<sup>F4</sup>an EEA state] other than the United Kingdom so that his employment in [<sup>F5</sup>that EEA state] is subject to the social and labour law relevant to the field of occupational pension schemes of [<sup>F5</sup>that EEA state];

“registrable information” shall be construed in accordance with section 60(1) (registrable information);

“scheme” means an occupational pension scheme;

“seconded worker” means a person—

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- (a) who—
  - (i) is employed under a contract of service by an employer established in the United Kingdom and whose habitual place of work under that contract is located in the United Kingdom, or
  - (ii) immediately before the commencement of the period of secondment was employed under a contract of service by an employer established in the United Kingdom and whose habitual place of work under that contract was located in the United Kingdom,
- (b) who—
  - (i) was posted before the commencement date for a limited period which had not expired before that date, or
  - (ii) is posted on or after the commencement date for a limited period, to <sup>F6</sup>[an EEA state] other than the United Kingdom for the purpose of providing services on behalf of his employer, and
- (c) who—
  - (i) at the time when that posting began expected to return to the United Kingdom to work for the employer described in (a)(i) or (ii) after the expiry of that period, or
  - (ii) expects to retire from employment immediately after the expiry of that period;

<sup>F7</sup> ...

“segregated multi-employer scheme” means a multi-employer scheme which is divided into two or more sections where—

- (a) any contributions payable to the scheme by an employer in relation to the scheme or by a member are allocated to that employer's or that member's section, and
- (b) <sup>F8</sup>[a specified proportion] of the assets of the scheme is attributable to each section of the scheme and cannot be used for the purposes of any other section;

“statutory funding objective” shall be construed in accordance with section 222 (the statutory funding objective); and

“the survivor” in relation to a member of a scheme means a person who—

- (a) is the widow, widower or surviving civil partner of the member, or
- (b) has survived that member and has any entitlement to benefit, or right to future benefits under the scheme in respect of that member.

(2) In these Regulations, “employer” in relation to a scheme which has no active members includes every person who was the employer of persons in the description of employment to which the scheme relates immediately before the time at which the scheme ceased to have any active members in relation to it.

(3) <sup>F9</sup>[Subject to paragraph (4), where a scheme is a segregated multi-employer scheme], these Regulations, except regulations 4 to 8, apply as if each section of the scheme were a separate scheme.

(4) <sup>F10</sup>[This paragraph applies where—

- (a) a European employer is an employer in relation to a segregated multi-employer scheme;
- (b) that European employer is an associate of one or more employers in relation to that scheme.

(5) Where paragraph (4) applies, all sections of the scheme that receive contributions from at least one of the employers referred to in that paragraph are together to be treated as a separate scheme for the purposes of regulations 7(2)(d) and 8(5).

(6) In paragraph (4)(b) “associate” has the meaning given in section 435 of the Insolvency Act 1986 (associated employer).]

#### Textual Amendments

- F1 Words in reg. 2(1) substituted (26.11.2007) by Occupational Pension Schemes (EEA States) Regulations 2007 (S.I. 2007/3014), regs. 1, 5(2)(a)
- F2 Words in reg. 2(1) substituted (26.11.2007) by Occupational Pension Schemes (EEA States) Regulations 2007 (S.I. 2007/3014), regs. 1, 5(2)(b)(i)
- F3 Words in reg. 2(1) substituted (26.11.2007) by Occupational Pension Schemes (EEA States) Regulations 2007 (S.I. 2007/3014), regs. 1, 5(2)(b)(ii)
- F4 Words in reg. 2(1) substituted (26.11.2007) by Occupational Pension Schemes (EEA States) Regulations 2007 (S.I. 2007/3014), regs. 1, 5(2)(c)(i)
- F5 Words in reg. 2(1) substituted (26.11.2007) by Occupational Pension Schemes (EEA States) Regulations 2007 (S.I. 2007/3014), regs. 1, 5(2)(c)(ii)
- F6 Words in reg. 2(1) substituted (26.11.2007) by Occupational Pension Schemes (EEA States) Regulations 2007 (S.I. 2007/3014), regs. 1, 5(2)(d)
- F7 Words in reg. 2(1) omitted (28.3.2006) by virtue of Occupational Pension Schemes (Cross Border Activities) (Amendment) Regulations 2006 (S.I. 2006/925), regs. 1(1), 2(2)
- F8 Words in reg. 2(1) substituted (6.4.2007) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/814), regs. 1, 18(2)(a)
- F9 Words in reg. 2(3) substituted (6.4.2007) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/814), regs. 1, 18(2)(b)
- F10 Reg. 2(4)-(6) inserted (6.4.2007) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/814), regs. 1, 18(2)(c)

#### Marginal Citations

- M3 Part 3 of the Act is modified in its application to occupational pension schemes undertaking cross-border activities by the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377).
- M4 1993 c. 48.
- M5 1995 c. 26.
- M6 1999 c. 30.
- M7 The Act is modified in its application to multi-employer schemes by S.I. 2005/441 as amended by S.I. 2005/993 and S.I. 2005/2113.

#### Meaning of “European employer” and “host member State” in Part 7 of the Act

3.—<sup>F11</sup>(1) Subject to paragraphs (2) to (4), in Part 7 of the Act “European employer” means a person who in relation to a <sup>F12</sup>host EEA state] either—

- (a) employs qualifying persons in <sup>F13</sup>that EEA state]; or
- (b) is a qualifying self-employed person in <sup>F13</sup>that EEA state],

and is making (or proposes to make) contributions to a scheme either in respect of a qualifying person or in respect of himself as a qualifying self-employed person.]

(2) But an employer is not to be regarded as a European employer in relation to any persons whom he employs who are not qualifying persons.

(3) Where—

- (a) the Regulator has approved the trustees or managers of a scheme in relation to a European employer, and

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- (b) benefits are, or will become, payable under the scheme rules to or in respect of any member who is or was a qualifying person in relation to that European employer, or to or in respect of any member who is or was a qualifying self-employed person, “European employer” shall include the persons specified in paragraph (4).
- (4) The persons referred to in paragraph (3) are—
- (a) in a case where the approval was granted in relation to a body corporate which has since ceased to be an employer of qualifying persons, that body corporate,
- (b) in a case where—
- (i) the approval was granted in relation to a European employer who is not a body corporate, and
- (ii) that European employer has ceased to be an employer of qualifying persons, the person who was the employer of qualifying persons who were, in accordance with that approval, members of the scheme immediately before the time at which the scheme ceased to have any such active members, and
- (c) in a case where the approval was granted in relation to a qualifying self-employed person who has ceased to be such a person, that person.
- (5) In Part 7 of the Act, [<sup>F14</sup>“host EEA state”], in relation to a European employer, means—
- (a) where that European employer is specified in a notice of intention, [<sup>F15</sup>the EEA state or states] other than the United Kingdom where—
- (i) that European employer has employees who are qualifying persons, or
- (ii) that European employer is a qualifying self-employed person, or
- (b) where the Regulator has approved the trustees or managers of a scheme in relation to that European employer, [<sup>F15</sup>the EEA state or states] other than the United Kingdom where—
- (i) that European employer has or had employees who are or were members of the scheme, or
- (ii) in the case of a self-employed person who is or was a member of the scheme, that self-employed person is or was a qualifying self-employed person.

#### Textual Amendments

- F11** Reg. 3(1) substituted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **18(3)**
- F12** Words in reg. 3(1) substituted (26.11.2007) by [Occupational Pension Schemes \(EEA States\) Regulations 2007 \(S.I. 2007/3014\)](#), regs. 1, **5(3)(a)(i)**
- F13** Words in reg. 3(1)(a)(b) substituted (26.11.2007) by [Occupational Pension Schemes \(EEA States\) Regulations 2007 \(S.I. 2007/3014\)](#), regs. 1, **5(3)(a)(ii)**
- F14** Words in reg. 3(5) substituted (26.11.2007) by [Occupational Pension Schemes \(EEA States\) Regulations 2007 \(S.I. 2007/3014\)](#), regs. 1, **5(3)(b)(i)**
- F15** Words in reg. 3(5)(a)(b) substituted (26.11.2007) by [Occupational Pension Schemes \(EEA States\) Regulations 2007 \(S.I. 2007/3014\)](#), regs. 1, **5(3)(b)(ii)**

#### Applications for general authorisation to accept contributions from European employers: established schemes which are not carrying on cross-border activity

- 4.—(1) This regulation applies to all schemes other than—
- (a) a scheme which is a new scheme on the date on which the trustees or managers make an application for authorisation under section 288, or

- (b) a scheme which is a pre-23rd September 2005 scheme.
- (2) Where the trustees or managers of a scheme apply to the Regulator for authorisation under section 288, the application shall be made—
  - (a) in the case of a money purchase scheme, in a form which provides the information described in paragraphs 2 and 3 of Schedule 1, or
  - (b) in the case of a scheme which is not a money purchase scheme, in a form which provides the information described in paragraphs 2 and 4 of that Schedule.

**Applications for general authorisation to accept contributions from European employers: established schemes which are carrying on cross-border activity**

- 5.—(1) This regulation applies where—
- (a) a scheme is a pre-23rd September 2005 scheme, and
  - (b) the trustees or managers of that scheme apply, within the period of three months beginning on the commencement date, to the Regulator for authorisation under <sup>[F16]</sup>section 288; or
  - <sup>[F17]</sup>(c) the trustees or managers of that scheme apply, on or after 6th April 2007, to the Regulator for authorisation under section 288.]
- (2) <sup>[F18]</sup>Subject to paragraph (3) or (4), where the application is made before 22nd September 2008, such] an application shall be made—
- (a) in the case of a money purchase scheme, in a form which provides the information described in paragraphs 2 and 3 of Schedule 1, or
  - (b) in the case of a scheme which is not a money purchase scheme, in a form which provides the information described in paragraphs 2 and 5 of that Schedule.
- <sup>[F19]</sup>(3) Where—
- (a) the trustees or managers of a <sup>[F20]</sup>pre-23rd September 2005] scheme make such an application on or before 29th March 2006;
  - (b) that application is made in a form which—
    - (i) includes the full name of the scheme; and
    - (ii) in the case of—
      - (aa) a money purchase scheme, provides as much of the information specified in paragraph (2)(a) as is readily available to those trustees or managers on the day on which the application is made; or
      - (bb) a scheme which is not a money purchase scheme, provides as much of the information specified in paragraph (2)(b) as is readily available to those trustees or managers on the day on which the application is made; and
  - (c) those trustees or managers provide all of the remaining information specified in paragraph (2)(a) or (b), as the case may be, on or before 15th May 2006;
- that application shall be deemed to have been made on the day on or before 29th March 2006 on which the application was first made.]
- <sup>[F21]</sup>(4) In a case where the trustees or managers of a pre-23rd September 2005 scheme make an application on or after 22nd September 2008—
- (a) where the scheme is a money purchase scheme, such an application shall be made in a form which provides the information described in paragraphs 2 and 3 of Schedule 1; or
  - (b) where the scheme is not a money purchase scheme, such an application shall be made in a form which provides the information described in paragraphs 2 and 4 of that Schedule.]

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### Textual Amendments

- F16** Words in reg. 5(1)(b) substituted (6.4.2007) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/814), regs. 1, **18(4)(a)(i)**
- F17** Reg. 5(1)(c) inserted (6.4.2007) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/814), regs. 1, **18(4)(a)(ii)**
- F18** Words in reg. 5(2) substituted (6.4.2007) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/814), regs. 1, **18(4)(b)**
- F19** Reg. 5(3) added (20.3.2006) by Occupational Pension Schemes (Republic of Ireland Schemes Exemption (Revocation) and Tax Exempt Schemes (Miscellaneous Amendments)) Regulations 2006 (S.I. 2006/467), regs. 1(1), **9(3)(b)**
- F20** Words in reg. 5(3)(a) substituted (28.3.2006) by Occupational Pension Schemes (Cross Border Activities) (Amendment) Regulations 2006 (S.I. 2006/925), regs. 1(1), **2(3)(a)**
- F21** Reg. 5(4) inserted (6.4.2007) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/814), regs. 1, **18(4)(c)**

### Applications for general authorisation to accept contributions from European employers: new schemes

6.—(1) This regulation applies to schemes which are new schemes on the date on which the trustees or managers make an application for authorisation under section 288.

(2) Where the trustees or managers of a scheme apply to the Regulator for authorisation under section 288, the application shall be made—

- (a) in the case of a money purchase scheme, in a form which provides the information described in paragraphs 2 and 3 of Schedule 1, or
- (b) in the case of a scheme which is not a money purchase scheme, in a form which provides the information described in paragraph 2 of that Schedule.

### Conditions for general authorisation to accept contributions from European employers

7.—(1) Where the Regulator receives an application for authorisation under regulation 4, 5 or 6, it shall, before granting the authorisation, be satisfied that the applicant meets the conditions described in paragraph (2).

(2) The conditions to be met under paragraph (1) are—

- (a) that the scheme is registered in the register,
- (b) the matters set out in Article 9(1)(b) to (f) of the Directive are satisfied,
- (c) that the trustees or managers of the scheme have ensured that the scheme will be operated in a way which is consistent with the requirements of the law relating to schemes, and
- (d) in the case of a scheme which is not a money purchase scheme—

(i) where the application is made under regulation 4, that the scheme meets the statutory funding objective, or

[<sup>F22</sup>(ii) where the application is made under regulation 5—

- (aa) in a case where the application is made on or after 6th April 2007 but before 22nd September 2008, that the scheme to which the application relates will, in the opinion of the Regulator, meet the statutory funding objective by 22nd September 2008; or



- (bb) in a case where the application is made on or after 22nd September 2008, that the scheme to which the application relates meets the statutory funding objective; or]
- (iii) where the application is made under regulation 6, that the scheme will, in the opinion of the Regulator, meet the statutory funding objective by the expiry of the period of two years beginning on the date on which the application was made.

#### Textual Amendments

**F22** Reg. 7(2)(d)(ii) substituted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **18(5)**

### Criteria for revocation of general authorisation to accept contributions from European employers

**8.—(1)** The Regulator may revoke an authorisation granted under section 288 where it is satisfied by the trustees or managers of that scheme that—

- (a) the scheme does not have any European members who have any accrued European rights, and
- (b) there are not in relation to the scheme any survivors of a European member of the scheme who have any accrued European rights.

(2) The Regulator may revoke an authorisation granted under section 288 where it is satisfied that any of the criteria described in paragraph (3) are met in relation to the scheme.

(3) The criteria to be applied by the Regulator in reaching any decision relating to the revocation of an authorisation under paragraph (2) are the seriousness, frequency and persistence of any failure—

- (a) by the trustees or managers of the scheme to ensure that the scheme is operated in a way which is consistent with, or
- (b) by the scheme to comply with,

any of the requirements described in paragraph (4).

(4) The requirements for the purposes of paragraph (3) for the purposes of any decision by the Regulator relating to the revocation of an authorisation are—

- (a) the provisions of the Directive other than Article 16(3),
- (b) the condition described in regulation 7(2)(c), and
- (c) in the case of a scheme which is not a money purchase scheme and to which—
  - (i) regulation 4 applies, the condition described in paragraph (5),
  - (ii) regulation 5 applies, the condition described in regulation 7(2)(d)(ii) or, after 22nd September 2008, the condition described in paragraph (5), or
  - (iii) regulation 6 applies, the condition described in regulation 7(2)(d)(iii) or, after the expiry of the period of two years beginning on the date on which the application for the authorisation of the scheme was made, the condition described in paragraph (5).

(5) The condition to be met under paragraph (4)(c)(i), (ii) or (iii) is that the scheme—

- (a) meets the statutory funding objective, or
- (b) where—
  - (i) the trustees or managers of the scheme have obtained an actuarial valuation, and

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- (ii) it appears to them that the statutory funding objective was not met on the effective date of that valuation,
- the scheme will, in the opinion of the Regulator, meet the statutory funding objective within two years after that date.

**Applications for approval in relation to particular European employer: established schemes which are not carrying on cross-border activity**

- 9.—(1) This regulation applies to all schemes other than—
- (a) a scheme which is a new scheme on the date on which the trustees or managers make an application for approval under section 289,
  - (b) a scheme which is a pre-23rd September 2005 scheme, or
  - (c) where the trustees or managers of a segregated multi-employer scheme have stated in the notice of intention relating to an application for approval under section 289 that any contributions payable to the scheme by the European employer specified in that notice of intention will be allocated to a new section, that section (to which these Regulations apply as if that section were a separate scheme in accordance with regulation 2(3)).
- (2) Where the trustees or managers of a scheme apply to the Regulator for approval under section 289 in relation to one or more European employers, the information to be contained in the notice of intention, in addition to the information specified in section 289(1)(a) to (c), shall be determined—
- (a) in the case of a money purchase scheme, in accordance with the provisions of paragraph 6(1), (2), (3) and (7) of Schedule 1, or
  - (b) in the case of a scheme which is not a money purchase scheme, in accordance with the provisions of paragraph 6(1), (2), (4) and (7) of that Schedule.

**Applications for approval in relation to particular European employer: established schemes which are carrying on cross-border activity**

- 10.—(1) This regulation applies where—
- (a) a scheme is a pre-23rd September 2005 scheme, and
  - (b) the trustees or managers of that scheme make an application for approval under section 289 in relation to one or more European employers within the period of three months beginning on the commencement date; <sup>[<sup>F23</sup>or]</sup>
  - <sup>[<sup>F24</sup></sup>(c) the trustees or managers of that scheme make an application for approval under section 289 in relation to one or more European employers on or after the end of that period.]
- (2) <sup>[<sup>F25</sup></sup>Subject to paragraph (3) or (4), the information to be contained in the notice of intention relating to such an application, where the application is made before 22nd September 2008] in addition to the information specified in section 289(1)(a) to (c), shall be determined—
- (a) in the case of a money purchase scheme, in accordance with the provisions of paragraph 6(1), (2), (3) and (7) of Schedule 1, or
  - (b) in the case of a scheme which is not a money purchase scheme, in accordance with the provisions of paragraph 6(1), (2), (5) and (7) of that Schedule.
- <sup>[<sup>F26</sup></sup>(3) Where—
- (a) the trustees or managers of a <sup>[<sup>F27</sup></sup>pre-23rd September 2005] scheme make such an application on or before 29th March 2006;
  - (b) that application is made in a form which—

- (i) includes the information specified in section 289(1)(a) to (c); and
- (ii) in the case of—
  - (aa) a money purchase scheme, provides as much of the information specified in paragraph (2)(a) as is readily available to those trustees or managers on the day on which the notice of intention is given; or
  - (bb) a scheme which is not a money purchase scheme, provides as much of the information specified in paragraph (2)(b) as is readily available to those trustees or managers on the day on which the notice of intention is given; and
- (c) those trustees or managers provide all of the remaining information specified in paragraph (2)(a) or (b), as the case may be, on or before 15th May 2006;

that application shall be deemed to have been made on the day on or before 29th March 2006 on which the notice of intention was first given.]

[<sup>F28</sup>(4) In a case where an application is made on or after 22nd September 2008—

- (a) where the scheme is a money purchase scheme, such an application shall be made in accordance with the provisions of paragraph 6(1), (2), (3) and (7) of Schedule 1; or
- (b) where the scheme is not a money purchase scheme, such an application shall be made in accordance with the provisions of paragraph 6(1), (2), (4) and (7) of that Schedule.]

#### Textual Amendments

- F23** Word in reg. 10(1)(b) inserted (6.4.2007) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/814), regs. 1, **18(6)(a)(i)**
- F24** Reg. 10(1)(c) inserted (6.4.2007) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/814), regs. 1, **18(6)(a)(ii)**
- F25** Words in reg. 10(2) substituted (6.4.2007) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/814), regs. 1, **18(6)(b)**
- F26** Reg. 10(3) inserted (20.3.2006) by Occupational Pension Schemes (Republic of Ireland Schemes Exemption (Revocation) and Tax Exempt Schemes (Miscellaneous Amendments)) Regulations 2006 (S.I. 2006/467), regs. 1(1), **9(4)(b)**
- F27** Words in reg. 10(3)(a) substituted (28.3.2006) by Occupational Pension Schemes (Cross Border Activities) (Amendment) Regulations 2006 (S.I. 2006/925), regs. 1(1), **2(3)(b)**
- F28** Reg. 10(4) inserted (6.4.2007) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/814), regs. 1, **18(6)(c)**

#### Applications for approval in relation to particular European employer: new schemes and new sections of segregated multi-employer schemes

11.—(1) This regulation applies to—

- (a) a scheme which is a new scheme on the date on which the trustees or managers make an application for approval under section 289, or
- (b) where the trustees or managers of a segregated multi-employer scheme have stated in the notice of intention relating to an application for approval under section 289 that any contributions to the scheme by the European employer specified in that notice of intention will be allocated to a new section, that section.

(2) The information to be contained in the notice of intention relating to such an application, in addition to the information specified in section 289(1)(a) to (c), shall be determined in accordance with the provisions of paragraph 6(1), (2), (6) and (7) of Schedule 1.

**Conditions for approval in relation to particular European employer**

12.—(1) Where the Regulator receives an application made under regulation 9, 10 or 11 for approval in relation to one or more European employers specified in the notice of intention it shall, before granting the approval in relation to any such European employer, be satisfied that persons giving the notice of intention meet the condition described in paragraph (2) in relation to that specified European employer.

(2) The condition to be met under paragraph (1) is that the Regulator has no reason to doubt that—

- (a) the administrative structure of the scheme,
- (b) the financial situation of the scheme, and
- (c) the repute and professional qualifications or experience of the persons running the scheme,

are compatible with the proposed operations of the scheme in the specified [<sup>F29</sup>host EEA state].

**Textual Amendments**

**F29** Words in [reg. 12\(2\)](#) substituted (26.11.2007) by [Occupational Pension Schemes \(EEA States\) Regulations 2007 \(S.I. 2007/3014\)](#), regs. 1, 5(4)

**Revocation of approval in relation to particular European employer**

13.—(1) In this regulation, “notified” in relation to a requirement means a requirement which was included in information which was received by the Regulator from the competent authority in the [<sup>F30</sup>host EEA state] in pursuance of Article 20(5) or (8) of the Directive and was forwarded by the Regulator—

- (a) in accordance with section 290(1) (notification of legal requirements of [<sup>F30</sup>host EEA state] outside the United Kingdom) to the person who gave the notice of intention, or
- (b) in accordance with section 290(2) to the trustees or managers of the scheme,

as the case may be.

(2) Where the Regulator has granted approvals under section 289 to the trustees or managers of a scheme in relation to one or more specified European employers it may revoke any or all of those approvals where it is satisfied by the trustees or managers of the scheme that—

- (a) the scheme does not have any European members who have any accrued European rights, and
- (b) there are not in relation to the scheme any survivors of a European member of the scheme who have any accrued European rights.

(3) Where the Regulator has granted approvals under section 289 to the trustees or managers of a scheme in relation to more than one specified European employer it may decide under paragraph (4) or (5) to revoke those approvals in relation to one or more such European employers.

(4) Where the Regulator has granted approvals under section 289 to the trustees or managers of a scheme in relation to one or more specified European employers and those European employers are all located in the same [<sup>F30</sup>host EEA state], the criteria to be applied by the Regulator in reaching any decision relating to the revocation of any such approval are the seriousness, frequency and persistence of any failure—

- (a) by the trustees or managers of the scheme to ensure that the scheme is operated in a way which is consistent with, or
- (b) by the scheme to comply with,

any of the requirements described in paragraph (5).

(5) The requirements under paragraph (4) for the purposes of any decision by the Regulator relating to the revocation of an approval are—

- (a) the notified requirements of the social and labour law of that [F30]host EEA state],
- (b) the notified information requirements imposed by that [F30]host EEA state] in pursuance of Article 20(7) of the Directive, or
- (c) the conditions described in regulation 12(2).

(6) Where the Regulator has granted approvals under section 289 to the trustees or managers of a scheme in relation to more than one specified European employer and not all of those European employers are located in the same [F30]host EEA state], the criteria to be applied by the Regulator in reaching any decision relating to the revocation of any such approval are the seriousness, frequency and persistence of any failure—

- (a) by the trustees or managers of the scheme to ensure that the scheme is operated in a way which is consistent with, or
- (b) by the scheme to comply with,

any of the requirements described in paragraph (7).

(7) The requirements for the purposes of paragraph (6) are—

- (a) the notified requirements of the social and labour law of any of the [F31]host EEA states],
- (b) the notified information requirements imposed by any of those [F31]host EEA states] in pursuance of Article 20(7) of the Directive, or
- (c) the conditions described in regulation 12(2).

#### Textual Amendments

**F30** Words in [reg. 13\(1\)\(4\)\(5\)\(6\)](#) substituted (26.11.2007) by [Occupational Pension Schemes \(EEA States\) Regulations 2007 \(S.I. 2007/3014\)](#), regs. 1, [5\(5\)\(a\)](#)

**F31** Words in [reg. 13\(7\)](#) substituted (26.11.2007) by [Occupational Pension Schemes \(EEA States\) Regulations 2007 \(S.I. 2007/3014\)](#), regs. 1, [5\(5\)\(b\)](#)

### Modifications of pensions legislation in relation to European members of cross-border schemes

**14.**—(1) Where a cross-border scheme is not a pre-23rd September 2005 scheme, the provisions of the 1993 Act and the 1995 Act which are listed in paragraph 2, 3 or 4 of Schedule 2 shall be modified in their application to that scheme as if—

- (a) the European members of that scheme, and
- (b) any European survivors,

were excluded from the application of those provisions in respect of any accrued European rights.

(2) Where a cross-border scheme is a pre-23rd September 2005 scheme, the provisions of the 1993 Act and the 1995 Act which are listed in paragraph 2 or 4 of Schedule 2 shall be modified in their application to that scheme as if—

- (a) the European members who were such members of that scheme on the commencement date; and
- (b) any European survivors of such European members,

were excluded from the application of those provisions in respect of any accrued European rights.

*Status: Point in time view as at 06/04/2016.*

*Changes to legislation: There are currently no known outstanding effects for the The Occupational Pension Schemes (Cross-border Activities) Regulations 2005. (See end of Document for details)*

(3) Where a cross-border scheme is a pre-23rd September 2005 scheme, the provisions of the 1993 Act and the 1995 Act which are listed in paragraph 2, 3 or 4 of Schedule 2 shall be modified in their application to that scheme as if—

- (a) the European members who became such members of the scheme after the commencement date, and
- (b) any European survivors of such European members,

were excluded from the application of those provisions in respect of any accrued European rights.

### **Ring-fencing of assets**

**15.**—(1) For the purposes of this regulation, the assets and liabilities of a scheme shall be determined in accordance with Part 3 of the Act and regulations made under that Part.

(2) Where the trustees or managers of a scheme receive contributions to the scheme from a European employer, the Regulator may issue a notice (“a ring-fencing notice”) to the trustees or managers of that scheme where it has reasonable grounds for believing that—

- (a) a person has done or will do any act which constitutes a misuse or misappropriation of the assets of the scheme, or
- (b) a situation exists which amounts to a material threat to the interests of the members of the scheme who are or have been qualifying persons or qualifying self-employed persons in relation to any European employer.

(3) A ring-fencing notice may direct the trustees or managers of the scheme—

- (a) to notify the Regulator, within three months of the date of the issue of the notice, of the details of the assets and liabilities of the scheme attributable to each European employer—
  - (i) from whom the trustees or managers have received or are receiving contributions, and
  - (ii) in relation to whom the ring-fencing notice is given, or
- (b) for so long as the Regulator has reasonable grounds for believing that there is a material threat to the interests of the members of the scheme who are or have been qualifying persons in relation to any such European employer or who are or have been such a European employer, to divide the scheme into two or more sections and ensure that—
  - (i) any contributions payable to the scheme by any such European employer in relation to the scheme or by any such member are allocated to a separate section, and
  - (ii) [<sup>F32</sup>within a time specified by the Regulator (subject to any extension the Regulator may subsequently grant),] a specified part or proportion of the assets of the scheme is attributable to that section and cannot be used for the purposes of any other section.

#### **Textual Amendments**

**F32** Words in reg. 15(3)(b)(ii) inserted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **18(7)**

### **Relevant legal requirements for the purposes of section 293**

**16.** Where a UK employer has made, makes, or proposes to make, contributions to a European pensions institution in respect of persons who are not qualifying persons, the relevant legal requirements for the purposes of section 293 are, in relation to such persons and their survivors, those requirements of the law relating to schemes as it applies in Great Britain which are listed in paragraph 2, 3 or 5 of Schedule 2.

### **Manner of applying to the Regulator under regulations 4 to 6 and 9 to 11**

17.—(1) In this regulation, “electronic communications network” shall be construed in accordance with section 304 (notification and documents in electronic form).

(2) An application to the Regulator by the trustees or managers of a scheme for authorisation under section 288 or for approval under section 289 shall be made in writing, or, where any requirements imposed by or under section 304 are complied with, may be made by transmitting it to the Regulator—

- (a) by means of an electronic communications network, or
- (b) by other means but in a form that nevertheless requires the use of apparatus by the Regulator to render it intelligible.

(3) A notification by the Regulator under section 289(2)(a)(i) or (b) to the persons who gave a notice of intention shall be made in writing, or, where any requirements imposed by or under section 304 are complied with, may be made by transmitting it to those persons—

- (a) by means of an electronic communications network, or
- (b) by other means but in a form that nevertheless requires the use of apparatus by those persons to render it intelligible.

### **Consequential amendment**

18.—(1) The Occupational Pension Schemes (Trust and Retirement Benefits Exemption) Regulations 2005 <sup>M8</sup> are amended as follows.

(2) In paragraph (2) of regulation 1, after the definition of “relevant statutory scheme”, add—  
““scheme undertaking cross-border activities” means a scheme in relation to which the trustees or managers are—

- (a) authorised under section 288 of the 2004 Act (general authorisation to accept contributions from European employers), or
- (b) approved under section 289 of the 2004 Act in relation to a European employer.”.

(3) After regulation 1, insert—

#### **“Application**

**1A.** With the exception of regulation 2(a), these Regulations do not apply to any scheme undertaking cross-border activities.”.

#### **Marginal Citations**

**M8** [S.I. 2005/2360](#).

### **[<sup>F33</sup>Treatment of overseas residents: section 66A of the Pensions Act 1995**

19. Where the provisions of an occupational pension scheme comply with these Regulations those provisions shall not contravene section 66A(3) of the Pensions Act 1995 to the extent that they would, apart from that section, have an effect with respect to the matters specified in paragraphs (a) to (c) of that section, which would be different according to whether that person works wholly in the United Kingdom or wholly or partly outside the United Kingdom.]

**Status:** Point in time view as at 06/04/2016.

**Changes to legislation:** There are currently no known outstanding effects for the The Occupational Pension Schemes (Cross-border Activities) Regulations 2005. (See end of Document for details)

**Textual Amendments**

**F33** Reg. 19 inserted (6.4.2007) by Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/814), regs. 1, **18(8)**

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

*Stephen C. Timms*  
Minister of State,  
Department for Work and Pensions



SCHEDULE 1

Regulations 4 to 6 and 9 to 11

ADDITIONAL INFORMATION TO BE CONTAINED IN  
APPLICATIONS FOR AUTHORISATION OR APPROVAL

1. In this Schedule—

“minimum funding valuation” means an actuarial valuation required by section 57(1)(a) or 57(2) of the 1995 Act <sup>M9</sup> (valuation and certification of assets and liabilities);

“payment schedule” shall be construed in accordance with section 87 of the 1995 Act <sup>M10</sup> (schedules of payments to money purchase schemes);

“schedule of contributions” shall be construed in accordance with section 227 <sup>M11</sup> (schedule of contributions), and includes a schedule of contributions prepared by the trustees or managers for any purpose, including that of making an application under section 288 or 289;

“statement of funding principles” shall be construed in accordance with section 223 (statement of funding principles), and includes a statement of funding principles prepared by the trustees or managers for any purpose, including that of making an application under section 288 or 289.

**Marginal Citations**

**M9** Section 57 is repealed by Schedule 13 to the Act.

**M10** Section 87(5)(a) is repealed by Schedules 12 and 13 to the Act on a date to be appointed.

**M11** Section 227 is modified in its application to schemes undertaking cross-border activities by regulation 19 of, and paragraph 6(2) of Schedule 2 to, [S.I. 2005/3377](#).

2. The information about the scheme to be provided in an application for authorisation in accordance with regulations 4(2), 5(2) and 6(2) is—

- (a) the pension scheme registration number which is allocated to that scheme in the register,
- (b) a statement signed by the trustees or managers of the scheme that they have provided to the Regulator all the registrable information with respect to the scheme,
- (c) a statement signed by the trustees or managers of the scheme that the scheme complies with the requirements of section 252(2) and (3) (UK based scheme to be trust with effective rules),
- (d) a statement signed by the trustees or managers of the scheme that any requirements made by or under—
  - (i) section 113 of the 1993 Act <sup>M12</sup> (disclosure of information to members of schemes etc),
  - (ii) section 35 of the 1995 Act <sup>M13</sup> (investment principles), and
  - (iii) section 36 of the 1995 Act <sup>M14</sup> (choosing investments),have been complied with, and
- (e) a statement signed by the trustees or managers of the scheme that—
  - (i) where section 247 <sup>M15</sup> (requirement for knowledge and understanding: individual trustees), and section 248 <sup>M16</sup> (requirement for knowledge and understanding: corporate trustees) are in force on the day on which the application is made, any requirements made by or under those sections have been complied with, or
  - (ii) where section 247 and section 248 are not in force on the day on which the application is made, any requirements made by or under those sections, or in any

**Status:** Point in time view as at 06/04/2016.

**Changes to legislation:** There are currently no known outstanding effects for the The Occupational Pension Schemes (Cross-border Activities) Regulations 2005. (See end of Document for details)

instrument made under either or both of those sections, will be complied with once those sections are in force.

#### Marginal Citations

- M12** Section 113(1)(ca) was substituted by section 52(1) of the [Child Support, Pensions and Social Security Act 2000 \(c. 19\)](#) (“the 2000 Act”). Section 113(2)(b) is amended by [S.I. 2005/2053](#). Section 113(2)(e) is inserted by Schedule 12 to the Act on a date to be appointed. Section 113(3A) was inserted by section 52(2) of the 2000 Act, and section 113(3B) is inserted by section 52(2) of the 2000 Act on a date to be appointed. Section 113(4) was amended by section 1(2)(a) of the [Employment Rights \(Dispute Resolution\) Act 1985 \(c. 8\)](#).
- M13** Section 35 is substituted by section 244 of the Act.
- M14** Section 36(1) and (1A) are substituted for section 38(1) as originally enacted by section 245(1) and (2) of the Act. Section 36(2) is repealed by section 245(1) and (3), and section 36(3) is amended by section 245(1) and (4), of the Act. Section 36(6)(a) was substituted by S.I 2001/3649. Section 36(8) is substituted by section 245(1) and (5), and section 36(9) is inserted by section 245(1) and (6) of the Act.
- M15** Section 247 will be brought into force on a date to be appointed.
- M16** Section 248 will be brought into force on a date to be appointed.

3. The information about a scheme to be provided in an application for authorisation in accordance with regulations 4(2)(a), 5(2)(a) and 6(2)(a) is the most recent payment schedule for the scheme.

4. The information about the scheme to be provided in an application for authorisation in accordance with regulation 4(2)(b) is—

- (a) a statement signed by the trustees or managers of the scheme that the scheme complies with the requirements of section 222,
- (b) a statement signed by the trustees or managers of the scheme that any requirements imposed by or under—
  - (i) section 224 (actuarial valuations and reports),
  - (ii) section 225 (certification of technical provisions), and
  - (iii) section 227 (schedule of contributions),
 have been complied with,
- (c) the most recent statement of funding principles for the scheme, and
- (d) an actuarial valuation for the scheme the effective date of which is within the period of 12 months ending on the date of the application.

5. The information about the scheme to be provided in an application for authorisation in accordance with regulation 5(2)(b) is the most recent minimum funding valuation for the scheme.

6.—(1) In this paragraph—

- (a) except in sub-paragraph (2)(c), references to the European employer are references to the European employer specified in the notice of intention, and
- (b) references to the provision of information in relation to one European employer shall include the provision of that information in relation to each European employer so specified.

(2) The additional information about the scheme and its existing activities to be contained in the notice of intention in accordance with regulations 9(2), 10(2) and 11(2) is—

- (a) where—

- (i) the application for approval is not made on the same day as the application for authorisation, and
  - (ii) the trustees or managers have not satisfied the Regulator that there has not been any material change in the information described in paragraph (2)(a) to (e) above since the application for authorisation was made,  
the information so described in so far as there has been any material change in that information,
  - (b) where the trustees or managers of the scheme have been authorised by the Regulator under section 288, the date on which such authorisation was granted,
  - (c) where the trustees or managers of the scheme are already accepting contributions from a European employer, the name and address of that employer and the [<sup>F34</sup>host EEA state] of that employer, and
  - (d) a copy of the scheme rules.
- (3) The additional information about the scheme and its existing activities to be contained in the notice of intention in accordance with regulations 9(2)(a) and 10(2)(a) is the most recent payment schedule for the scheme.
- (4) The additional information about the scheme and its existing activities to be contained in the notice of intention in accordance with regulation 9(2)(b) is—
- (a) where—
    - (i) the application for approval is not made on the same day as the application for authorisation, and
    - (ii) the trustees or managers have not satisfied the Regulator that there has not been any material change in the information described in paragraph 4(a) to (d) since the application for authorisation was made,  
the information so described in so far as there has been any material change in that information, and
  - (b) the most recent schedule of contributions for the scheme.
- (5) The additional information about the scheme and its existing activities to be contained in the notice of intention in accordance with regulation 10(2)(b) is the most recent minimum funding valuation for the scheme.
- (6) The additional information about the scheme to be contained in the notice of intention in accordance with regulation 11(2) is a statement signed by the trustees or managers of the scheme showing—
- (a) the rates of contributions which will be payable towards the scheme by or on behalf of the employer and the active members of the scheme, and
  - (b) the dates on or before which such contributions are to be paid.
- (7) The additional information about the future activities of the scheme when it is approved in relation to the European employer to be contained in the notice of intention in accordance with regulations 9(2), 10(2) and 11(2) is—
- (a) the names of any [<sup>F35</sup>EEA states] other than the United Kingdom where the scheme already has members who are qualifying persons or qualifying self-employed persons,
  - (b) where the scheme has established, or is intending to establish, a branch in the [<sup>F34</sup>host EEA state], the address, e-mail address, telephone number and fax number of—
    - (i) that branch, and
    - (ii) all persons authorised to represent the scheme for the business of that branch,

**Status:** Point in time view as at 06/04/2016.

**Changes to legislation:** There are currently no known outstanding effects for the The Occupational Pension Schemes (Cross-border Activities) Regulations 2005. (See end of Document for details)

- (c) the address, e-mail address, telephone number and fax number in the [F34host EEA state] of the European employer,
- (d) a description of the type of scheme to be offered to the European employer (including whether it will be defined contribution only, defined benefit, final salary, salary related or some form of hybrid),
- (e) the conditions to be met before benefits are, or will become, payable,
- (f) the types and rates of contributions to be paid towards the scheme by or on behalf of the European employer and those active members of the scheme in the [F34host EEA state] who are—
  - (i) qualifying persons in relation to that European employer, or
  - (ii) qualifying self-employed persons,
- (g) a description of any guarantees and additional coverage offered by the scheme,
- (h) a description of the categories of persons who are employees in the [F34host EEA state] of that European employer who cannot become members of the scheme, F36 ...
- (i) whether the assets or liabilities (or both) of the scheme which correspond to the activities carried out in the [F34host EEA state] will be ring-fenced.
- [F37(j) the number of members in the scheme; and
- (k) whether the scheme has any external, contractual-based asset manager.]

#### Textual Amendments

- F34** Words in Sch. 1 para. 6(2)(c) (7)(b) (7)(c) (7)(f) (7)(h)(i) substituted (26.11.2007) by [Occupational Pension Schemes \(EEA States\) Regulations 2007 \(S.I. 2007/3014\)](#), regs. 1, **5(6)(a)**
- F35** Words in Sch. 1 para. 6(7)(a) substituted (26.11.2007) by [Occupational Pension Schemes \(EEA States\) Regulations 2007 \(S.I. 2007/3014\)](#), regs. 1, **5(6)(b)**
- F36** Word in Sch. 1 para. 6(7)(h) omitted (6.4.2007) by virtue of [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **18(9)(i)**
- F37** Sch. 1 para. 6(7)(j)(k) inserted (6.4.2007) by [Occupational and Personal Pension Schemes \(Miscellaneous Amendments\) Regulations 2007 \(S.I. 2007/814\)](#), regs. 1, **18(9)(ii)**

## SCHEDULE 2

Regulations 14 and 16

### MODIFICATIONS OF PENSIONS LEGISLATION, AND RELEVANT LEGAL REQUIREMENTS FOR THE PURPOSES OF SECTION 293

1.—(1) In this Schedule, a reference to a section of an Act includes a reference to any subordinate legislation made or having effect as if made under that section.

(2) In this Schedule, “the 2000 Act” means the Child Support, Pensions and Social Security Act 2000 M17.

#### Marginal Citations

M17 [2000 c. 19](#).

2. For the purposes of regulations 14 and 16—

(a) the provisions of pensions legislation which are modified in their application to European members and European survivors of cross-border schemes, and

(b) the relevant legal requirements for the purposes of section 293,

are the provisions listed in Column 1 of Table 1—

Table 1

<i>Provision of the 1995 Act</i>	<i>Description of provision of the 1995 Act</i>
Section 50(1) to (5) and (7) M18	Resolution of disputes

**Marginal Citations**

**M18** Section 50 is substituted by sections 50, 50A and 50B by virtue of section 273 of the Act on a date to be appointed.

3. For the purposes of regulations 14 and 16—

(a) the provisions of pensions legislation which are modified in relation to European members and European survivors of cross-border schemes, other than European members of a cross-border scheme which is a pre-23rd September 2005 scheme who became members of that scheme before the commencement date and European survivors of such members, and

(b) the relevant legal requirements for the purposes of section 293,

are the provisions listed in Column 1 of Table 2 set out below—

Table 2

<i>Provisions of the 1993 Act</i>	<i>Description of provisions of the 1993 Act</i>
Sections 69 to 76 and 81 and 82 M19	Preservation of benefit under occupational schemes
Sections 83 to 86 M20	Revaluation of accrued benefits (excluding guaranteed minimum pensions)
Sections 93 to 98, 99(1) to (4A), (7)(a) and (8), 100 and 101 M21	Transfer values
Sections 101AA to 101AI M22	Early leavers: cash transfer sums and contribution refunds
<i>Provisions of the 1995 Act</i>	<i>Description of provisions of the 1995 Act</i>
Sections 51 to 54 M23	Indexation
Sections 91 to 94 M24	Assignment, forfeiture, bankruptcy etc.

**Status:** Point in time view as at 06/04/2016.

**Changes to legislation:** There are currently no known outstanding effects for the The Occupational Pension Schemes (Cross-border Activities) Regulations 2005. (See end of Document for details)

### Marginal Citations

- M19** Section 70(1)(ii) is amended by S.I. 2005/2053. Section 71(3) was substituted by section 263(1) of the Act. Section 72(4) was inserted by section 263(2) of the Act. Section 73(2)(a)(ii) was amended by Schedules 2 and 13 to the 1999 Act.
- M20** Section 83(1) was amended, and section 83(1A) and (4) were inserted, by Schedule 12 to the 1999 Act. Section 84(5) was repealed in part by Schedules 5 and 7 to the 1995 Act. Section 84(5)(b) and (6) were inserted by section 281 of the Act, and section 84(5) is amended by S.I. 2005/2053. Section 85 was amended by Schedule 12 to the 1999 Act.
- M21** Section 93(1)(a) was substituted, and section 93(1A) and (1B) were inserted, by section 152 of the 1995 Act. Section 93(1ZA) was inserted by Schedule 12 to the 1999 Act. Section 94(1)(a) was amended, and section 94(1)(aa), (1A) and (3), and the definition of “the guarantee date” in section 94(2) were inserted, by section 154 of the 1995 Act. Section 94(1B) was inserted by Schedule 12 to the 1999 Act. Section 94(2) is amended, and section 94(2A) is inserted, by Schedule 12 to the Act. Section 95(1) was amended by Schedule 6 to the 1995 Act. Section 95(2)(c) was amended by S.I. 2001/3649. Section 95(4) was repealed by Schedules 5 and 9 to the 2000 Act. Section 96(2)(a) and (3)(a) were amended by Schedule 5 to the 1995 Act, and section 96(2)(a)(ii) was repealed by Schedules 2 and 13 to the 1999 Act. Section 96(3) is amended by S.I. 2005/2053. Section 96(4) was inserted by Schedule 12 to the 1999 Act. Section 97(2)(a) and (3)(b) were amended, and section 97(3A) was inserted, by Schedule 6 to the 1995 Act. Section 97(2)(aa) was substituted by Schedule 5 to the 2000 Act. Section 98(1), (2) and (3)(a) were amended, section 98(1A) was inserted and section 98(3)(aa) was substituted, by Schedule 6 to the 1995 Act. Section 98(5) and (8) were amended by Schedule 12 to the 1999 Act. Section 98(7) was amended, and section 98(7)(a) was repealed, by Schedules 5 and 9 to the 2000 Act. Section 99(2)(a) to (c) were substituted by Schedule 6 to the 1995 Act. Section 99(3A), (7) and (8) were inserted, section 99(4) and (4A) were substituted for section 99(4) and (5) as originally enacted, and section 99(6) was amended, by Schedule 6 to the 1995 Act. Section 99(4) and (4A) are amended by Schedule 12 to the Act on a date to be appointed. Section 99(6) is repealed by Schedule 13 to the Act. Section 100(1) was amended, and section 100(2A) was inserted, by Schedule 12 to the 1999 Act.
- M22** Sections 101AA to 101AI are inserted by section 264 of the Act.
- M23** Section 51(1)(a)(i) is repealed in part by section 278(2)(a) of, and Schedule 13 to, the Act. Section 51(1)(a)(iii) is inserted, and section 51(1)(b) and (c) are substituted for section 51(1)(b) as originally enacted, by section 278(2)(b) and (c) of the Act. Section 51(2) was amended by section 51(1) of the 2000 Act and is further amended by section 278(3) of the Act. Section 51(4) is amended, section 51(4A) to (4C) are inserted, and section 51(5) is amended, by section 278(4), (5) and (6) of the Act. Section 51(6) was amended by Schedule 12 to the 1999 Act. Section 51ZA was inserted by section 278(7) of the Act. Section 51A was inserted by section 51(2) of the 2000 Act. Section 51A was inserted by section 51(2) of the 2000 Act. Section 53(3A) was inserted by Schedule 12 to the 1999 Act. In section 54(3), the definition of “appropriate percentage” was amended by Schedule 2 to the 1999 Act and is repealed by Schedule 13 to the Act. Section 54(3) is also amended by section 278(8) of the Act.
- M24** Section 91(1), (2) and (5) were amended by Schedule 12 to the 1999 Act. Section 91(3) was repealed by Schedule 13 to the 1999 Act. Section 91(5)(f) is inserted, and section 91(6) is amended, by section 266 of the Act. Section 91(5) is amended by S.I. 2005/2053. Section 92(1) and (4) were amended by Schedule 12 to the 1999 Act. Section 92(2)(b) was repealed by Schedule 13 to the 1999 Act. Section 92(3)(b) is substituted by S.I. 2005/2053. Section 93(1), (2) and (4) were amended by Schedule 12 to the 1999 Act. Section 94(3)(c) and (e) were repealed by Schedule 13 to the 1999 Act. Section 94(3)(f) was inserted by Schedule 2 to the 1999 Act.

4. For the purposes of regulation 14, the other provisions of pensions legislation which are modified in their application to European members and European survivors of cross-border schemes are the provisions listed in Column 1 of Table 3 set out below.

Table 3

<i>Provisions of the 1993 Act</i>	<i>Description of provisions of the 1993 Act</i>
Section 99(7)(b) M25	Trustees' duties after exercise of option
<i>Provisions of the 1995 Act</i>	<i>Description of provisions of the 1995 Act</i>
Section 50(6)	Resolution of disputes

**Marginal Citations**

M25 Section 99(7)(b) was inserted by Schedule 6 to the 1995 Act.

5. For the purposes of regulation 16, the other relevant legal requirements for the purposes of section 293 are the provisions listed in Column 1 of Table 4 set out below.

Table 4

<i>Provisions of the 1993 Act</i>	<i>Description of provisions of the 1993 Act</i>
F38	General requirements for certification
...	
[ <sup>F39</sup> Section 12E]	[ <sup>F40</sup> Former salary related contracted-out schemes to comply with guaranteed minimum pension requirements]
Sections 13 to 21 and 23 M26	Requirements for certification of occupational pension schemes providing guaranteed minimum pensions
Sections 27 to 33 M27	Requirements for certification of occupational and personal money purchase schemes
Sections 37 and 39 M28	Alteration of scheme rules after certification
Section 45B M29	Money purchase and personal pension schemes: verification of ages
[ <sup>F41</sup> Section 51]	Approval of arrangements for scheme ceasing to be certified
Sections 52 to 54 M30	Supervision of formerly certified schemes
Sections 55 to 58 and 61 to 63 M31	State scheme premiums
F42	
...	
Sections 87 to 92 M32	Protection of increases in guaranteed minimum pensions (“anti-franking”)

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Section 93A(1) to (3) M33	Salary related schemes: right to statement of entitlement
Sections 109 and 110 M34	Guaranteed minimum pensions
Sections 129 to 132 M35	Relationship between requirements and scheme rules
Section 159 M36	Inalienability of guaranteed minimum pension and protected rights payments
<i>Provisions of the 1999 Act</i>	<i>Description of provisions of the 1999 Act</i>
Sections 11 to 13	Pensions and bankruptcy
Section 40 M37	Other pension schemes

### Textual Amendments

- F38** Sch. 2 para. 5 omitted (6.4.2016) by virtue of [The Pensions Act 2014 \(Abolition of Contracting-out for Salary Related Pension Schemes\) \(Consequential Amendments and Savings\) Order 2016 \(S.I. 2016/200\)](#), arts. 1(2), **26(a)**
- F39** Words in Sch. 2 para. 5 substituted (6.4.2016) by [The Pensions Act 2014 \(Abolition of Contracting-out for Salary Related Pension Schemes\) \(Consequential Amendments and Savings\) Order 2016 \(S.I. 2016/200\)](#), arts., 1(2) 26(b(i))
- F40** Words in Sch. 2 para. 5 substituted (6.4.2016) by [The Pensions Act 2014 \(Abolition of Contracting-out for Salary Related Pension Schemes\) \(Consequential Amendments and Savings\) Order 2016 \(S.I. 2016/200\)](#), arts., 1(2) 26(b(ii))
- F41** Words in Sch. 2 para. 5 substituted (6.4.2016) by [The Pensions Act 2014 \(Abolition of Contracting-out for Salary Related Pension Schemes\) \(Consequential Amendments and Savings\) Order 2016 \(S.I. 2016/200\)](#), arts. 1(2), **26(c)**
- F42** Words in Sch. 2 para. 5 Table 4 omitted (6.4.2009) by virtue of [Pensions Act 2008 \(Abolition of Safeguarded Rights\) \(Consequential\) Order 2009 \(S.I. 2009/598\)](#), arts. 1, **11(2)**

### Marginal Citations

**M26** Section 13(2) was repealed in part by Schedules 5 and 7 to the 1995 Act. Section 14(2A) was inserted by Schedule 11 to the Proceeds of Crime Act 2002. Section 14(3) was repealed by Schedule 5 to the 1995 Act. Section 14(4) was amended by Schedule 1 to the Social Security Contributions (Transfer of Functions, etc) Act 1999. Section 14(8) was amended by Schedule 5 to the 1995 Act. Section 15A was inserted by section 32 of the 1999 Act. Section 16(3) and (5) were amended by Schedule 5 to the 1995 Act. Section 16(5) was amended by Schedule 2 to the 1999 Act. Section 17(4A) was inserted by Schedule 5 to the 2000 Act. Section 17(5) and (6) was amended, and section 17(5) was repealed in part, by Schedules 5 and 9 to the 2000 Act. Section 17(7) was amended by Schedule 5 to the 1995 Act and was further amended by Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999. Section 17(8) was inserted by section 284 of the Act. Section 17(1), (4), (4A), (6) and (7) are amended, and section 17(2)(c), (4B) and (9) are inserted, by [S.I. 2005/2050](#). Section 19(4)(a) was amended and in part repealed, and section 19(7) was repealed, by [S.I. 2001/3649](#). Section 19(5)(a) is amended by [S.I. 2005/2050](#). Section 20(1) was amended by Schedule 5 to the 2000 Act. Section 20(6) is amended by [S.I. 2005/2050](#). Section 21(1) was substituted by section 284(1) of the Act. Section 21(2) is amended by [S.I. 2005/2050](#). Section 23(1) and (5) were repealed by Schedules 5 and 7 to the 1995 Act. Section 23(3)(b) is amended [S.I. 2005/2050](#). Section 23(4) was amended by Schedule 5 to the 1995 Act.



- M27** Section 28(1)(b) was amended by Schedule 2 to the 1999 Act. Section 28(1A) was inserted by section 142 of the 1995 Act and substituted by Schedule 2 to the 1999 Act. Section 28(2) was amended by Schedule 5 to the 2000 Act. Section 28(3) was amended by section 142 of the 1995 Act, by Schedule 2 to the 1999 Act, by Schedule 5 to the 2000 Act and by section 284(5) of the Act, and is amended by [S.I. 2005/2050](#). Section 28(4)(a) (which was amended by section 142 of the 1995 Act) and (b) are repealed, and section 28(4)(e) is inserted, by section 284(3) of the Act. Section 28(4)(c) was repealed in part by Schedule 13 to the Act. Section 28(4)(d) is substituted by Schedule 5 to the 2000 Act. Section 28(4A) and (4B) were inserted by Schedule 5 to the 2000 Act and are repealed by section 284 of, and Schedule 13 to, the Act. Section 28(4B) is amended by [S.I. 2005/2050](#). Section 28(5) was amended by section 284 of the Act. Section 28(7) was repealed by Schedule 5 to the 1995 Act. Section 28(8) and (9) were inserted by sections 142 and 146 of the 1995 Act, and section 28(8) is amended, in the definition of “the termination date”, by [S.I. 2005/2050](#), and is repealed in part by sections 284 of, and Schedule 13 to, the Act. Section 28A was inserted by section 143 of the 1995 Act. Section 28A(1), (2) and (5)(b) are amended by [S.I. 2005/2050](#). Section 29(1)(a) and (aa) were substituted for section 29(1)(a) as originally enacted by section 144 of the 1995 Act. Section 29(1)(a) is amended, and section 29(1)(aa)(ii) is in part repealed, by section 284 of, and Schedule 13 to, the Act. Section 29(1)(b) was amended by Schedule 5 to the 1995 Act and is amended by [S.I. 2005/2050](#). Section 29(3)(b)(iii) and section 29(4) were amended by section 144 of the 1995 Act. Section 29(3)(b) and section 29(4) were amended by [S.I. 2001/3649](#) and [S.I. 2005/2050](#). Section 30(1) was amended by Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999. Section 31(1) was repealed, section 31(3)(a) was amended, and section 31(5) was inserted, by Schedules 5 and 7 to the 1995 Act. Section 31(3) was also amended by Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999. Section 32A was inserted by section 146(1) of the 1995 Act. Section 32A(2)(a) was amended and section 32A(2)(a)(i) was in part repealed by [S.I. 2001/3649](#).
- M28** Section 37 was substituted by Schedule 5 to the 1995 Act. Section 37(4) is amended by [S.I. 2005/2050](#).
- M29** Section 45B was inserted by section 139 of the 1995 Act. Section 45B(2) was amended by section 1 of, and Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999.
- M30** Section 52(2)(a) and (b) and (2A) were substituted for section 52(1)(a) and (b) as originally enacted, and section 52(3)(a) and (b) were substituted, by Schedule 5 to the 1995 Act. Section 52(2A)(c) was inserted, and section 52(3)(b) was amended, by Schedule 12 to the 1999 Act. Section 52(4) to (6) were repealed by Schedules 5 and 7 to the 1995 Act. Section 53(1), (1A) and (1B) were substituted for section 53(1) as originally enacted, and section 53(3) was substituted, by Schedule 5 to the 1995 Act. Section 53(1C) is inserted by Schedule 12 to the Act. Section 53(2), (4) and (5) were repealed by Schedules 5 and 7 to the 1995 Act. Section 53(1) and (3) were amended by Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999. Section 54(1), (1A), (1B) and (2) were substituted for section 54(1) and (2) as originally enacted by Schedule 5 to the 1995 Act. Section 54(1) and (2) were amended by Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999. Section 54(3) was repealed by Schedules 5 and 7 to the 1995 Act.
- M31** Section 55(1) and (3) to (6) were repealed by Schedules 5 and 7 to the 1995 Act. Section 55(2) and (2A) were substituted for section 55(2) as originally enacted by section 141(1) of the 1995 Act. Section 55(2) was amended, and section 55(2B) and (2C) were inserted by Schedule 2 to the 1999 Act. Section 55(2A) was in part repealed by Schedules 2 and 13 to the 1999 Act. Section 55(2A)(c) is amended by [S.I. 2005/2050](#). Section 56(1) and (3) were repealed, and section 56(2) was in part repealed, by Schedules 5 and 7 to the 1995 Act. Section 56(2) was amended by Schedule 1 to the [Social Security Contributions \(Transfer of Functions, etc.\) Act 1999 \(c. 2\)](#). Section 56(4) is amended, and section 56(7) and (8) are inserted, by Schedule 12 to the Act. Section 56(5) was repealed by Schedule 9 to the 2000 Act. Section 56(6) was substituted by Schedule 5 to the 1995 Act. Section 57(4) was amended by Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999. Section 58(1) to (3), (5) and (6) were repealed by Schedules 5 and 7 to the 1995 Act. Section 58(4) and (4A) were substituted for section 58(4) as originally enacted by Schedule 5 to the 2000 Act. Section 61(1), (8) and (9) were amended by Schedule 5 to the 1995 Act. Section 61(2) was amended by Schedule 5 to the 2000 Act. Section 61(9A) is inserted by Schedule 12 to the Act. Section 62(1) was amended by Schedule 5 to the 1995 Act. Section 62(2) was repealed by Schedules 5 and 7 to the 1995 Act. Section 63(1), (3), (3)(b)

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and (5) were amended by Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999. Section 63(1)(a), (1)(c), (2), (3) in part, (3)(a) and (4) were repealed by Schedules 5 and 7 to the 1995 Act. Section 63(3)(b) was amended by Schedule 5 to the 1995 Act.

**M32** Sections 87 to 90 are amended by S.I 2005/2050.

**M33** Section 93A was inserted by section 153 of the 1995 Act and section 93A(1A) was inserted by Schedule 12 to the 1999 Act.

**M34** Section 109(2) was amended by section 55(a) of the 1995 Act, and section 109(2)(b) is amended by [S.I. 2005/2050](#). Section 109(3A) was inserted by section 55(b) of the 1995 Act. Section 110(1) was amended by section 53(4)(b) of the 1995 Act, and section 110(1)(b) is amended by [S.I. 2005/2050](#). Section 110(2) to (4) were repealed by section 53(4)(a) of the 1995 Act.

**M35** Section 129(1) was amended by Schedules 3 and 7 to the 1995 Act, and by section 84(1) of, and Schedule 12 to, the 1999 Act. It is further amended by Schedule 12 to the Act. Section 129(2) was amended by Schedule 3 to the 1995 Act, was further amended by Schedule 12 to the 1999 Act and is repealed in part by Schedule 13 to the Act. Section 129(3)(a) was repealed by Schedules 3 and 7 to the 1995 Act. Section 129(3)(b) is amended by [S.I. 2005/2053](#), and is repealed by Schedule 13 to the Act. Paragraph (b) of section 130 is amended by Schedule 12 to the Act. Paragraph (b) of section 131 is repealed in part by Schedule 13 to the Act. Section 132 was repealed in part by Schedules 3 and 7 to the 1995 Act, and is further repealed in part by Schedule 13 to the Act.

**M36** Section 159(4A) and (4B) were inserted by Schedule 3 to the 1999 Act. Section 159(5) was repealed by Schedule 13 to the 1999 Act. Section 159(6) was amended by section 14(2) of the 1999 Act.

**M37** Section 40(1), (2) and (3) is amended by section 280(2), (3) and (5) of the Act. Section 40(2A) and (2B) are inserted by section 280(4) of the Act.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision relating to the carrying out by the Pensions Regulator (“the Regulator”) of its functions in relation to cross-border activity within the European Union by occupational pension schemes and their trustees or managers, or by European pensions institutions.

Regulation 3 makes provision as to the meaning of “European employer” and “host member State” when those terms are used in Part 7 of the Pensions Act 2004 (c. 35).

Regulations 4, 5 and 6 make provision about the information to be supplied to the Regulator when the trustees or managers of an occupational pension scheme make an application to the Regulator for a general authorisation to accept contributions from European employers.

Regulation 7 makes provision about the conditions which must be met by an applicant for general authorisation before the Regulator may grant the application.

Regulation 8 makes provision about the criteria to be applied by the Regulator in reaching any decision as to the revocation of a general authorisation.

Regulations 9, 10 and 11 make provision about the information to be supplied to the Regulator when the trustees or managers of an occupational pension scheme make an application to the Regulator for approval in relation to a particular European employer.

Regulation 12 makes provision about the conditions which must be met by an applicant for approval before the Regulator may grant an approval.

Regulation 13 makes provision about the revocation of approvals and the criteria to be applied by the Regulator in reaching any decision as to the revocation of an approval.

Regulation 14 provides for the modification of certain provisions of pensions legislation in their application to European members of occupational pension schemes which carry out cross-border activity.

Regulation 15 makes provision about the circumstances in which the Regulator may issue a ring-fencing notice, and about what such a notice may require of the trustees or managers of an occupational pension scheme.

Regulation 16 makes provision about the requirements of the law relating to occupational pension schemes to be notified by the Regulator to the competent authorities of other member States and complied with by European pensions institutions which accept contributions from UK employers.

Regulation 17 makes provision about the manner of applying to the Regulator for authorisation or approval.

Regulation 18 makes a consequential amendment to the Occupational Pension Schemes (Trust and Retirement Benefits Exemption) Regulations 2005 (S.I. 2005/2360).

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Pensions Act 2004 by virtue of which they are made, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

An assessment of the impact of these Regulations on business, charities and the voluntary sector has been made. Copies of this Regulatory Impact Assessment have been placed in the libraries of both Houses of Parliament. Copies may be obtained from the Better Regulation Unit of the Department for Work and Pensions, 1-11, John Adam Street, London WC2N 6HT.

**Status:**

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