



STATUTORY INSTRUMENTS.

S.I. No. 632 of 2021



OCCUPATIONAL PENSION SCHEMES (CROSS-BORDER)
(AMENDMENT) REGULATIONS 2021

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I, HEATHER HUMPHREYS, Minister for Social Protection, in exercise of the powers conferred on me by section 5 (as amended by section 44 of the Social Welfare Law Reform and Pensions Act 2006 (No. 5 of 2006)), section 148 (as amended by section 37 of the Social Welfare and Pensions Act 2007 (No. 8 of 2007)), section 149 (as amended by section 37 of the Social Welfare and Pensions Act 2007 (No. 8 of 2007)) and section 151 (inserted by section 37 of the Social Welfare and Pensions Act 2005 (No. 4 of 2005)) of the Pensions Act 1990 (No. 25 of 1990) (as adapted by the Employment Affairs and Social Protection (Alteration of Name of Department and Title of Minister) Order 2020 (S.I. No. 447 of 2020)) and for the purposes of giving further effect to Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016¹, hereby make the following Regulations:

Citation and Construction

1. These Regulations may be cited as the Occupational Pension Schemes (Cross-Border) (Amendment) Regulations 2021.

2. The Occupational Pension Schemes (Cross-Border) Regulations 2006 and these Regulations may be cited together as the Occupational Pension Schemes (Cross-Border) Regulations 2006 to 2021 and shall be construed together as one.

Amendments

3. The Occupational Pension Schemes (Cross-Border) Regulations 2006 (S.I. No. 292 of 2006) are amended –

- (a) in Regulation 2, by the insertion of the following definition after the definition of “new scheme”:
 - “ “Regulations of 2021” means the European Union (Occupational Pension Schemes) Regulations 2021 (S.I. No. 128 of 2021);”;
- (b) in Regulation 4 by -
 - (i) in paragraph (a), by the substitution of “the Act and regulations 31 to 37 of the Regulations of 2021;” for “the Act, and”;
 - (ii) in paragraph (b), by the substitution of “the Act and regulations 31 to 37 of the Regulations of 2021, and” for “the Act.”, and

¹ OJ No. L 354, 23.12.2016, p.37

(iii) by the insertion of the following paragraph after paragraph (b):

“(c) for the purposes of section 151B, Parts III and V and sections 59B and 59C of the Act and regulations 31 to 37 of the Regulations of 2021.”;

(c) in Regulation 5 by -

(i) the deletion of “(“, and

(ii) in paragraph (a)(i), by the insertion of “and regulations 31 – 37 of the Regulations of 2021” after “made thereunder”;

(d) by the insertion of the following regulation after Regulation 5:

“Regulation 5A Notification of compliance with authorisation requirements.

In the case of a receiving scheme referred to in section 151A(13) of the Act where the trustees of such a scheme are deemed, under section 151A(13)(a), authorised under section 149, the trustees of that scheme shall, not later than one month from the date of that deemed authorisation, provide the Pensions Authority with the following information –

(a) for the purposes of satisfying the Pensions Authority that they comply with the conditions of authorisation under section 149(4)(a), a statement signed by the trustees that, where applicable, the requirements relating to –

(i) disclosure of information under section 54 of the Act and Regulations made thereunder and regulations 31 – 37 of the Regulations of 2021,

(ii) trustees under section 59A of the Act and Regulations made thereunder,

(iii) remittance of contributions under section 58A of the Act,

are complied with, and

(b) the Pensions Authority registration number.”;

(e) in Regulation 6, in sub-article (1)(b), by the deletion of “on or after January 2016”;

(f) in Regulation 7, by the substitution of “and 56” for “, 56 and 59(1B)”;

(g) in Regulation 9, in paragraph (a), by the substitution of “Schedule 1” for “the Schedule”;

(h) by the insertion of the following regulation after Regulation 9:

“9A Form of notification for the purposes of section 151A.

In the case of a receiving scheme referred to in section 151A(13) of the Act where approval under section 151 has been deemed to

have been granted under section 151A(13)(b), the trustees of that scheme shall, not later than one month from the date on which that approval is deemed to have been granted, notify the Pensions Authority of the information set out in Schedule 2 to these Regulations.”;

- (i) in the Schedule –
 - (i) by the designation of the Schedule as Schedule 1;
 - (ii) in paragraph 2 –
 - (I) by the substitution of “legal form, address,” for “legal form address,”;
 - (II) by the deletion of “fax number,” and
 - (III) by the insertion of “and, in the case of the address, that shall be the location of the main administration of the undertaking” after “the host member state of the undertaking”;
 - (iii) in paragraph 3, by the deletion of “fax number,”;
 - (iv) in paragraph 5, by the deletion of “fax number,”;
 - (v) in paragraph 6, by the insertion of “which, in the case of host Member States, shall be identified by the sponsoring undertaking, where applicable” after “the scheme is currently operating”;
 - (vi) in paragraph 12, by the deletion of “and” after “members,”;
 - (vii) by the substitution of the following paragraph for paragraph 19:

“Details of any external contractual based asset manager appointed,”;
 - (viii) by the deletion of paragraph 20, and
 - (ix) in paragraph 21, by the substitution of “The” for “On or after 1 June 2012, the”;
- (j) by the insertion of the following Schedule:

“Schedule 2 – Information required of schemes referred to in section 151A(13) where approval under section 151 has been deemed to have been granted under section 151A(13)(b).

Article 9A

1. The date on which authorisation was deemed to have been granted under section 151A(13)(b),
2. The name, legal form, address, telephone number and email address in the host member state of the undertaking

and, in the case of the address, that shall be the location of the main administration of the undertaking,

3. The name, address, telephone number and email address of the trustees of the scheme,
4. The Pensions Authority registration number,
5. The representative or branch name, legal form, address, telephone number and email address of the scheme in the host Member State, if applicable,
6. A list of the Member States in which the scheme is currently operating which, in the case of host Member States, shall be identified by the sponsoring undertaking, where applicable,
7. A description of the type of scheme offered to the undertaking,
8. A description of the categories of benefits provided under the scheme,
9. A description of the conditions for payment of benefits under the scheme,
10. A description of any guarantees offered under the scheme and who provides such guarantees,
11. A description of any additional coverage offered and who provides such additional coverage,
12. A description of the types of contributions paid by the undertaking and by the members,
13. A statement by the trustees that they continue to satisfy the requirements of section 149 of the Act,
14. The most recent actuarial funding certificate for the scheme (where applicable),
15. A statement by the trustees of the number of persons who have, and estimated number of persons who are likely to, become active members of the scheme as a result of approval deemed to have been granted under section 151A(13)(b),
16. Number of members (latest available information),
17. A description of the categories of the undertaking's employees that can be members of the pension scheme (if there are any restrictions),
18. Details of who is responsible for the payment of benefits,

19. Details of any external contractual based asset manager appointed, and
20. The most recent funding standard reserve certificate for the scheme (where applicable).”



GIVEN under my Official Seal,
25 November, 2021.

HEATHER HUMPHREYS,
Minister for Social Protection.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations amend S.I. No. 292 of 2006 in order to give further effect to Directive (EU) 2016/2341 and to take account of obligations imposed on schemes that operate on a cross-border basis by the European Union (Occupational Pension Schemes) Regulations 2021 (S.I. No. 128 of 2021) by -

- prescribing the relevant statutory requirements for the purposes of sections 151B of the Pensions Act 1990;
- specifying additional compliance requirements in respect of statements to be signed by trustees for the purposes of satisfying the Pensions Authority that they comply with section 149(4)(a) of the Act;
- inserting a new Regulation 5A to specify the information to be provided to the Pensions Authority by the trustees of a scheme, who are deemed, under section 151A(13)(a), authorised under section 149, for the purposes of satisfying the Pensions Authority that they comply with the conditions of authorisation under section 149(4)(a);
- amending the sections of the Pensions Act 1990 that are prescribed for the purposes of section 149(3) of the Act;
- inserting a new Regulation 9A to require trustees of a receiving scheme referred to in section 151A(13) of the Act, where approval under section 151 has been deemed to have been granted under section 151(13)(b), to notify the Pensions Authority of the information set out in Schedule 2;
- making textual and technical amendments to the existing Schedule;
- inserting a new Schedule 2 to specify the information to be provided to the Pensions Authority by schemes referred to in section 151A(13), where approval under section 151 has been deemed to have been granted under section 151A(13)(b), and
- making a number of other technical amendments.

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