



STATUTORY INSTRUMENTS.

S.I. No. 633 of 2021



TRUST RACS (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 Trust RACs (Cross-Border) (Amendment) Regulations 2021.

2. The Trust RACs (Cross-Border) Regulations 2007 and these Regulations may be cited together as the Trust RACs (Cross-Border) Regulations 2007 to 2021 and shall be construed together as one.

Amendments

3. The Trust RACs (Cross-Border) Regulations 2007 (S.I. No. 184 of 2007) are amended –

(a) in Regulation 2 by –

- (i) in the definition of “the Act”, by the substitution of “;” for “.”, and
- (ii) by the insertion of the following definition after the definition of “the Act”:

“ “Regulations of 2021” means the European Union (Occupational Pension Schemes) Regulations 2021 (S.I. No. 128 of 2021).”;

(b) in Regulation 3 by –

- (i) the insertion of “requirements” after “relevant statutory”, and
- (ii) the substitution of “sections 151B and 154 of the Act, Part V of the Act and regulations 31 to 37 of the Regulations of 2021.” for “section 154 of the Act, Part V of the Act.”;

¹ OJ No. L 354, 23.12.2016, p.37

(c) in Regulation 4, 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 4:

“Regulation 4A Notification of compliance with authorisation requirements.

In the case of a receiving trust RAC referred to in section 151A(13) of the Act where the trustees of such a trust RAC are deemed, under section 151A(13)(a), authorised under section 149, the trustees of that trust RAC 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,

are complied with, and

(b) the Pensions Authority registration number.”;

(e) by the substitution of the following Regulation for Regulation 5:

“For the purposes of section 149(3) of the Act, and in the case of a small trust RAC which seeks to accept contributions from an undertaking prior to the 31st December 2021, section 55 of the Act is prescribed in respect of any such small trust RAC.”;

(f) in Regulation 7, in paragraph (a), by the substitution of “Schedule 1” for “the Schedule”;

(g) by the insertion of the following regulation after Regulation 7:

“7A Form of notification for the purposes of section 151A.

In the case of a receiving trust RAC 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 trust RAC 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.”;

(h) in the Schedule –

(i) by the designation of the Schedule as Schedule 1;

(ii) in paragraph 2 –

- (I) by the deletion of “fax number,” and
- (II) 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) by the substitution of the following paragraph for paragraph 18:

“Details of any external contractual based asset manager appointed.”, and
- (vii) by the deletion of paragraph 19;
- (i) by the insertion of the following Schedule:

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

Article 7A

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 trust RAC,
4. The Pensions Authority registration number,
5. The representative or branch name, legal form, address, telephone number and email address of the trust RAC in the host Member State, if applicable,
6. A list of the Member States in which the trust RAC 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 trust RAC offered to the undertaking,
8. A description of the categories of benefits provided under the trust RAC,

9. A description of the conditions for payment of benefits under the trust RAC,
10. A description of any guarantees offered under the trust RAC 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. A statement by the trustees of the number of persons who have, and estimated number of persons who are likely to, become members of the trust RAC as a result of approval deemed to have been granted under section 151A(13)(b),
15. Number of members (latest available information),
16. A description of the categories of the undertaking's employees that can be members of the trust RAC (if there are any restrictions),
17. Details of who is responsible for the payment of benefits, and
18. Details of any external contractual based asset manager appointed.”



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. 184 of 2007 in order to give further effect to Directive (EU) 2016/2341 and to take account of obligations imposed on trust RACs 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 and 154 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 4A to specify the information to be provided to the Pensions Authority by the trustees of a trust RAC, 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);
- prescribing, in the case of a trust RAC which seeks to accept contributions from an undertaking prior to 31st December 2021, the relevant sections of the Act for the purposes of section 149(3);
- inserting a new Regulation 7A to require trustees of a receiving trust RAC 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 trust RACs 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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