



STATUTORY INSTRUMENTS.

S.I. No. 447 of 2019



EUROPEAN UNION (SUPPLEMENTARY PENSION RIGHTS)
REGULATIONS 2019

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I, REGINA DOHERTY, Minister for Employment Affairs and Social Protection, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014¹ on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights, hereby make the following regulations:

Part 1

Preliminary and general

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Supplementary Pension Rights) Regulations 2019.

(2) These Regulations shall come into operation on 13 September 2019.

Definition

2. In these Regulations, “Act of 1990” means the Pensions Act 1990 (No. 25 of 1990).

Part 2

Amendments to the Act of 1990

Amendment of section 27 of Act of 1990

3. Section 27 of the Act of 1990 is amended-

(a) in subsection (1), by the insertion of the following definition:

“Directive of 2014’ means Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014² on minimum requirements for enhancing worker mobility between

¹ OJ No. L 128, 30.4.2014, p. 1

² OJ No. L 128, 30.4.2014, p. 1

Member States by improving the acquisition and preservation of supplementary pension rights;”, and

(b) by the insertion of the following subsection after subsection (3):

“(4) A word or expression which is used in this Part and the Second Schedule and which is also used in the Directive of 2014 has, unless the context otherwise requires, the same meaning in this Part and the Second Schedule as it has in that Directive.”.

Entitlement to refund of contributions where no entitlement to preserved benefit

4. The Act of 1990 is amended by the insertion of the following section after section 32:

“32A. (1) Where the service in relevant employment of an outgoing worker of a scheme is terminated and the outgoing worker is not, at the time of the termination, entitled to a preserved benefit under a scheme, the outgoing worker shall be entitled to receive a refund in the manner specified in subsection (2) of the contributions paid to the scheme by, or on behalf of, the outgoing worker.

(2) For the purposes of the refund referred to in subsection (1), the trustees of the scheme shall-

- (a) in the case of a defined benefit scheme, refund the outgoing worker the pension contributions paid by or on behalf of the outgoing worker, or
- (b) in the case of a defined contribution scheme, refund the outgoing worker-
 - (i) the sum of the contributions paid by, on behalf of, and in respect of the outgoing worker, whether the contributions were paid by that outgoing worker or the employer, or by both of them, or
 - (ii) the value of the investments arising from the contributions paid by, on behalf of, and in respect of the outgoing worker whether the contributions were paid by that outgoing worker or the employer, or by both of them.

(3) Where the rules of a scheme provide for a refund of an amount that is greater than the amount of-

- (a) pension contributions referred to in paragraph (a) or (b)(i) of subsection (2), or
- (b) the value of investments referred to in paragraph (b)(ii) of subsection (2),

nothing in subsection (2) shall operate to prevent the greater amount being refunded to the outgoing worker.”.

Amendment of section 35 of Act of 1990

5. Section 35 of the Act of 1990 is amended-

- (a) in subsection (1), by the substitution of “Subject to subsection (1A), notwithstanding anything” for “Notwithstanding anything”,
- (b) by the insertion of the following subsection after subsection (1):

“(1A) In the case of an outgoing worker, the trustees of a scheme may effect a transfer payment from the scheme by making one or more payments referred to in section 34(3) where an outgoing worker has provided consent in writing.”, and

- (c) in subsection (2), by the substitution of “subsections (1) or (1A)” for “subsection (1)”.

Waiting period

6. The Act of 1990 is amended by the insertion of the following section after section 39:

“39A. (1) Notwithstanding anything contained in the rules of a scheme in respect of a waiting period, where an outgoing worker is eligible to become a member of a scheme, he or she shall be admitted as a member of the scheme after a waiting period that is not greater than-

- (a) 12 months from the date of commencement of the service in relevant employment of that person, or
- (b) in the case of a person whose service in relevant employment commenced before the relevant date and the scheme rules require a waiting period of-
 - (i) 12 months to be admitted into it, that person shall be admitted into the scheme 12 months from the day on which that service commenced, or

(ii) more than 12 months to be admitted into it and on the relevant date a period of 12 months has elapsed from the day on which that service commenced, that person shall be admitted into the scheme on the relevant date.

(2) In this section, 'relevant date' means 13 September 2019."



GIVEN under my Official Seal,
3 September, 2019.

REGINA DOHERTY,
Minister for Employment Affairs and Social Protection.

EXPLANATORY NOTE

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

These Regulations amend the Pensions Act 1990 by inserting a new section 32A, by amending section 35 and by inserting a new section 39A into that Act to specify requirements in respect of “outgoing workers”, meaning an active scheme member whose current employment relationship terminates for reasons other than becoming eligible for a supplementary pension and who moves between Member States, which will:

- i) provide a right of entitlement to a refund of pension contributions where service in the relevant employment has terminated and the outgoing worker is not entitled to a preserved benefit under a scheme,
- ii) provide that trustees of a scheme may not effect a transfer payment from a scheme in respect of an outgoing worker unless consent to the transfer has been obtained, and
- iii) specify a waiting period of not greater than 12 months shall apply from the date of commencement of service in the relevant employment of the outgoing worker to become eligible to become a member of a scheme.

These Regulations also amend section 27 of the Pensions Act 1990 in respect of definitions for the purposes of Part III of that Act.

These Regulations transpose obligations imposed by Articles 4(1)(a), 4(1)(c) and 5(1) of the Directive 2014/50/EU (the Portability Directive) into Irish law.

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