

EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL PENSION SCHEMES
(REPUBLIC OF IRELAND SCHEMES EXEMPTION (REVOCATION) AND
TAX EXEMPT SCHEMES (MISCELLANEOUS AMENDMENTS))
REGULATIONS 2006

2006 No. 467

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 These Regulations: revoke the Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations 2000 (SI 2000/3198); and provide that the exemptions for “Republic of Ireland Schemes” (as defined in the above mentioned Regulations) within the following sets of regulations are removed:

- The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (S.I. 1996/1655)
- The Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715)
- The Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996 (S.I. 1996/1975)
- The Occupational and Personal Pension Schemes (General Levy) Regulations 2005 (S.I. 2005/626).

2.2 The Regulations additionally require that schemes covered by section 615 of the Income and Corporation Taxes Act 1988 (section 615 schemes) which wish to receive contributions from European employers (in accordance with sections 287, 288 and 289 of the Pensions Act 2004) will need to comply with the Register of Occupational and Personal Pension Schemes Regulations 2005 (S.I. 2005/597) with effect from 20 March 2006.

2.3 The Regulations provide that cross-border section 615 schemes will no longer benefit from the exemptions contained within the following regulations:

- The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (S.I. 1996/1655)
- The Occupational Pension Schemes (Winding Up) Regulations 1996 (SI 1996/3126)
- The Occupational Pension Schemes (Employer Debt) Regulations 2005 (SI 2005/626)
- The Occupational Pension Schemes (Winding up etc) Regulations 2005 (SI 2005/706)
- The Pensions Regulator (Contribution Notices and Restoration Orders) Regulations 2005 (S.I. 2005/993).

2.4 The Regulations amend the Occupational and Personal Pension Schemes (General Levy) Regulations 2005 (S.I. 2005/626) to provide that cross-border section 615 schemes will be exempt from the requirement to pay the general levy.

2.5 The Regulations amend the Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (SI 2005/3381) so that existing section 615 cross-border schemes are allowed an additional 6 weeks after the 29 March 2006 deadline to provide the Pensions Regulator with all the information required in applications for authorisation and approval, as long as they have sent in as much information as they can by the 29th March deadline.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Section 287 of the Pensions Act 2004 and the Occupational Pension Schemes (Cross-border Activities) Regulations came into force on 30 December 2005 (the effect of this is delayed for existing cross-border schemes which apply for authorisation and approval before 30 March 2006). These provisions implement the cross-border provisions of the Occupational Pensions Directive 2003/41/EC (known as the IORP Directive) which allow a scheme based in one EU member State to be sponsored by an employer in another. With the introduction of these provisions, the position of schemes based in the Republic of Ireland (ROI) with members based in the UK and section 615 schemes has had to be considered.

4.2. Under the terms of the Directive, schemes based in other EU Member States will be regulated by the Member State in which they are based. This means that ROI schemes with members in the UK will no longer be regulated by the Pensions Regulator. As a result, the definition of “occupational pension scheme” will change from 6 April 2006 (The Occupational Pension Schemes (Categories) Regulations 2005 refer) so that it will be restricted to schemes which are based in the UK or outside the Member States. The consequence for ROI schemes is that, as they will no longer be defined as an occupational pension scheme, they can also no longer benefit from the exclusions from certain pensions legislation detailed in the Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations 2000. These Regulations will therefore need to be revoked from 6 April 2006 and the Regulations to which they refer will need to be suitably amended to remove the exclusions for ROI schemes.

4.3. The position of UK based schemes covered by section 615 of the Income and Corporation Taxes Act 1988 (these are unapproved, tax exempt schemes) which are involved in cross-border activity has also had to be considered as a result of the introduction of the Cross-border Regulations. Until now such schemes have not been required to register with the Pensions

Regulator and have (like some schemes based in Ireland) been exempt from certain pensions legislation. In order now to comply with the Cross-border Regulations (and with the IORP Directive), cross-border section 615 schemes must now be registered with the Pensions Regulator and must also meet certain other requirements from which they were previously exempt. e.g. compliance with information requirements.

4.4 In order to take account of the changes detailed at paragraphs 4.2 and 4.3 regulations have therefore been drafted which will amend current legislation related to ROI and cross-border section 615 schemes.

4.5 A transposition note and brief scrutiny history is attached in an **Annex**.

5. Extent

5.1 This instrument generally applies to England, Wales and Scotland, but, Regulation 4 (Requirement for cross-border section 615 schemes to be registered) extends to Northern Ireland.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 The IORP Directive is an important element of the Financial Services Action Plan and represents a first step towards a single market for occupational retirement provision. The cross-border elements of the Directive seek to provide greater freedom for employers to decide where and in which pension schemes they wish to invest.

7.2 The cross-border elements of the Directive seek to provide a standard procedure for occupational pension schemes established in one EU Member State wishing to be sponsored by employers in other Member States, i.e. entering into cross-border activity. The Occupational Pensions (Cross-border Activities) Regulations implemented the cross-border provisions of the IORP Directive. The introduction of these regulations placed new requirements on existing cross-border schemes based in the UK. Schemes based in the Republic of Ireland involved in cross-border activity with the UK will have to comply with legislation implemented in the Republic of Ireland.

7.3 To ensure that section 615 schemes are able to comply with the Cross-border Regulations and ROI schemes involved in cross-border activity with the UK can comply with legislation in the ROI, it has been necessary to amend certain UK legislation affecting section 615 schemes and ROI schemes.

7.4 If the Government were to take no action, it would risk infraction action (investigation and potentially financial penalties) by the European Commission in the European Court of Justice on account of the fact that the

provisions of the Directive would not have been fully implemented. The Government has therefore drafted Regulations to ensure that the cross-border elements of the Directive can be fully implemented in respect of all existing UK based cross-border schemes.

7.5 Because these Regulations are consequential on other instruments, and are being made within 6 months of those instruments coming into force, a statutory consultation exercise is not required. However, full consultation was carried out prior to the Occupational Pension Schemes (Cross-border Activities) Regulations 2005 being made and further informal consultation was undertaken on the proposals of this consequential legislation during January and February 2006, to gauge the impact of these regulations, especially on section 615 schemes. There were 2 responses. The responses detailed the number of cross-border section 615 schemes believed to be in existence (14) and requested a delay in the deadline for these schemes to apply to the Pensions Regulator for authorisation and approval to continue cross-border activity. In view of the short time available for cross-border section 615 schemes to register and apply for authorisation and approval (20 March – 29 March), the Occupational Pensions (Cross-border Activities) Regulations have been amended to allow such schemes which make an initial application for authorisation and approval by 29 March a further 6 weeks beyond that date in which to provide all of the necessary information.

8. Impact

8.1 The introduction of these Regulations is as a consequence of the introduction of the Occupational Pension Schemes (Cross-border Activities) Regulations 2005, the Occupational Pension Schemes (Categories Regulations) 2005, and the provisions in article 3 of the Pensions Act 2004 (Commencement No. 8) Order 2005. As a Regulatory Impact Assessment was carried out in respect of schemes likely to be affected by the new Regulations when the Cross-border Regulations came into force, and the impact of these amending Regulations is considered to be negligible – cross-border section 615 schemes will have to meet the additional requirements of being registered with the Pensions Regulator and providing members with certain information – a further Regulatory Impact Assessment has therefore not been carried out.

8.2 The impact on the public sector is Nil.

9. Contact

Richard Jordan at the Department for Work and Pensions, Tel: 0207-962-8201 or e-mail: Richard.jordan1@dwp.gsi.gov.uk can answer any queries regarding the instrument.

Transposition Note

The Occupational Pension Schemes (Republic of Ireland Schemes Exemption (Revocation) and Tax Exempt Schemes (Miscellaneous Amendments)) Regulations 2006

Transposing those parts of the European Union Directive 2003/41/EC on the Activities and Supervision of Institutions for Occupational Retirement Provision¹ (IORP Directive) which concern Occupational Pension Schemes covered by section 615 of the Income and Corporation Taxes Act 1988 (section 615 schemes) wishing to enter into cross-border activity in other EU Member States

Article	Requirements	Implementation
9	Requirement for Member States(MSs) to ensure that: (1) (a) In the case of cross-border activity, the institution is registered in a national registry by the competent supervisory authority	(1) Regulation 4 of the Occupational Pension Schemes (Republic of Ireland Schemes Exemption (Revocation) and Tax Exempt Schemes (Miscellaneous Amendments)) Regulations 2006 (which amends the Register of Occupational and Personal Pension Schemes Regulations 2005, SI 2005/597) ensures that section 615 schemes are able to register with the Pensions Regulator.
11	Requirement for information to be given to members and beneficiaries	Regulation 2 of these Regulations (which amends the Occupational Pension Schemes (Disclosure of Information) Regulations 1996, SI 1996/1655) ensures that section 615 schemes who enter into cross-border activity are required to provide appropriate information to members and beneficiaries.

¹ (OJ No. L 235, 23.9.03, p.10)

Article	Requirements	Implementation
16	<p>Funding of technical provisions:</p> <p>3) Technical provisions must at all times be fully funded in the event of cross-border activity.</p>	<p>Regulation 8 which amends the Pension Regulator (Contribution notices and Restoration Orders) Regulations 2005 (together with existing legislation provided in the Cross-border Regulations (Regulation 7 (d) (ii)) will ensure that section 615 schemes who enter into cross-border activity are fully-funded at all times.</p>

SCRUTINY HISTORY

Doc Ref 13420/00, COM(200)507: Proposal for a Directive of the European Parliament and of the Council on the coordination of laws, Regulations and administrative provisions relating to institutions for occupational retirement provisions.

The Government submitted explanatory memoranda to Parliament dated 11 December 2000 and 16 May 2001.

The House of Commons European Scrutiny Committee reported on the proposal and the Governments explanatory memoranda in report no.2, Session 00/01 and in report no. 31, Session 01/02.

The proposal and explanatory memoranda were sifted to Sub-Committee A of the House of Lords European Union Committee and were cleared by that committee following correspondence with Ministers on 17 June 2002.