

Industry Update

Cross-border schemes

This update will be of interest to Trustees of defined benefit pension schemes with employees in other EU Member States. Specialist advice will be needed if the Cross Border Regime applies.

Reminder – to which schemes does the cross-border regime apply?

Pension schemes located in one EU member state must apply for authorisation and approval to accept contributions from employers employing members who are subject to the social and labour law of another EU member state. Norway, Iceland and Liechtenstein (technically EEA states) are included for this purpose. This application would make the scheme subject to the cross-border regime.

Identifying a cross-border scheme

The Pensions Regulator has issued guidance to help schemes identify whether or not they are cross-border schemes. To become subject to the cross-border provisions a scheme must have its main administration in one state and members in another.

A UK scheme must have its main administration in the UK and include European members or European survivors to be a cross-border scheme. In this case it would apply for authorisation and approval in the UK. Members in non EU (or Non-EEA) states do not cause a scheme to have cross-border status. If a scheme has trustees in the UK and is set up under UK law, it can be taken to have its main administration in the UK.

If a scheme has its main administration in an EU member state other than the UK, but there are or will be members in the UK, the scheme may be accepting contributions in respect of European members. However, the scheme has its main administration outside the UK and should follow the procedure for authorisation and approval of the relevant EU member state.

European member means a member of a scheme in respect of whom contributions were made to the scheme by a European employer.

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.

It is only if the European member is (or was) subject to the social and labour law of the country in which he or she was working that the scheme must meet the cross-border conditions.

Once a scheme is authorised and approved to accept contributions in respect of European members, it remains subject to the cross-border legislation for as long as it has any European members, or European survivors.

European Members or Secondees?

It is important to distinguish European members, subject to the social and labour laws of the country in which he or she is working, from secondees. Having secondees as scheme members does not make a scheme subject to the cross-border regime and the consequences outlined below.

Identifying Secondees

If employees are sent by a UK employer to work overseas for a period in another EU member state, and at the end of that period intend to return to resume work for that employer in the UK or intend to retire, then:

- if they were sent to the other EU member state for a limited period (typically 5 years or shorter); and
- they were sent for the purpose of providing services on behalf of the UK employer; and
- they intend at the end of that period either to return to the UK to work for the same employer, or to retire,

they are counted as seconded employees.

If a situation does not meet all of the above criteria it should not generally be treated as secondment.

Consequences of being a cross-border scheme

Schemes which apply for authorisation are expected to comply with the cross-border funding requirements and schemes which do not meet these requirements cannot be authorised.

The requirements are:

- for a new scheme, that it will meet its statutory funding objective within two years of the date of application for authorisation;
- for a scheme which already exists, but is going cross-border for the first time, that it meets its statutory funding objective at the date of application;
- that full valuations will be undertaken annually (rather than 3 yearly);
- any deficit shown in a valuation is to be made up within 24 months of the effective date of the valuation;

The statutory funding objective must be met for the entire scheme for which application for authorisation is being made; it cannot be met for a 'European' part of a single employer scheme.

Effect of the UK leaving the EU?

If the UK should vote to leave the EU in the forthcoming referendum the effect on cross-border schemes is currently uncertain.

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