

Pensions

Consultation on the success of the Occupational Pension Schemes (Cross-border activities) Regulations 2005¹ in implementing the cross-border provisions of Directive 2003/41

October 2007

DWP Department for
Work and Pensions

¹ In GB: The Occupational Pensions (Cross-border activities) Regulations 2005 (SI: 2005/3381)
In N.Ireland: The Occupational Pensions (Cross-border activities) Regulations (Northern Ireland)
2005 (SR:2005/581)

CONSULTATION ON THE SUCCESS OF THE OCCUPATIONAL PENSION SCHEMES (CROSS-BORDER ACTIVITIES) REGULATIONS 2005² IN IMPLEMENTING THE CROSS-BORDER PROVISIONS OF DIRECTIVE 2003/41

1. The UK, along with its fellow EU Member States, was required to implement the cross-border provisions of the EU Occupational Pensions Directive 2003/41 EC (otherwise known as the IORP Directive) by 23 September 2005. The Directive provides a framework for the operation and supervision of occupational retirement schemes. However, due to technical difficulties, implementation was not possible until December 2005.
2. The European Commission plan to carry out a review of the IORP Directive in early 2008. Whilst the Commission will be looking at all relevant parts of the Directive, one of the key areas they will focus on will be the success of the cross-border provisions of the Directive. The Cross-border provisions seek to enable multi-nationals operating in a number of EU Member States through subsidiary companies to consolidate their pension arrangements in one Member State. It also allows an employer to locate their pension scheme in another Member State for commercial reasons.
3. So that we can compare the Commission's findings with our own experience of how well the cross-border provisions of the Directive have performed, we plan to carry out our own review of the Occupational Pensions (Cross-border Activities) Regulations 2005 (the legislation we used to implement the Directive's cross-border provisions). The purpose of this paper, therefore, is to seek your views (in the form of an evaluation questionnaire) on the success of the Regulations in enabling schemes to operate cross-border.

Why Ministers have decided this is a limited consultation

4. Because of the technical nature of this document, Ministers have decided that it is not appropriate to publish it under the provisions of the Cabinet Office Code of Practice on consultation. It does, however, apply best practice from the Code.

How to respond

5. The consultation period begins on 10 October and will run until 4 December. Please ensure that your response reaches us by that date. If you would like further copies of this consultation document it can be found at:
<http://www.dwp.gov.uk/consultations/2007/index.asp>.

6. Please send consultation responses to:
Richard Jordan
Private Pensions

² In GB: The Occupational Pensions (Cross-border activities) Regulations 2005 (SI: 2005/3381)
In N.Ireland: The Occupational Pensions (Cross-border activities) Regulations (Northern Ireland) 2005 (SR:2005/581)

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Phone: 020 7962 8201
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Email responses can be sent to: CROSS-BORDER.ACTIVITIES@DWP.GSI.GOV.UK

7. When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make clear whom the organisation represents, and where applicable, how the views of members were assembled.

Whom this consultation document has been sent to

8. A list of those consulted is attached. If you have any suggestions of others who may wish to be involved in this process, please contact us.

How responses will be handled

9. Because of the Freedom of Information Act (2000), all information contained in your response, including personal information, may be subject to publication or disclosure. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information which is provided, or remove it completely. If you want the information in your response to the consultation be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this. We cannot guarantee confidentiality even if your IT system claims it automatically. The contact point to discuss is Richard Jordan (details at paragraph 5). More information about the Freedom of Information Act can be found on the website of the Department for Constitutional Affairs - <http://www.dca.gov.uk/foi/guidance/exguide/index.htm>.

Impact Assessment

10. An Impact Assessment has not been completed as this consultation is merely seeking your views at this stage, rather than proposing actual changes to legislation.

Summary of responses

11. We will aim to publish a summary of responses, including the next steps by January 2008 at: <http://www.dwp.gov.uk/consultations/2007/>
Paper copies will be available on request.

How well have we consulted?

12. **DWP values feedback on how well it consults. If you have any comments on the process of this consultation (as opposed to the issues raised), please contact the DWP Consultation co-ordinator. Please also**

make any suggestions as to how the process of consultation could be improved further. Please contact:

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Background

1. On 13 May 2003 the European Council of Ministers adopted Directive 2003/41/EC on the Activities and Supervision of Institutions for Occupational Retirement Provision (commonly known as the 'IORP' or 'Occupational Pensions Directive'). This Directive provides a framework for the operation of and supervision of occupational pension schemes. Member States were required to have implemented the provisions of the Directive into national law by 23 September 2005.
2. Article 20 of the IORP Directive provides for occupational pension schemes established in one EU Member State to be sponsored by employers in other Member States. Pension schemes operating in this way are said to be engaged in 'cross-border activity'.
3. The cross-border provisions of the Directive were primarily implemented in the UK through the Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (SI 2005/3381) and Part 7 of the Pensions Act 2004. The IORP Directive provides in Article 15.6 that the Commission would "with a view to further harmonisation of the rules regarding the calculation of technical provisions which may be justified every two years or at the request of a Member State, issue a report on the situation concerning the development in cross-border activities." In advance of the Commission's first report (scheduled for the early part of 2008), we intend to carry out our own review of the provisions provided for by the Cross-border Regulations. The review covers the following:
 - The efficiency of the authorisation and approval procedure allowing schemes to operate cross-border.
 - The extent to which UK schemes have undertaken cross-border activity through sponsorship by European employers (what have been the inhibitors to cross-border activity), and whether the policy objective (to allow occupational pension schemes established in the UK to be sponsored by employers in other Member States) has been realised.
 - Schemes' ability to comply with the social and labour law of the host Member State

- Comparisons with other EU Member States. How have other Member States implemented the Cross-border provisions of the Directive? What lessons can be learnt?

EVALUATION QUESTIONNAIRE – THE SUCCESS OF THE OCCUPATIONAL PENSION SCHEMES (CROSS-BORDER ACTIVITIES) REGULATIONS 2005³ IN ENABLING SCHEMES TO OPERATE CROSS-BORDER

The Efficiency of the Authorisation and Approval Process

Section 287 of the Pensions Act 2004 and the Cross-border Regulations provide that a scheme based in the UK must be authorised (a general clearance to operate in any Member State) and approved (specific clearance related to a particular sponsoring employer in a Member State) by the Pensions Regulator before it can accept sponsorship from an employer located in another Member State where the scheme in relation to that sponsorship is operated according to the social and labour law of that state..

The information a scheme must provide in connection with applications for authorisation seeks to establish that the scheme is generally in a fit condition to expand its operations elsewhere in the EU. The information a scheme must supply when seeking approval seeks to establish the exact nature of each proposal and whether the experience of those running the scheme is compatible with the proposed operation in the other EU State (in compliance with article 20 (4) of the IORP Directive). In the case of defined benefit schemes, both processes require that these schemes are fully-funded (able to meet the Statutory Funding Objective), (in compliance with Article 16 (3) of the IORP Directive), or in the case of brand new schemes, that they will be fully-funded within 2 years.

Questions

1. Is the information requested in making applications for authorisation and approval reasonable and appropriate?
2. What are the difficulties in providing this information? How could this be improved?
3. What are the extra costs involved for a scheme which operates cross-border? How might these costs be reduced or efficiencies made?
4. Time taken (from sending application form) to gain:
 - (i) authorisation
 - (ii) approval.

³ In GB: The Occupational Pensions (Cross-border activities) Regulations 2005 (SI: 2005/3381)
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Achievement of policy objective – to allow occupational pension schemes established in the UK to be sponsored by employers in other Member States

To gauge the success of the regulations in allowing schemes to enter into cross-border activity we need to obtain statistics on the extent to which schemes provide their services to sponsoring employers located in other Member States. We would also be grateful for any feedback on whether the regulations are in any way inhibiting schemes from entering into cross-border activity in order to determine whether the regulations are achieving their objective.

Questions

5. Has your scheme extended its retirement provision in Europe? Please provide statistical details if possible including:

- Whether cross-border arrangements with other EU Member States were in existence in your scheme before the Cross-border legislation came into effect on 30 December 2005.
- EU Member States in which your scheme was operating at 23 September 2005.
- EU Member States in which your scheme now operates.
- Details of the European employers sponsoring your scheme including the Member States in which these employers are based.
- Total scheme membership
- Number of members based in other EU States (by State if figures held)
- Are there any Member States where you have sought to extend provision but been unsuccessful? What prevented you from doing so?

6. How do you feel about the process? Do the Cross-border Regulations allow schemes to reasonably enter into cross-border activity with European sponsors? If not, what are the inhibitors to entering into cross-border activity?

7. Are there any other specific reasons why you have not used the process? How might these issues be resolved? What are the alternative options? Would you, potentially, take advantage of the provisions if certain changes were made?

Compliance with Social and Labour Law

When an occupational pension scheme located in one Member State starts providing its services to a sponsoring employer located in another Member State, it is required to comply with the social and labour law relevant to occupational pensions in that Member State (as supplied by the competent authority for occupational pensions in that Member State). This is a requirement of Article 20(9) of the IORP Directive. We would like to ensure that this requirement is not placing any unreasonable demands or possibly demands that can not be complied with on the scheme exporting its services.

Questions

8. Has there been any difficulty in complying with host Member State social and labour law? If so, what were the problems? Please provide details.

Consideration of best practice when implementing EU legislation

The Better Regulation Executive within the Cabinet Office provides guidance on best practice when implementing EU legislation. The Davidson Review seeks to ensure that Government Departments do not go beyond the requirements of a Directive when implementing EU legislation. The Review recommends that as part of any review of regulations which have come into force, implementation practices should be compared with at least two other major Member States to draw lessons on methods of implementation and enforcement. As part of our review, we therefore propose to consider the implementation procedures of Ireland and the Netherlands.

Question

9. Should we consider comparisons with any other Member States? (If so, which Member States should we consider, please state reasons why, e.g. what we might learn from making comparisons with that Member State?).

Any other comments?

10. Please provide any comments you may have on any other features of the Regulations not covered by this questionnaire.

List of those consulted

Association of British Insurers
Association of Consulting Actuaries
Association of Pensions Lawyers
Bank of Ireland
Confederation of British Industry
Construction Company
Engineering Employers Federation
Faculty and Institute of Actuaries
HMRC
Investment Managers Association
Institute of Chartered Accountants
Institute of Chartered Accountants in Ireland
Law Society of Northern Ireland
National Association of Pension Funds
National Pensions Convention
Pensions Management Institute
Pensions Ombudsman
Social Security Policy and Legislation Division DSD Northern Ireland
Scottish Executive
Society of Pension Consultants
The Pensions Advisory Service
The Pensions Regulator
Trades Union Congress
National Assembly for Wales