

**S.I. No. 292 of 2006**

**OCCUPATIONAL PENSION SCHEMES (CROSS-BORDER) REGULATIONS 2006**

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**S.I. No. 292 of 2006**

**OCCUPATIONAL PENSION SCHEMES  
(CROSS-BORDER) REGULATIONS, 2006**

The Minister for Social and Family Affairs, in exercise of the powers conferred on him by section 5 (as amended by section 44 of the Social Welfare Law Reform and Pensions Act 2006 (No. 5 of 2006), 148, 149, 151, 152 and 154 (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) hereby makes the following Regulations:

**Citation.** 1. These Regulations may be cited as the Occupational Pension Schemes (Cross-Border) Regulations, 2006.

**Definitions.** 2. In these Regulations—

‘the Act’ means the Pensions Act, 1990 (No.25 of 1990);

‘new scheme’ means a scheme which does not have any members;

‘relevant scheme’ has the meaning assigned by section 40 of the Act.

**Revocation.** 3. The Occupational Pension Schemes (Cross-Border) Regulations 2005 (S.I. No. 592 of 2005) are revoked.

**Relevant statutory requirements.** 4. For the purposes of the definition of ‘relevant statutory requirements’ in section 148 of the Act, the statutory provisions prescribed are—

(a) for the purposes of section 154, Parts III and V and sections 59B and 59C of the Act, and

(b) for the purposes of section 153, Parts III and V and sections 59B and 59C of the Act.

**Application for authorisation.**

5. (An application for authorisation under section 149(2) of the Act shall include the following information—

(a) for the purposes of satisfying the Board that they comply with 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,

(ii) trustees under Section 59A of the Act and Regulations made thereunder,

(iii) remittance of contributions under section 58A of the Act,

are complied with,

(b) where applicable, an actuarial funding certificate as provided for in article 6, and

(c) the Pensions Board registration number.

**Conditions of Authorisation.**

6. (1) Subject to sub-article (2), the condition of authorisation prescribed in the case of a relevant scheme for the purposes of section 149(4)(b) of the Act is that the scheme is deemed to have satisfied the funding standard in accordance with section 44.

(2) In the case of a relevant scheme which was accepting contributions from an undertaking on 22<sup>nd</sup> September 2005, and which at the date of application for authorisation is not deemed to have satisfied the funding standard in accordance with section 44 and where the actuary to the scheme has certified, prior to the date of the grant of authorisation

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(a) that the scheme could be reasonably be expected to satisfy the funding standard at the effective date of the next actuarial funding certificate, or

(b) by any later date specified by the Pensions Board under section 49(3),

the condition in sub-article (1) shall not apply until the earlier of the following dates –

(i) where applicable, the effective date referred to in paragraph (a), or

(ii) where applicable, the later date referred to in paragraph (b) or

(iii) the date on which the scheme is deemed to satisfy the funding standard in accordance with section 44.

(3) In the case of a new scheme which is a relevant scheme, the trustees shall provide an actuarial funding certificate under section 42 of the Act by the expiry of the period of two years beginning on the date on which approval is granted under section 151 of the Act.

(4) In the case of a relevant scheme (other than a scheme to which sub-article (2) applies) where the most recent annual report prepared under section 55 of the Act does not include a statement required under subsection (3) of that section, or contains the statement but the actuary does not state therein that he is reasonably satisfied that, if he were to prepare an actuarial funding certificate under section 42 of the Act having an effective date of the last day of the period to which the annual report relates, he would certify that the scheme satisfies the funding standard provided for in section 44 of the Act, the trustees shall provide an actuarial funding certificate satisfying the funding standard, with an effective date within the twelve month period prior to the date on which the application for authorisation was made.

**Authorisation  
of small  
schemes.**

7. For the purposes of section 149(3) of the Act, sections 44, 55, 56 and 59(1B) of the Act are prescribed.

**Application  
of Act.**

8. The provisions of the Act prescribed as relevant statutory requirements for the purposes of section 154, shall not apply to schemes or trustees of schemes with regard to individuals in respect of whom an undertaking makes or proposes to make contributions.

**Form  
of  
notification.**

9. For the purposes of section 151 of the Act, the notification shall—

(a) in addition to the information specified in section 151(2) of the Act, contain the information set out in the Schedule to these Regulations, and

(b) provide the information referred to in paragraph (a) in—

(i) the English language, and

(ii) the language of the host Member State.

**GIVEN** under the Official Seal of the Minister for Social and Family Affairs, this 24<sup>th</sup> day of May 2006.

**L.S.**

**SÉAMUS BRENNAN**

**Minister for Social and Family Affairs**

## SCHEDULE

### *Article 9*

#### INFORMATION REQUIRED IN NOTIFICATION TO ACCEPT CONTRIBUTIONS FROM UNDERTAKING

1. The date on which authorisation was granted,
2. The name, legal form address, telephone number, fax number, and e-mail address in the host member state of the undertaking,
3. The name, address, telephone number, fax number, and e-mail address of the trustees of the scheme,
4. The Pensions Board registration number,
5. The representative or branch name, legal form, address, telephone number, fax number, and e-mail address of the scheme in the host Member State, if applicable,
6. A list of the Member States in which the scheme is currently operating,
7. A description of the type of scheme to be offered to the undertaking,
8. A description of the categories of benefits to be provided under the scheme,
9. A description of the conditions for payment of benefits under the scheme,
10. A description of any guarantees offered under the scheme 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, and
13. A statement by the trustees that they continue to satisfy the requirements of section 149 of the Act.
14. The most recent actuarial funding certificate for the scheme (where applicable).
15. A statement by the trustees of the estimated number of persons who are likely to become active members of the scheme if approval of the undertaking is granted by the Pensions Board.
16. Number of members (latest available information)
17. A description of the categories of the undertaking's employees that can be members of the pension scheme (if there are any restrictions).

18. Details of who is responsible for the payment of benefits
19. Is there any external contractual based asset manager?
20. Will the assets and liabilities attributable to the IORP in the host Member State be ringfenced as permitted by the Directive?

## EXPLANATORY NOTE

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

These Regulations revoke and replace Regulation 592 of 2005.

Recent case law in Ireland has suggested that a provision of domestic legislation cannot be used for the purposes of implementing EC law unless it is clear that such delegated legislation is clearly authorised by the primary legislation.

To this end, section 5 of the Pensions Act 1990 was amended by section 44 of the Social Welfare Law Reform and Pensions Act, 2006 to expressly state that regulations made under the Pensions Act may be used to implement law.

Regulation 592 of 2005 was made under section 3 of the European Communities Act 1972 due to uncertainty with regard to using the powers under the Pensions Act. However, now that those powers have been clarified these regulations are now being re made under the Pensions Act powers.

There are some minor changes to the Regulations as promulgated in 2005 and these are -

- drafting of article 6 in relation to the conditions of authorisation to operate cross border. The condition of authorisation, that a scheme must satisfy the funding standard, was originally provided by way of primary legislation. This condition of authorisation is now being incorporated into secondary legislation to allow for flexibility in relation to the funding standard requirements for certain schemes which require authorisation to operate cross border.
- In the case of schemes which were already operating cross border on the 22<sup>nd</sup> September 2005, the condition of authorisation in relation to the funding standard shall not apply until the earlier of (i) the date on which the schemes satisfies the funding standard, (ii) the effective date of the next actuarial funding certificate after the date on which the application to operate cross border was made, or (iii) such later date as may be granted by the Pensions Board under section 49(3) of the Act.
- the consequential insertion of a definition of “relevant scheme” in article 2.
- Additional items of information required in notification to accept contributions from an undertaking.
- Some minor drafting amendments