



Department for

Communities

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**THE OCCUPATIONAL PENSION SCHEMES
(CROSS-BORDER ACTIVITIES) (AMENDMENT)
REGULATIONS (NORTHERN IRELAND) 2018**

REGULATORY IMPACT ASSESSMENT

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The costs and savings outlined in this Regulatory Impact Assessment are calculated on a United Kingdom-wide basis.

Evidence Base

Background and terminology

1. “**IORP**” stands for Institutions for Occupational Retirement Provision.
2. The “**home state**” is the EEA member State where the pension scheme is based.
3. The “**host state**” is the EEA member State where the employee/employer is based.
4. “**Cross-border schemes**” are schemes where the sponsoring employer is located in a different member State.
5. “**Bulk transfers**” is a non-legal term for transfers of all or some of the members in one pension scheme to another scheme.

The policy issue and rationale for Government intervention

6. In January 2019, the EU Directive 2016/2341 (commonly known as IORP II) comes into effect with new and amended provisions for the EU’s cross-border authorisation regime for occupational pension schemes within the EEA. These provisions update and expand the regime outlined in the EU Directive 2003/41/EC (commonly known as IORP I) which was transposed into UK law via the Pensions (Northern Ireland) Order 2005, the Occupational Pension Schemes (Cross-border Activities) Regulations (Northern Ireland) 2005 and analogous Great Britain legislation.
7. On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period, the Government will continue to negotiate, implement and apply EU legislation.
8. If the Directive is not transposed, some parts of UK legislation will become outdated, wherever provisions have been added or amended in IORP II. This includes current legislation governing the authorisation and regulation of cross-border activity; and current legislation governing bulk transfers to European pension schemes, which will become inoperable in the face of a new pan-European process. Additionally, since some parts of UK legislation governing cross-border activity refers directly to the IORP I Directive, when IORP II comes into force, some parts of the law will become inoperable and no longer make sense. This will create confusion for the Pensions Regulator (TPR) and for any

schemes, employers and members participating in UK-EEA cross-border activity or cross-border bulk transfers.

Policy objectives and intended effects

9. The intent of the EU's cross-border authorisation regime, as created through the IORP Directives, is to encourage a single market for occupational pension schemes across the EEA whilst ensuring regulatory protection for members.
10. The UK policy intent is to maintain operability of UK law and to ensure that the UK can continue to participate in, and continues to comply with, the EU's cross-border authorisation regime, whilst it is still an EU member State and/or during any Implementation Period.

Policy options considered, including alternatives to regulation

Option 1: Do Nothing

11. As outlined in paragraph 8, if this option is chosen, some parts of UK legislation governing cross-border schemes and UK-European bulk transfers will become outdated or inoperable.
12. Since the UK is still an EU member State when IORP II comes into force in January 2019, not transposing could lead to the European Commission taking legal action against the UK through an 'infringement procedure'. In certain cases, the European Commission may refer the issue to the Court of Justice, which in certain cases, can impose financial penalties.
13. If the UK law governing the cross-border authorisation regime diverges from other EEA member States, the UK's Pensions Regulator and UK schemes and employers will be legally obliged to follow and implement processes which no longer apply, and UK schemes will be unable to make or receive bulk transfers across EEA borders. Additionally, TPR will not be legally empowered to ensure UK members and employers contributing to EEA schemes are sufficiently protected.

Option 2: Legislative transposition

14. Legislative transposition will impose new and amended processes for TPR to follow in respect of the EU's cross-border authorisation regime, including:
 - invoking new timescales for TPR to follow when authorising, approving and revoking cross-border status;
 - increasing the amount of information that TPR may send to European Insurance and Occupational Pensions Authority (EIOPA) or regulators in other member States;
 - introducing new processes for cross-border bulk transfers, which can be used as a route to authorisation for schemes wishing to undertake cross-border activity.
15. By maintaining parity with other member States through legislative transposition, while the UK is a member State, TPR will be able to collaborate more effectively with other

competent authorities regarding the authorisation and regulation of the cross-border regime. It will be able to hold to account regulators and schemes in other EEA countries, to which UK members may be contributing. TPR has been preparing for this change for three years, in collaboration with national competent authorities across the EEA, and is prepared for implementation.

16. Full transposition will allow current schemes and employers participating in cross-border activity to continue without disruption and will ensure that UK schemes can continue to make or receive bulk transfers across EEA borders through the new pan-European process. It will fulfil the UK's obligations as an EU member State and maintain operability of the law.

Option 3: Non-legislative transposition

17. As outlined in paragraph 8, when IORP II comes into force some parts of UK legislation governing cross-border schemes will become outdated or inoperable. Consequently, at least a partial legislative solution is necessary to maintain operability of the law.
18. Some provisions in the IORP II Directive could be pursued through non-legislative means, however, since a cross-border regime aligned with IORP 1 already exists in UK legislation, the particular articles relating to cross-border schemes will need to be legislated for once IORP 1 ceases to exist in January 2019.

Expected level of business impact

Scale: Volumes of schemes and members in cross-border pension schemes

19. TPR data¹ shows that there are fewer than 30 schemes with around 6,500 members in total with a UK employer and a membership of an Irish pension scheme. TPR believe this captures most of the schemes with a UK employer. They also estimate there are fewer than 20 schemes with under 600 members with a UK scheme and EEA employer.
20. There have only been four authorisations for cross-border activity since 2012¹.
21. In the UK there are around 32,000 defined contribution trust-based schemes with a total membership of over 12 million² and around 5,500 defined benefit schemes with a total membership of just over 10 million³.
22. Therefore the volume of schemes that operate across EEA borders is a very small part of the overall UK pensions industry and covers a small volume of total UK and EU members.

Monetised and non-monetised costs and benefits

Options 1 and 2 have been considered in this section as Option 3 has been ruled out for the reasons described above.

¹ Information received from TPR, July 2018

² TPR DC Trust statistics, 2017-18: <http://www.thepensionsregulator.gov.uk/doc-library/dc-trust-presentation-of-scheme-return-data-2018.aspx>

³ PPF Purple Book 2017: http://www.pensionprotectionfund.org.uk/About-Us/TheBoard/Documents/WEB_170407%20-%20PPF_Purple_Book_2017.pdf

Option 1: Do nothing

Direct costs to government

23. Under the “do nothing” option the UK government could be liable to infraction proceedings and therefore a penalty could be imposed.

Direct costs to the Pensions Regulator

24. For a period of time the UK would be part of the EU but its pension schemes would be operating under different rules from those applying to the rest of the pension schemes in the EU. This would result in confusion surrounding the authorisation and regulation process of UK cross-border schemes. TPR would not be able to apply the regulatory process in dealing with these schemes. Therefore there will be a cost to TPR in attempting to interpret the legislation in the best way possible.
25. This cost will be met from the General Levy which is imposed on UK pension schemes. These are excluded from business costs for the purposes of the EANDCB or BIT.

Direct costs to UK pension schemes

26. Schemes that currently operate across borders would face difficulty in understanding which regulations apply to their scheme; however, due to the small numbers of schemes and low incidence of cross-border activity, it would be disproportionate to monetise this highly uncertain impact.
27. Given that IORPII is being introduced in the EU irrespective of the UK’s approach, a failure to transpose would mean that schemes would then be operating in the presence of the UK legislation being outdated and/or inoperable thus creating significant confusion.
28. This situation and the associated confusion would potentially result in substantial costs:
- Firstly, schemes and their sponsoring business might invest excessive resources in getting legal or business advice in the presence of this significant uncertainty.
 - Secondly, where cross-border transfers are stopped or delayed due to uncertainty and/or confusion, any value associated with them would be lost.
 - Thirdly, if they take an action based on their best interpretation which is later deemed to be incorrect there would be sunk costs and additional costs associated with re-doing it.

Option 2: Legislative transposition

Direct costs to The Pensions Regulator

29. TPR will need to make changes to their existing authorisation process to:
- invoke new timescales to follow when authorising, approving and revoking cross-border status;
 - increase the amount of information that TPR may send to EIOPA or regulators in other member States;

- take into account the new process for cross-border transfers, which can be used as a vehicle for authorisation for schemes wishing to undertake cross-border activity.
30. TPR will be responsible for enforcing all the regulations in practice. They will also need to update their front line regulation processes and legal checklists for their case managers and update published guidance for schemes.
 31. These costs will be met from the General Levy which is imposed on UK pension schemes. These are excluded from business costs for the purposes of the EANDCB or BIT.

Direct/indirect costs to UK pension schemes for additional information as part of authorisation

32. There is no direct regulatory burden on UK pension schemes. If a UK pension scheme chooses to apply for authorisation in the future they will have a **negligible** extra indirect cost to supply the location of their administrator as part of the authorisation regime.

Direct/indirect costs and benefits to UK pension providers and pension members of cross-border transfers

33. With this policy option, trustees of pension schemes wishing to make or receive a bulk transfer of members to/from an EEA pension scheme will have to follow a new process for authorisation.
34. Trustees have to make the decision for a UK pension scheme to receive a cross-border transfer or to transfer members to an EEA scheme whilst they consider value for members of the scheme.
35. This transfer will be subject to authorisation by the competent authorities in the relevant member States. The new authorisation process places a new burden on receiving schemes. Consequently, UK schemes wishing to receive a transfer will need to apply to TPR and provide:
 - information pertaining to the relevant schemes, employer and the amount to be transferred;
 - written agreement with the transferring scheme setting out the conditions of the transfer;
 - proof of prior consent from the sponsoring employer and either a majority of beneficiaries and members concerned or a majority of trustees and managers.
36. Currently, UK legislation enables some schemes, if they fulfil certain criteria, to transfer members to an EEA-based scheme without the transfer needing to be authorised. However, once IORP II has been introduced across the EU, no EEA-based scheme will be able to accept such a transfer as it will contravene the requirements of the authorisation process, making the current UK legislation redundant.
37. Given that IORP II would be introduced in the EU irrespective of whether the UK makes this legislative transposition of it or not, the counterfactual is not the old system but a

situation where the schemes operate in the presence of the UK legislation being outdated and/or inoperable thus creating significant confusion and associated costs – as discussed in paragraph 28 above.

38. It is believed that, on balance, familiarising with and operating within the new IORP II consistent legislative environment would be less burdensome/more beneficial to businesses than in the presence of legislative inconsistencies across the countries (i.e. UK and another country) and associated uncertainties. On this basis the cost burden of the proposed option is assessed to be either cost neutral or cost negative (i.e. beneficial).
39. In general, (as set out in paragraphs 19-22) the volumes of cross-border pension schemes and members in them is relatively very low within the wider UK's occupational pensions landscape. On this basis it is believed that the assessment is proportionate and quantifying the highly uncertain and likely limited impacts would be disproportionate.

Small and Micro Business Assessment

40. Small and micro businesses will be affected in the same way as all other business – the legislative changes will enable them to continue making cross-border transactions, if they wish to, in the presence of a clear and consistent legislative framework. No data is held on what proportion of all businesses supporting cross-border pension scheme(s) are small or micro.

Monitoring and Evaluation

41. The importance of monitoring and evaluation is recognised, but for such a small measure it would be disproportionate to commit to a formal programme of evaluation. However, TPR will continue to engage with schemes that operate across borders in a proportionate way.

Other Impacts

Equality

42. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these legislative proposals and, as they make mainly technical amendments to implement the EU Directive, has concluded that they would not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

Environmental

43. There are no implications.

Rural proofing

44. There are no implications.

Health

45. There are no implications.

Human rights

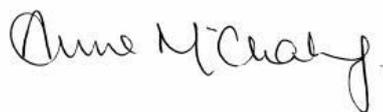
46. The Department considers that the regulations are compliant with the Human Rights Act 1998.

Competition

47. There are no implications.

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed for the Department for Communities



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