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# Keeping EU Cross-border Conscious

Since 30 December 2005, a UK pension scheme has needed to have prior authorisation and approval from the Pensions Regulator to operate as a cross-border scheme. Designation as cross-border brings with it a fairly onerous requirement to be “fully funded at all times” (namely, meet the statutory funding objective), together with additional compliance requirements. It is therefore vital that employers and trustees of occupational pension schemes keep cross-border conscious (to avoid being caught inadvertently cross-border).

## Cross-border schemes

A quick recap

- Broadly, a cross-border scheme is an occupational pension scheme established in one European member state (**the home state**) which has members who work for a European employer in another member state (**the host state**).
- Cross-border status may be triggered when active members of a UK pension scheme, who are employed under UK contracts, provide services in another EU member state such that they become subject to the social and labour laws relevant to occupational pensions of that other EU member state.

## Cross-border status

Secondments

- Active members of a pension scheme who are on “secondment” to another EU member state do not trigger cross-border status.
- The characteristics of a “secondment” for this purpose are:

  - the employee being sent to work overseas from the UK;

  - the employee remaining under the UK employer’s control;

  - the secondment being for a “limited period”; and

  - an intention to return to work for the same employer in the UK or to retire at the end of that period.
- The Pensions Regulator’s guidance anticipates the “limited period” ending on a specified date or being limited by reference to a specific event, such as the completion of a project.

## Monitoring cross-border status

Possible cross-border triggers!

- The following could trigger cross-border status:
  - a UK scheme member is posted to another EU member state but the "secondment" test is not satisfied; or
  - an individual's secondment being extended in such a way that the test is no longer met[1].
- The Pensions Regulator's approval is required each time a new employer starts to participate in relation to "cross-border" members.

## Rolling review

Action by employers

- An employer's HR team should liaise closely with their pensions colleagues about EU assignments to ensure awareness of any employees who could activate cross-border status.
- Employers should review their standard employment contracts and assignment/secondment terms to check that they do not give people the right to remain in the pension scheme if they become a cross-border member.

## Rolling review

Action by trustees

- It is not practical for trustees to become generally involved in the employment arrangements of pension scheme members.
- However, they could request that the employer provide them with regular confirmation that the scheme is not, and is not likely to become, a cross-border scheme.
- Trustees could conduct a periodic audit of the active members of the scheme and their status. Whether this is appropriate will depend on the circumstances of the scheme.

## And finally...

Trustees beware!

- If a scheme operates as cross-border without the requisite approval or authorisation, it is the trustees who risk the imposition of civil penalties under the Pensions Act 2004.
- It is therefore particularly imperative for pension scheme trustees to keep abreast of their scheme's cross-border standing.

1 But it does not automatically follow that employees working in another EU member state who are not "seconded" are subject to that state's social and labour law.


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