

alert

CROSS BORDER - NEW ORDER

1 INTRODUCTION

The Pensions Act 2004 transposed the cross border requirements of the European Pensions Directive into UK law. The reason the designation as a cross-border pension scheme is important is that it brings with it a need to be “fully funded at all times”.

The Cross Border Activities Regulations 2005 which detail the exact conditions and procedures schemes must follow to enter into cross border activity have at last been finalised – and there are some significant changes from the draft published for consultation in September¹.

2 KEY POINTS

In this Alert we highlight the final position on these key issues:

- Schemes with members on secondment outside the UK (see section 3 below)
- Anglo-Irish Schemes (section 4)
- Schemes with an overseas parent (section 5)

3 MEMBERS ON SECONDMENT

“Seconded workers” are effectively people usually located in the UK and who provide services in the EU but outside the UK and intend to return to work for the same employer in the UK when they finish. But bear in mind that they could be employed by either a branch of the company in the EU or by the UK

¹ And on which we reported in our Sackers Extra Alerts “Cross Border Schemes” dated 28 September 2005 and “European Pensions Directive ” dated 24 October 2005, available from our website or from your usual contact

alert

Continued

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employer. If a scheme has such workers, the cross border provisions will apply to it.

But some secondments are excluded from the definition. Originally only secondments of up to 12 months were excluded but following comments on consultation that this would be unnecessarily draconian, the exception has been expanded so that secondments of a "limited period" are excluded. Please note that:

- The Regulator's Guidance indicates that the limited period should be for no more than 5 years; and
- This applies to members already on secondment as well as new secondees.

4 ANGLO-IRISH SCHEMES

There will be no carve-out for Anglo-Irish Schemes (i.e. UK schemes with active Irish members) and the Regulations will apply. Anglo-Irish Schemes must, therefore, take action by 29 March 2006 to ensure that they comply with the legislation.

5 SCHEMES WITH AN OVERSEAS PARENT

The original definition of "European employer" was drafted ambiguously. This meant that a company based overseas with a UK pension scheme for only its UK branch employees could have been classified as a "cross-border scheme". This ambiguity has been fixed so that such employers will not be exposed.

6 CONCLUSIONS

Schemes now have the facts at their fingertips – and, if necessary, trustees should act fast to meet the 29 March 2006 deadline for registration.