

# alert

## CROSS-BORDER – ROAD TO NOWHERE?

### 1 INTRODUCTION

The cross-border road has been a series of twists and turns, with a final hairpin bend.<sup>1</sup>

The final date for applications is tomorrow - 29 March 2006. But the Regulator has published some further guidance on applications this afternoon. To facilitate the changes, the Department for Work and Pensions (DWP) laid The Occupational Pension Schemes (Cross-border Activities)(Amendment) Regulations 2006 (the Amending Regulations) before Parliament yesterday. The Regulations come into force today.

A link to the guidance is shown below:

<http://www.thepensionsregulator.gov.uk/trustees/crossBorder/cross-12.aspx>

### 2 KEY POINTS

- The Regulator has revised its guidance on the meaning of contributions to confirm that contributions in respect of deferred members won't count (see section 4).
- Schemes which still have active cross-border members on 29 March will have to register but could withdraw their applications if all cross-border members become deferred by 29 June 2006 (again, see section 4).
- Schemes can now register by short-form email. This needs to be submitted by midnight on 29 March 2006 (see section 5).

<sup>1</sup> This Alert is the latest in a series of communications we have sent out on "cross-border". Please see the client area of our website [www.sackers.com](http://www.sackers.com)

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### **3 TO RECAP**

A scheme needs to register in order to accept contributions from a “European employer”. An employer is a “European employer” in relation to a UK pension scheme if it employs a “qualifying person” and it makes contributions to the UK pension scheme in respect of him.

### **4 NEW GUIDANCE**

#### *Contributions*

The original guidance from the Regulator indicated that only contributions in respect of active members would be relevant. This guidance was revised on 2 March 2006 to widen the scope of contributions to be counted – to include for example, deficit contributions and contributions in respect of revaluation of deferred members. This meant that schemes which had taken steps to ensure that any qualifying persons were deferred by 29 March 2006 had not done enough to ensure that they were not cross-border schemes. Therefore, we were forced to advise that those schemes would still need to register.

Today’s further guidance on contributions relies on a change to the DWP’s interpretation of the legislation. The DWP’s note says:

“We have now changed our view regarding treatment of payment of contributions in respect of deferred members in other EU States to cover section 75 debt and statutory revaluation of benefits. These contributions will no longer trigger the cross-border provisions ... “

#### *Extension of time*

“...The new Regulations will allow schemes, who wish to, an extension until 29 June 06 to defer members based in other EU States (provided they send initial information by 29 March and complete their applications by 15 May 2006). These schemes could then withdraw their applications for approval

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(before 29 June 06) and would not then be subject to the cross-border provisions. Any schemes who have deferred all their members in other EU States prior to 29 March and who will only be making contributions in respect of these members to cover section 75 debt and statutory revaluation will now not need to go through the authorisation and approval process. “

## **5 REGISTRATION PROCESS**

The Regulator has also announced today that schemes can submit a simplified or partial application by email<sup>2</sup>. This is also made possible by the Amending Regulations.

The email should include the name of the scheme, name of employer, name of host member states, a statement that the scheme intends (subject to approval) to accept contributions from that employer, any other information the scheme wishes to notify the Regulator of at that time, and contact point. The full forms should follow by 15 May 2006. Applications can, of course, be made after this date but would be treated as from new schemes and therefore these schemes would not be entitled to benefit from the transitional arrangements on funding.

## **6 CONCLUSION**

So, the result at the finish line is to require schemes to register unless all cross-border members are deferred by 29 March (albeit in a simplified manner). But provided that the trustees ensure all relevant members are deferred by 29 June 2006 and withdraw their applications the scheme will not be subject to the cross-border requirements.

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<sup>2</sup> Submit to [crossborder@thepensionsregulator.gov.uk](mailto:crossborder@thepensionsregulator.gov.uk)