

Subsidiary Legislation made under s. 86(1)(g).

Employment (Occupational Pensions) Regulations 2018

LN.2018/111

Commencement **21.5.2018**

Transposing:-

Directive 2014/50/EU

ARRANGEMENT OF REGULATIONS

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In exercise of the powers conferred upon the Minister with responsibility for Employment by section 86(1)(g) of the Employment Act 1932, and all other enabling powers, as read with section 23(g)(i) of the Interpretation and General Clauses Act 1962, and in order to transpose Directive 2014/50/EU of the European Parliament and of the Council on the minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights, the Minister has made the following regulations-

Title.

1. These Regulations may be cited as the Employment (Occupational Pensions) Regulations 2018.

Commencement.

2. These Regulations come into operation on 21 May 2018.

Application.

- 3.(1) Subject to sub-regulation (2), these Regulations apply to occupational pension schemes with the exception of schemes covered by Regulation (EC) No 883/2004.

- (2) These Regulations do not apply to-

- (a) occupational pension schemes, that on 21 May 2018, no longer accept new active members and remain closed to them;
- (b) occupational pension schemes that are subject to measures involving the intervention of administrative bodies established by national legislation or judicial authorities, which are intended to preserve or restore their financial situation, including winding-up proceedings;
- (c) insolvency guarantee schemes, compensation schemes and national pension reserve funds;
- (d) a one-off payment made by an employer to an employee at the end of that employee's employment relationship which is not related to retirement provision;
- (e) invalidity and/or survivor's benefits attached to occupational pension schemes, with the exception of the specific provisions contained within Regulation 8 and Regulation 10 relating to survivor's benefits; and

- (f) the acquisition and preservation of occupational pension rights of workers moving within Gibraltar.

(3) These Regulations apply only to periods of employment that fall after 21 May 2018.

Interpretation.

4. In these Regulations-

“active scheme member” means a worker whose current employment relationship entitles that worker, or is likely to entitle that worker, after fulfilling any acquisition conditions, to an occupational pension in accordance with the provisions of an occupational pension scheme;

“collective agreement” means any agreement or arrangement made by or on behalf of one or more trade unions, or other organisations of workers, or associations of such trade unions or organisations of workers and one or more employers or associations of employers;

“deferred beneficiary” means a former active scheme member who has vested pension rights in an occupational pension scheme and who is not yet in receipt of an occupational pension from that scheme;

“Member State” means a Member State of the European Union and includes an EEA State;

“occupational pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employments so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of employed or self-employed persons with qualifying service in an employment of any such description or category;

“outgoing worker” means an active scheme member whose current employment relationship terminates for reasons other than becoming eligible for an occupational pension and who moves between Member States;

“Regulation (EC) No 883/2004” means Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems;

“surviving beneficiaries” in relation to survivor’s benefits, means a person entitled to that benefit;

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“value of the dormant pension rights” means the capital value of the pension rights calculated in accordance with Gibraltar law and practice;

“vested pension rights” means any entitlement to accumulated occupational pension rights after the fulfilment of any acquisition conditions, under the rules of an occupational pension scheme, and where applicable, under Gibraltar law;

“vesting period” means the period of active membership of a scheme, required under Gibraltar law or the rules of an occupational pension scheme, in order to trigger entitlement to the accumulated occupational pension rights; and

“waiting period” means the period of employment, required under Gibraltar law or by the rules of an occupational pension scheme or by the employer before a worker becomes eligible for membership of a scheme.

Length of vesting period under occupational pension schemes.

5. Where a vesting period or waiting period, or both, is applied, the total combined period shall not exceed three years for outgoing workers.

Minimum age for vesting of pension rights.

6. Where a minimum age for the vesting of pension rights is stipulated, that age shall not exceed 21 years for outgoing workers.

Reimbursing contributions.

7.(1) Where an outgoing worker has not yet acquired vested pension rights when the employment relationship is terminated, the occupational pension scheme shall reimburse the contributions paid by the outgoing worker or paid on behalf of the outgoing worker.

(2) Reimbursement of the contributions pursuant to sub-regulation (1) shall be in accordance with-

- (a) established Gibraltar law; or
- (b) collective agreements or contracts; or
- (c) either the sum of the contributions made or the investment value arising from these contributions, in instances where the outgoing worker bears the investment risk.

Vested pension rights remaining in occupational pension schemes.

8.(1) Measures must be taken to ensure that outgoing workers' and their survivors' dormant pension rights or their values are treated in line with the value of the rights of active scheme members or the development of pension benefits currently in payment, or are treated in other ways which are fair.

(2) Measures referred to in sub-regulation (1) include:

- (a) safeguarding the nominal value of the dormant pension rights where the pension rights in the occupational pension scheme are acquired as an entitlement to a nominal sum;
- (b) adjusting the value of the dormant pension rights by applying:
 - (i) a rate of interest built into the occupational pension scheme; or
 - (ii) the return on investments derived by the occupational pension schemewhere the value of accrued pension rights changes over time;
- (c) adjusting the value of the dormant pension rights accordingly where the value of the accrued pension rights is adjusted, for instance, in accordance with the inflation rate or salary levels, subject to any proportionate limit set by Gibraltar law or trade unions, or other organisations of workers, or associations of such trade unions or organisations of workers by collective agreement.

(3) The initial value of those rights referred to in sub-regulation (1) shall be calculated at the moment in time when an outgoing worker's current employment relationship terminates.

(4) In adopting the measures referred to in sub-regulation (2), regard shall be had to the nature of the pension scheme rules and practice.

Information for active scheme members.

9.(1) An active scheme member must be able to request and obtain information on how a termination of employment may affect their occupational pension rights.

(2) For the purpose of providing the information referred to in sub-regulation (1), the information provided to the member shall relate to-

- (a) the conditions governing the acquisition of occupational pension rights and the effects of applying them when the employment relationship is terminated;

- (b) the value of their vested pension rights or an assessment of the vested pension rights that has been carried out no more than 12 months preceding the date of the request; and
- (c) the conditions governing the future treatment of dormant pension rights.

(3) Where the scheme allows early access to vested pension rights through the payment of a capital sum, the information provided in sub-regulation (2) shall also include a written statement providing that the member should consider taking advice on investing that capital sum for retirement provision.

Information for deferred beneficiaries.

10.(1) A deferred beneficiary must be able to request and obtain information regarding-

- (a) the value of their dormant pension rights or an assessment of their dormant pension rights that has been carried out no more than 12 months preceding the date of the request; and
- (b) the conditions governing the treatment of dormant pension rights,

from their pension provider.

(2) For survivor's benefits attached to occupational pension schemes, sub-regulation (1) shall apply to surviving beneficiaries as regards the payment of survivor's benefits.

Information provided under regulations 9 and 10.

11.(1) Information provided under regulations 9 and 10-

- (a) shall be clear;
- (b) shall be in writing;
- (c) shall be provided within a reasonable timeframe;

(2) Regulations 9 and 10-

- (a) shall be without prejudice to the obligations of the institutions for occupational retirement provision under section 7 of the Financial Services (Occupational Pensions Institutions) Act 2006; and
- (b) shall be in addition to the obligations referred to in sub-regulation (2)(a)."