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# Ireland: EU (Supplementary Pensions Rights) regulations 2019

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Ireland's [European Union \(EU\) \(Supplementary Pensions Rights\) Regulations 2019](#) came into force 13 Sep 2019 and provide certain rights to members or prospective members of the pension scheme if they have changed or may change employers in EU member states. The rights arose due to the transposition into Irish law of the [EU Portability Directive 2014/50/EU](#), which was designed to make moving between EU employments easier in light of the EU's principle of freedom of movement. The rights override any conflicting provisions in the rules of the pension scheme. The Pensions Authority [issued](#) guidance on the regulations in November 2019.

## Highlights of schemes and persons affected

The regulations apply only to schemes which accept new members on or after the date the Directive came into force (20 May 2014). They created the concept of an "outgoing worker" who moves between EU employments and effectively introduced a new ring-fenced membership status. In broad terms, an outgoing worker is either:

- An employee who joins the company on or after 13 Sep 2019 (or prior to that date if in a waiting period to join the company's scheme) whose most recent employment was in another EU member state and who was an active member of a pension scheme relating to that employment; or
- An employee who leaves the company on or after 13 Sep 2019 who either:
  - Was already determined to be an outgoing worker when service commenced (as defined above), or
  - Whose next employment after leaving is in another EU member state

## Rights and entitlements of outgoing workers

- Where an outgoing worker is entitled to a statutory preserved benefit on leaving service, they have the right to have that benefit retained in all circumstances.
- Where the outgoing worker is not entitled to a statutory preserved benefit on leaving service, (i.e. if they leave before completing two years of qualifying service), they have the right to have their employee (if the scheme is defined contribution) and their employer contributions (or the investment value of those contributions) refunded when they leave.
- An outgoing worker has the right to join a scheme applying to their employment within a period of no more than 12 months from the date they commence employment.

## Implications for the company, trustees and scheme

The new regulations represent a material change in how defined contribution occupational pension schemes have operated in Ireland and are likely to present some challenges with respect to identifying outgoing workers and ensuring their rights are protected in the scheme.

While the Pensions Authority's guidance note does provide some suggestions for employers and trustees with regard to fulfilling their legal obligations, this guidance is limited and does not address all of the practical issues that could arise.

Perhaps most importantly, the legal obligation for determining whether or not an employee or former employee is provided with any entitlements under the regulations falls on the employer and the trustees. It is not up to individual employees or former employees to initiate this process, though they will be required to engage with the process.

Administrative processes must be adapted, by employers and the scheme, to ensure that current and prospective employees are asked the appropriate questions when they join or leave service. This will ensure their status is correctly determined and recorded, and the correct tax relief applied to refunds.

- In addition, where an employee leaves and their status cannot be immediately verified, trustees are restricted from taking any action which might prejudice the employee's rights under the regulations. This means that the trustees are required to engage with former employees until they can determine Outgoing Worker status. This could prove difficult in practice.

## Next steps

To help employers identify who is currently within the scope of the regulations and adopt appropriate procedures with respect to employees who may fall within the scope in the future, the following steps are recommended:

- Step 1. Identify potential current and former employees who may be current or potential “Outgoing Workers.”
- Step 2. Verify potentially affected employees by requesting and collecting documentary evidence.
- Step 3. Implement required actions with respect to affected employees, including updating membership records and processing refunds where applicable. In some cases, scheme rules and member explanatory booklets may also require amendments.
- Step 4. Adopt an appropriate operational policy to process future cases. This will require changes to the way in which employees are engaged with prior to commencing or leaving employment, as well as to the information the scheme provides to them.

## Related resources

### Non-Mercer resources

- [European Union \(Supplementary Pension Rights\) Regulations 2019](#) (Irish statute book, 10 Sep 2019)
- [Guidance](#) (Pensions Authority, November 2019)
- [Directive 2014/50/EU](#) (Europa, 16 Apr 2014)
- [Proposed regulations](#) (Federal Register, 23 Oct 2018)
- [Press release](#) (DOL, 22 Oct 2018)

### Mercer Law & Policy resource

- [IRS gives closed plans relief for benefits, rights and features testing](#) (14 Nov 2019)

### Other Mercer resources

- [Top 10 investment ideas for endowments and foundations in 2019](#) (18 Dec 2018)
- [Top 10 DB areas of focus for 2020](#) (28 Jan 2020)

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