



# OUTGOING WORKER

OCTOBER 2020

## EUROPEAN UNION (SUPPLEMENTARY PENSION RIGHTS) REGULATIONS 2019

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This new EU Regulation has been brought into law amending the Pension Act. This impacts the rule on how benefits are treated for 'outgoing workers', with effect from 13 September 2019 as well as setting out requirements in relation to the treatment of people who are coming to work from another EU country.

### WHO IS CLASSED AS AN OUTGOING WORKER (OW)?

1. A person who joins the pension scheme whose previous immediate employment was with an employer in another EU state and the person was a member of a supplementary pension scheme in that employment; or
2. A person who on leaving service has their next employment in another EU state.

### THIS IMPACTS PENSION SCHEMES IN THREE WAYS:

1. Requirements in relation to how a new entrant from another EU State must be treated.
2. New rights for outgoing workers in relation to refunds of employer contributions made on or after 13 September 2019.
3. Section 35 of the Pensions Act has been amended to require Trustees to have consent in writing from a member who is an OW in order to make transfer payments to meet the provisions of Section 34 (3) of the Pensions Act.

### IMPACT OF THE OUTGOING WORKER DIRECTIVE

- Leavers who meet the definition of an OW, and who are entitled to take a refund of contributions (i.e. are not entitled to a statutory preserved benefit), are now entitled to a refund of the value of the employer contributions made on or after 13 September 2019 element of their fund.
- Irish Life will require individuals who request a refund of their own contributions to confirm whether they are an OW, in which case we will also refund the employer element to them. Trustees will need such members to provide evidence they are an OW (if they have not already done so when a person was joining their plan) so such individuals can benefit from a refund of the value of employer contributions made on or after 13 September 2019.
- Trustees will need to have the written consent of an OW before they can make transfer payments in line with Section 34(3) of the Pensions Act 1990. These provisions cover transfers of preserved benefits within certain criteria.
- The waiting period for joining the pension plan for an OW can be no longer than 12 months.

## PROPOSED PROCESS

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For existing cases between September 2019 and June 2020 the value of the employee contributions was paid to the member but the value of the employer contribution was held back pending us considering the process to be applied and instruction from the Trustees. We will write to the members impacted to ascertain if they are an OW at regular intervals and once OW status confirmed we will pay the value of the employer contributions accordingly.

### LEAVING SERVICE

From 1 June 2020 onwards, after receiving a signed Option form requesting a refund of contributions, we will send a declaration to the member, on behalf of the Trustees, to establish OW status.

No refund will be paid to the member until the OW status is confirmed.

If the member is an OW the following is required:

1. If moving to an EU member state - evidence of the employment on employer headed paper
2. If immediately previously to joining the current plan that the member come from another EU member state – evidence of membership in an occupational pension plan in that member state

If the member provides evidence that they are an OW, the refund of employee and employer contributions (made on or after 13 September 2019) will be paid to the member, net of 20% tax. Confirmation will also be sent to Revenue. Before proceeding with our proposed process we will ask all Trustees to confirm if they are happy to proceed on this basis.

If the member confirms that they are not an OW we can refund the value of the employer contributions to the employer with the consent of the Trustees.

### TRANSFERS

Processes and forms are being revised to capture OW status for transfers in and out.

## ISSUES FOR TRUSTEES AND EMPLOYERS

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### PRINCIPLE OF EQUAL TREATMENT

The Pensions Authority guidance note says that Trustees and Employers should get independent legal advice in relation to pensions equality treatment as the legislation does not apply to leavers who remain in Ireland or go to work in a non-EU country. The normal vesting rules of the Scheme apply to them.

### RECORDING OW STATUS

The Pensions Authority has said it is a matter for Trustees and Employers to determine whether a member is an OW.

- At present Irish Life are capturing this information at the point where it becomes most relevant – i.e. claim stage.
- Employers may wish to consider capturing outgoing worker status as part of their global mobility processes, for workers moving internationally within their company. This would potentially save time and effort for the individuals in managing their pension entitlements. We are happy to work with employers to review the new entrant process in this regard.

# OPTIONS FOR CONSIDERATION BY TRUSTEES AND EMPLOYERS

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## WAIVING THE VESTING PERIOD OF THE PLAN

- Where immediate vesting (i.e. entitlement to the value of both Employer and Employee contributions) is not currently granted, Employers and Trustees may wish to consider this option.
- Waiving the vesting period would grant all members fully vested rights on leaving service. However, leavers who remain in Ireland or who move to a non-EU country who have less than 2 years' service would only have an entitlement to the refund of the value of the employee contributions unlike an OW.
- Employees who can prove that they are Outgoing Workers would still be able to claim a refund of the value of their own and the employers contributions made since 13 September 2019.

## GIVING THE VALUE OF EMPLOYER CONTRIBUTIONS TO ALL EMPLOYEES

- As a further step, Employers may consider the option of waiving their right to receive a refund of Employer contributions in respect of non-outgoing workers who leave with less than two years' service and give all leavers regardless of OW status the value of the employer contributions.
- At present the Revenue is not permitting members other than OWs to have a refund of the value of the employer contributions.

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