

## **PART C**

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### **APPENDICES TO RULES FOR OCCUPATIONAL RETIREMENT SCHEMES**

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## APPENDIX 12

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(SLC 1.2.7 of Part B of the Pension Rules for Occupational Retirement Schemes)

### **MINIMUM REQUIREMENTS FOR ENHANCING EMPLOYEE MOBILITY BY IMPROVING THE ACQUISITION AND PRESERVATION OF PENSION RIGHTS**

#### Scope

- 1.1 This Appendix aims to reflect and take into account the minimum requirements laid down in [Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights, \(the "EU Mobility Directive"\)](#).

#### Application

- 1.2 This Appendix should apply only to:
- (a) an Occupational Retirement Scheme established on a voluntary basis and duly licensed under the Act, in relation to Members of such Scheme who are employed persons (including self-employed persons) and who may move to another employment within the same Member State or EEA State, or to another Member State or EEA State; and
  - (b) periods of employment falling after the 21st May 2018.
- 1.3 This Appendix shall not apply to the following:
- (a) closed Occupational Retirement Schemes that, as from the 6th May 2014, no longer accept new active members and remain closed to them;
  - (b) Occupational Retirement Schemes that are subject to measures involving the intervention of authorities which are competent for the purposes of the reorganisation measures (which are intended to preserve or restore the Scheme's financial situation) or the winding-up proceedings in Malta, and this exclusion shall not extend beyond the end of that intervention;
  - (c) invalidity and, or survivor's benefits attached to Occupational Retirement Schemes, with the exception of the specific provisions relating to survivor's benefits found in paragraphs 1.6 to 1.16 of this Appendix;
  - (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 contributions made in relation to retirement provision.

### Definitions

1.4 For the purposes of this Appendix:

'active scheme members' means employees whose current employment relationship entitles them or is likely to entitle them, after fulfilling any acquisition conditions, to Retirement Benefits in accordance with the Scheme Document of the Occupational Retirement Scheme;

'waiting period' means the period of employment, if any, as may be required by the Occupational Retirement Scheme, **or by the employer** before an employee becomes eligible for membership of the Occupational Retirement Scheme;

'vesting period' means the period of active membership of a scheme, if any, as may be required by the Occupational Retirement Scheme, in order to trigger entitlement to the accumulated pension rights;

'vested pension rights' means any entitlement to the accumulated pension rights after the fulfilment of any acquisition conditions, as may be specified by the Occupational Retirement Scheme;

'outgoing employee' means an active scheme member whose current employment relationship terminates for reasons other than becoming eligible for Retirement Benefits and who moves to another employment within the same Member State or EEA State, or in another Member States or EEA State;

'deferred beneficiary' means a former active scheme member who has vested pension rights in an Occupational Retirement Scheme and is not yet in receipt of Retirement Benefits from that scheme;

'dormant pension rights' means vested pension rights retained within the Occupational Retirement Scheme in which they have been accrued by a deferred beneficiary;

'value of the dormant pension rights' means the capital value of the pension rights calculated in accordance with national law and practice.

### Conditions governing the acquisition of rights under Occupational Retirement Schemes

1.5 The Occupational Retirement Scheme shall ensure that:

- (a) where a vesting period or a waiting period, or both, is applied by the Occupational Retirement Scheme, the total combined period shall under no circumstances exceed three years for outgoing employees;
- (b) where a minimum age is stipulated for the vesting of pension rights, that age shall not exceed 21 years for outgoing employees; and
- (c) where an outgoing employee has not yet acquired vested pension rights when the employment relationship is terminated:

- (i) in the case of an Occupational Retirement Scheme set up as a Defined Benefit Scheme, such Scheme is to reimburse the contributions paid by the outgoing employee, or paid on behalf of the outgoing employee;
- (ii) in the case of an Occupational Retirement Scheme set up as a Defined Contribution Scheme, such Scheme is to provide an outgoing employee bearing the investment risk, either:
  - (aa) the sum of the contributions made; or
  - (bb) the investment value arising from the said contributions;

and, upon joining the Scheme, the Retirement Scheme Administrator shall inform the Member as to whether such Member would be entitled to receive either the sum of contributions or the investment value, in the case where the employment relationship is terminated.

#### Preservation of Dormant Pension Rights

- 1.6 The Retirement Scheme Administrator administering an Occupational Retirement Scheme shall ensure that the vested pension rights of outgoing employees can remain as dormant pension rights in the Occupational Retirement Scheme in which they vested. The initial value of those vested pension rights for the purposes of paragraph 1.7 shall be calculated at the moment in time when an outgoing employee's current employment relationship terminates.
- 1.7 The Retirement Scheme Administrator administering the Occupational Retirement Scheme shall, having regard to the type of Occupational Retirement Scheme, ensure that the dormant pension rights of outgoing employees and of their survivors', or their values, are treated in an equivalent manner, in line with the value of the rights of active scheme members or the development of Retirement Benefits currently in payment, or are treated in other ways which are considered as fair, such as:
  - (a) in the case of an Occupational Retirement Scheme set up as a Defined Contribution Scheme:
    - (i) where the pension rights in the Occupational Retirement Scheme are acquired as an entitlement to a nominal sum, by safeguarding the nominal value of the dormant pension rights;
    - (ii) where the value of accrued pensions rights changes over time, by adjusting the value of the dormant pension rights by applying:
      - (aa) a rate of interest built into the Occupational Retirement Scheme; or
      - (bb) the return on investments derived by the Occupational Retirement Scheme; or

- (b) in the case of an Occupational Retirement Scheme set up as a Defined Benefit Scheme, where the value of the accrued pension rights is adjusted, for instance, in accordance with the inflation rate or salary levels, by adjusting the value of the dormant pension rights accordingly.
- 1.8 Where the Retirement Scheme Administrator administering the Occupational Retirement Scheme adjusts the value of dormant pension rights of outgoing employees and of their survivors, pursuant to paragraph 1.7, it shall take account of the type of Scheme, the interests of the deferred beneficiaries, the interests of the remaining active scheme members and the interests of retired beneficiaries.
- 1.9 The Retirement Scheme Administrator shall not retain the vested pension rights of an outgoing worker but pay, with the worker's informed consent, including as regards applicable charges, a capital sum equivalent to the value of the vested pension rights to the outgoing worker, as long as the value of the vested pension rights does not exceed the capital sum threshold of €3,000.

Provision of Information

- 1.10 The Retirement Scheme Administrator of an Occupational Retirement Scheme shall provide active scheme members with information on the consequences which a termination of employment would have on their pension rights, **upon request and as a minimum** on an annual basis. This information shall be provided clearly and in writing and shall as a minimum include the following:
- (a) the conditions governing the acquisition of 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 on which the information is provided; and
  - (c) the conditions governing the future treatment of dormant pension rights.
- 1.11 Where the Retirement Scheme Administrator allows early access to vested pension rights through the payment of a capital sum, the information provided shall also include a written statement that the member should consider taking advice on investing that capital sum for retirement provision.
- 1.12 The Retirement Scheme Administrator of an Occupational Retirement Scheme shall, upon request, provide deferred beneficiaries, clearly and in writing, with information, regarding the following:
- (a) the value of their dormant pension rights or an assessment of the 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.
- 1.13 The conditions governing the treatment of dormant pension rights mentioned in paragraphs 1.10 (b) and 1.10 (c) of this Appendix shall 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, and may include, but is not limited to, the imposition of a condition which ensures that the charges applicable to outgoing workers' and their survivors' dormant pension rights are in line with the charges applicable to active scheme members' and their survivors' pension rights.

- 1.14 For survivor's benefits attached to Occupational Retirement Schemes, paragraph 1.10 shall apply to surviving beneficiaries as regards the payment of survivor's benefits.
- 1.15 The requirements provided in paragraphs 1.9 to 1.11 shall be without prejudice to and shall be in addition to the obligations of Occupational Retirement Schemes under the relevant information provisions laid down in Article 11 of the Occupational Pensions Directive, as amended from time to time.
- 1.16 An Occupational Retirement Scheme shall, without prejudice to any other requirements laid down in the Pension Rules:
- (a) comply with the minimum requirements contained in this Appendix and shall not provide less favourable protection than that provided in this Appendix; and
  - (b) expressly provide for the requirements contained in this Appendix in the Scheme's Constitutional Document, Scheme Document and Scheme Particulars.