



Pensions Act 2004

2004 CHAPTER 35

PART 1

THE PENSIONS REGULATOR

Trustees of occupational pension schemes

33 Prohibition orders

For section 3 of the Pensions Act 1995 (c. 26) (prohibition orders) substitute—

“3 Prohibition orders

- (1) The Authority may by order prohibit a person from being a trustee of—
 - (a) a particular trust scheme,
 - (b) a particular description of trust schemes, or
 - (c) trust schemes in general,if they are satisfied that he is not a fit and proper person to be a trustee of the scheme or schemes to which the order relates.
- (2) Where a prohibition order is made under subsection (1) against a person in respect of one or more schemes of which he is a trustee, the order has the effect of removing him.
- (3) The Authority may, on the application of any person prohibited under this section, by order revoke the order either generally or in relation to a particular scheme or description of schemes.
- (4) An application under subsection (3) may not be made—
 - (a) during the period within which the determination to exercise the power to make the prohibition order may be referred to the Tribunal under section 96(3) or 99(7) of the Pensions Act 2004, and

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- (b) if the determination is so referred, until the reference, and any appeal against the Tribunal’s determination, has been finally disposed of.
- (5) A revocation made at any time under this section cannot affect anything done before that time.
- (6) The Authority must prepare and publish a statement of the policies they intend to adopt in relation to the exercise of their powers under this section.
- (7) The Authority may revise any statement published under subsection (6) and must publish any revised statement.
- (8) In this section “the Tribunal” means the Pensions Regulator Tribunal established under section 102 of the Pensions Act 2004.”

Commencement Information

- II** S. 33 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7** (with transitional provisions and savings in [S.I. 2005/695](#), arts. 5(8), 6, Schs. 2, 3 (as amended by [S.I. 2005/1108](#), art. 3(b))

34 Suspension orders

In section 4 of the Pensions Act 1995 (c. 26) (suspension orders)—

- (a) after subsection (1)(a) insert—
 - “(aa) pending consideration being given to the institution of proceedings against him for an offence involving dishonesty or deception,”
- (b) in subsection (2)—
 - (i) in paragraph (a) after “paragraph (a)” insert “ or (aa) ”,
 - (ii) after “have effect” insert “ in relation to a trust scheme ”, and
 - (iii) after “section 3(1)” insert “ in relation to that scheme ”,
- (c) after subsection (5) insert—
 - “(5A) An application under subsection (5) may not be made—
 - (a) during the period within which the determination to exercise the power to make an order under subsection (1) may be referred to the Tribunal under section 96(3) or 99(7) of the Pensions Act 2004, and
 - (b) if the determination is so referred, until the reference, and any appeal against the Tribunal’s determination, has been finally disposed of.”, and
- (d) after subsection (6) insert—
 - “(7) In this section “the Tribunal” means the Pensions Regulator Tribunal established under section 102 of the Pensions Act 2004.”

Commencement Information

- I2** S. 34 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7** (with transitional provisions and savings in [S.I. 2005/695](#), arts. 5(8), 6, Schs. 2, 3 (as amended by [S.I. 2005/1108](#), art. 3(b))

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35 Appointments of trustees by the Regulator

(1) In section 7 of the Pensions Act 1995 (appointment of trustees)—

- (a) omit subsection (4), and
- (b) after subsection (5) insert—

“(5A) An application may be made to the Authority in relation to a trust scheme by—

- (a) the trustees of the scheme,
- (b) the employer, or
- (c) any member of the scheme,

for the appointment of a trustee of the scheme under subsection (3) (a) or (c).”

(2) In section 8 of that Act (consequences of appointment of trustees under section 7), for subsections (1) and (2) substitute—

“(1) An order under section 7 appointing a trustee may provide for any fees and expenses of trustees appointed under the order to be paid—

- (a) by the employer,
- (b) out of the resources of the scheme, or
- (c) partly by the employer and partly out of those resources.

(2) Such an order may also provide that an amount equal to the amount (if any) paid out of the resources of the scheme by virtue of subsection (1)(b) or (c) is to be treated for all purposes as a debt due from the employer to the trustees of the scheme.”

Commencement Information

I3 S. 35 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

36 Independent trustees

(1) Part 1 of the Pensions Act 1995 (c. 26) (occupational pension schemes) is amended as follows.

(2) In section 22 (circumstances in which provisions relating to independent trustees apply)—

- (a) in subsection (1)(b) omit “or” at the end of sub-paragraph (i) and after that sub-paragraph insert—

“(ia) the interim receiver of the property of a person who is the employer in relation to the scheme, or”,

- (b) in subsection (2), after “a scheme” insert “ by virtue of subsection (1) ”,
- (c) after subsection (2) insert—

“(2A) To the extent that it does not already apply by virtue of subsection (1), this section also applies in relation to a trust scheme—

- (a) at any time during an assessment period (within the meaning of section 132 of the Pensions Act 2004) in relation to the scheme, and

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- (b) at any time, not within paragraph (a), when the scheme is authorised under section 153 of that Act (closed schemes) to continue as a closed scheme.”, and
- (d) after subsection (2A) (inserted by paragraph (c) above) insert—
 - “(2B) The responsible person must, as soon as reasonably practicable, give notice of an event within subsection (2C) to—
 - (a) the Authority,
 - (b) the Board of the Pension Protection Fund, and
 - (c) the trustees of the scheme.
 - (2C) The events are—
 - (a) the practitioner beginning to act as mentioned in subsection (1)(a), if immediately before he does so this section does not apply in relation to the scheme;
 - (b) the practitioner ceasing to so act, if immediately after he does so this section does not apply in relation to the scheme;
 - (c) the official receiver beginning to act in a capacity mentioned in subsection (1)(b)(i), (ia) or (ii), if immediately before he does so this section does not apply in relation to the scheme;
 - (d) the official receiver ceasing to act in such a capacity, if immediately after he does so this section does not apply in relation to the scheme.
 - (2D) For the purposes of subsection (2B) “the responsible person” means—
 - (a) in the case of an event within subsection (2C)(a) or (b) the practitioner, and
 - (b) in the case of an event within subsection (2C)(c) or (d), the official receiver.
 - (2E) Regulations may require prescribed persons in prescribed circumstances where this section begins or ceases to apply in relation to a trust scheme by virtue of subsection (2A) to give a notice to that effect to—
 - (a) the Authority,
 - (b) the Board of the Pension Protection Fund, and
 - (c) the trustees of the scheme.
 - (2F) A notice under subsection (2B), or regulations under subsection (2E), must be in writing and contain such information as may be prescribed.”
- (3) For sections 23 and 24 (appointment of independent trustees) substitute—

“23 Power to appoint independent trustees

- (1) While section 22 applies in relation to a trust scheme, the Authority may by order appoint as a trustee of the scheme a person who—
 - (a) is an independent person in relation to the scheme, and
 - (b) is registered in the register maintained by the Authority in accordance with regulations under subsection (4).

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- (2) In relation to a particular trust scheme, no more than one trustee may at any time be an independent trustee appointed under subsection (1).
 - (3) For the purposes of this section a person is independent in relation to a trust scheme only if—
 - (a) he has no interest in the assets of the employer or of the scheme otherwise than as trustee of the scheme,
 - (b) he is neither connected with, nor an associate of—
 - (i) the employer,
 - (ii) any person for the time being acting as an insolvency practitioner in relation to the employer, or
 - (iii) the official receiver acting in any of the capacities mentioned in section 22(1)(b) in relation to the employer, and
 - (c) he satisfies any prescribed requirements;and any reference in this Part to an independent trustee is to be construed accordingly.
 - (4) Regulations must provide for the Authority to compile and maintain a register of persons who satisfy the prescribed conditions for registration.
 - (5) Regulations under subsection (4) may provide—
 - (a) for copies of the register or of extracts from it to be provided to prescribed persons in prescribed circumstances;
 - (b) for the inspection of the register by prescribed persons in prescribed circumstances.
 - (6) The circumstances which may be prescribed under subsection (5)(a) or (b) include the payment by the person to whom the copy is to be provided, or by whom the register is to be inspected, of such reasonable fee as may be determined by the Authority.
 - (7) This section is without prejudice to the powers conferred by section 7.”
- (4) In section 25 (appointment and powers of independent trustees: further provisions)—
- (a) for subsection (4)(a) substitute—

“(a) he must as soon as reasonably practicable give written notice of that fact to the Authority, and”,
 - (b) after subsection (5) insert—

“(5A) Section 10 applies to any person who, without reasonable excuse, fails to comply with subsection (4)(a).”, and
 - (c) for subsection (6) substitute—

“(6) An order under section 23(1) may provide for any fees and expenses of the trustee appointed under the order to be paid—

 - (a) by the employer,
 - (b) out of the resources of the scheme, or
 - (c) partly by the employer and partly out of those resources.
- (7) Such an order may also provide that an amount equal to the amount (if any) paid out of the resources of the scheme by virtue of subsection (6)

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(b) or (c) is to be treated for all purposes as a debt due from the employer to the trustees of the scheme.

(8) Where, by virtue of subsection (6)(b) or (c), an order makes provision for any fees or expenses of the trustee appointed under the order to be paid out of the resources of the scheme, the trustee is entitled to be so paid in priority to all other claims falling to be met out of the scheme's resources.”

Commencement Information

- I4** S. 36(1)(4) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes in so far as not already in force (6.4.2005) by [S.I. 2005/275, art. 2\(7\)](#), **Sch. Pt. 7**
- I5** S. 36(2)(3) in force at 10.2.2005 for specified purposes and 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), **Sch. Pt. 3**

37 Disqualification

In section 30 of the Pensions Act 1995 (c. 26) (consequences of disqualification under section 29), for subsection (1) substitute—

“(1) Where a person who is a trustee of a trust scheme becomes disqualified under section 29 in relation to the scheme, his becoming so disqualified has the effect of removing him as a trustee.”

Commencement Information

- I6** S. 37 in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), **Sch. Pt. 7**

Status:

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Changes to legislation:

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