

2005 No. 169

PENSIONS

**The Occupational Pension Schemes (Independent Trustee)
Regulations (Northern Ireland) 2005**

Made - - - - - *25th March 2005*

Coming into operation *11th April 2005*

The Department for Social Development, in exercise of the powers conferred on it by sections 109(1)(d), (2), (3) and (4), 164(1) and (4) and 177(2) and (3) of the Pension Schemes (Northern Ireland) Act 1993(a) and Articles 22(2F), 23(4), (5)(a) and (6), 115(1), 122(3) and 166(3) of the Pensions (Northern Ireland) Order 1995(b), and now vested in it(c), and Articles 7(5)(a), 88(2)(q), 92(5)(u) and 287(2) and (3) of, and paragraph 2(d) of Schedule 1 to, the Pensions (Northern Ireland) Order 2005(d) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Independent Trustee) Regulations (Northern Ireland) 2005 and shall come into operation on 11th April 2005.

(2) In these Regulations –

“the 1995 Order” means the Pensions (Northern Ireland) Order 1995;

“the 2005 Order” means the Pensions (Northern Ireland) Order 2005;

“applicant” means a person who applies to be registered in the trustee register;

“controller” means, where the applicant is a company, a person who holds 10 per cent. or more of the shares in the applicant and exercises significant influence over the management of the applicant by virtue of that shareholding;

“key person” in relation to an applicant who is not an individual means a person who has overall management responsibility for the pension trustee work conducted by the applicant;

“officer” means –

(a) a relevant individual who has significant influence over the management of the pension trustee work, or

(b) any person whose signature may authorise, in part or in full, a transaction involving the assets of any scheme for which the applicant acts as trustee;

“pension trustee work” means the work as a trustee carried out by the applicant in relation to trust schemes;

(a) 1993 c. 49; section 164 was substituted by Article 151(1) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

(b) S.I. 1995/3213 (N.I. 22); Article 22(2F) is inserted, and Article 23 is substituted, by Article 32(2)(d) and (3) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))

(c) See Article 8(b) of S.R. 1999 No. 481

(d) S.I. 2005/255 (N.I. 1)

“pension scheme registration number”, in relation to a scheme, refers to the number given to the scheme when it is placed on the register of occupational and personal pension schemes compiled and maintained by the Regulator^(a);

“the Regulator” means the Pensions Regulator;

“relevant individual” means a director, member of the committee of management, chief executive, designated member in relation to a limited liability partnership, partner or controller;

“trustee register” means the register compiled and maintained by the Regulator under regulation 2 below,

and other expressions used in these Regulations have the same meaning as in Part II of the 1995 Order (occupational pensions).

(3) In these Regulations, any reference to a numbered Article is a reference to the Article of the 1995 Order bearing that number.

(4) The Interpretation Act (Northern Ireland) 1954^(b) shall apply to these Regulations as it applies to an Act of the Assembly.

The trustee register

2. The Regulator must compile and maintain a register of persons who satisfy the conditions set out in regulation 3.

Conditions for registration

3. The conditions for registration prescribed for the purposes of Article 23(4) (power to appoint independent trustees) are –

- (a) the applicant must not, at the time he is making the application or at any time while he is registered in the trustee register, be any of the following –
 - (i) the subject of a prohibition order made under Article 3^(c) (prohibition orders);
 - (ii) the subject of a suspension order made under Article 4^(d) (suspension orders), or
 - (iii) disqualified for being a trustee of any trust scheme on any of the grounds set out in Article 29(1) (persons disqualified for being trustees), or by virtue of being the subject of an order made under Article 29(3) or 4^(e);
- (b) the Regulator is satisfied that –
 - (i) the applicant has sufficient relevant experience of occupational pension schemes;
 - (ii) the applicant is a fit and proper person to act as a trustee of an occupational pension scheme;
 - (iii) the applicant operates sound administrative and accounting procedures, and
 - (iv) the applicant has adequate indemnity insurance cover;
- (c) where the applicant is not an individual –
 - (i) each officer of the applicant must satisfy the conditions specified in paragraphs (a) and (b)(ii), and
 - (ii) each key person must satisfy the conditions specified in paragraphs (a) and (b)(i) and (ii);
- (d) the applicant has premises in the United Kingdom from which he conducts his business as a trustee of an occupational pension scheme, and he discloses the address of those premises to the Regulator;
- (e) the applicant agrees –

(a) Under section 59(1) of the Pensions Act 2004 (c. 35) the Regulator is required to compile and maintain a register of occupational and personal pension schemes which are or have been “registrable schemes”; *see also* regulation 2 of S.R. 2005 No. 93

(b) 1954 c. 33 (N.I.)

(c) Article 3 is substituted by Article 29 of the Pensions (Northern Ireland) Order 2005

(d) Article 4 is amended by Article 30 of, and paragraph 29 of Schedule 10 to, the Pensions (Northern Ireland) Order 2005

(e) Article 29(3) and (4) is amended by Schedule 11 to the Pensions (Northern Ireland) Order 2005

- (i) to have his fees and costs scrutinised by an independent adjudicator and to be bound by that adjudicator’s final adjudication as to his fees and costs;
- (ii) to the Regulator disclosing his name, business address and the areas of trustee work in which he specialises on the version of the trustee register which is to be publicly available;
- (iii) to comply with reasonable requests of the Regulator to provide information to the Regulator, and
- (iv) to inform the Regulator as soon as is reasonably practicable if he becomes disqualified under Article 29 –
 - (aa) for one of the reasons set out in paragraph (1) of that Article, or
 - (bb) by virtue of being the subject of a court order referred to in paragraph (3)(b) of that Article.

Refusing to register an applicant in the trustee register

4.—(1) The function set out in paragraph (2) is prescribed for the purposes of Article 88(2)(q) of the 2005 Order (the Regulator’s procedure in relation to its regulatory functions).

(2) The function referred to in paragraph (1) is the Regulator’s duty under Article 23(4) and regulation 2 to compile and maintain a register of persons who satisfy prescribed conditions to act as independent trustees, but only in so far as that duty entails refusing to register an applicant in that register.

(3) The Regulator may, in such circumstances as it sees fit, delegate the function specified in paragraph (2) to the Determinations Panel^(a).

Removal from the trustee register – amendment of Schedule 2 to the 2005 Order

5. In Schedule 2 to the 2005 Order (the reserved regulatory functions) after paragraph 13 there shall be inserted the following paragraph –

“13A. The duty under Article 23(4), and regulations made thereunder, to compile and maintain a register of persons who satisfy prescribed conditions to act as independent trustees, but only in so far as that duty entails the removal of a person from that register if he does not satisfy, or no longer satisfies, any such prescribed condition.”.

Removal from the trustee register – prescribed regulatory function

6.—(1) The function set out in paragraph (2) is prescribed for the purposes of Article 92(5)(u) of the 2005 Order (special procedure: applicable cases).

(2) The function referred to in paragraph (1) is the Regulator’s duty under Article 23(4), and regulations made thereunder, to compile and maintain a register of persons who satisfy prescribed conditions to act as independent trustees, but only in so far as that duty entails the removal of a person from that register if he does not satisfy, or no longer satisfies, any such prescribed condition.

Removal from the trustee register – supplementary provision

7. The validity of the appointment of an independent trustee under Article 23(1) or any action taken by him during that appointment is not to be affected by that trustee’s subsequent removal from the register.

Notification

8.—(1) A notice given under Article 22(2B)(b) (circumstances in which provisions relating to independent trustees apply) shall contain the information specified in paragraph (2).

(2) The information specified for the purposes of paragraph (1) is –

(a) The Determinations Panel is established under section 9 of the Pensions Act 2004
 (b) Article 22(2B) is inserted by Article 32(2)(d) of the Pensions (Northern Ireland) Order 2005

- (a) that the notice is a notice given under Article 22(2B);
- (b) the date of the notice;
- (c) the name and address of the scheme;
- (d) the pension scheme registration number;
- (e) the names and addresses of all trustees of the scheme;
- (f) the name of the employer or employers to which the circumstances set out in Article 22(1)(a) apply;
- (g) the name and address of the responsible person giving the notice, and
- (h) the date of the responsible person's appointment, or the date on which that appointment is to end.

Access to the trustee register

9.—(1) The Regulator shall provide the most recent copy of the register to any person on request, and may do so either –

- (a) free of charge, or
 - (b) on the payment by that person of a charge determined by the Regulator which does not exceed the expense incurred in copying, packing and posting the copy.
- (2) The Regulator may publish the register in any way.

Multi-employer schemes

10.—(1) Where Article 22 applies in relation to a trust scheme which is a multi-employer scheme, by virtue of the circumstances set out in paragraph (1)(a) or (b) of that Article applying to at least one employer in that scheme, Articles 22 to 26(b) (independent trustees) are modified so that references to the employer in those Articles are to be treated as if they were references to each employer to which Article 22 applies.

(2) In this regulation “multi-employer scheme” means a trust scheme in relation to which there is more than one employer.

Cases where a partnership is the employer

11.—(1) Articles 22 to 26 are modified as specified in paragraphs (2) and (3) in their application to any case where –

- (a) a partnership is the employer or one of the employers in relation to a trust scheme;
- (b) the partnership is insolvent, and
- (c) the Northern Ireland courts have jurisdiction to wind up the insolvent partnership.

(2) Article 22(1) shall be modified so as to apply in relation to the scheme –

- (a) if a person begins to act as an insolvency practitioner in relation to the insolvent partnership, or
- (b) if the official receiver becomes the liquidator or provisional liquidator of the insolvent partnership.

(3) Where, by virtue of paragraph (2), Article 22 applies in relation to the scheme, paragraphs (2) to (3) of that Article and Articles 23 to 26 shall have effect as if references in those provisions to a company included references to the insolvent partnership.

Extension of the meaning of “employer”

12. For the purposes of Articles 22 to 26 and these Regulations, references to the employer shall include a person who would have been an employer to whom the circumstances set out

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- (a) Article 22 was amended by section 43(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and is amended by Article 32(2) of, and paragraph 34 of Schedule 10 to, and Schedule 11 to, the Pensions (Northern Ireland) Order 2005
 - (b) Articles 23 and 24 are substituted by Article 32(3) of the Pensions (Northern Ireland) Order 2005; Article 25 is amended by Article 32(4) of, and paragraph 35 of Schedule 10 to, and Schedule 11 to, that Order; Article 26 is amended by paragraph 36 of Schedule 10 to that Order

in sub-paragraph (a) or (b) of Article 22(1) apply, but for the fact that, immediately before an insolvency practitioner or the official receiver began to act as set out in those sub-paragraphs, that person no longer employed any persons in the description of employment to which the scheme in question relates.

Disclosure requirements and penalty

13.—(1) A trustee appointed to a scheme by order made under Article 7(1) or (3)(a) (appointment of trustees) and an independent trustee appointed to a scheme by order made under Article 23(1) (both referred to in this regulation as “the appointed trustee”) must furnish the information specified in paragraph (2) in accordance with the following provisions of this regulation.

(2) The information specified for the purposes of paragraph (1) is –

- (a) the name and address of the appointed trustee;
- (b) the scale of fees that will be chargeable by the appointed trustee and payable by the scheme;
- (c) details of each of the amounts charged to the scheme by the appointed trustee in the past 12 months.

(3) The appointed trustee must furnish the information specified in paragraph (2)(a) in writing to every member or relevant trade union as of course within a reasonable period following his appointment.

(4) The appointed trustee must furnish any of the information specified in paragraph (2) in writing to any member or prospective member or relevant trade union on request (not being a request made less than 12 months after the last occasion on which such information was furnished to the same person or trade union) within a reasonable period following the request being made.

(5) Where the appointed trustee fails to take all reasonable steps to comply with any requirement imposed upon him by this regulation, the Regulator may require him to pay, within 28 days, a penalty which –

- (a) in the case of an individual shall not exceed £5,000, and
- (b) in any other case shall not exceed £50,000.

(6) In this regulation –

“member” –

- (a) does not include a deferred member whose present address is not known to the trustees and in respect of whom correspondence sent by the trustees to his last known address has been returned, and
- (b) includes a person who is in receipt of benefits under the scheme by virtue of having been a dependant of someone who was a member;

“prospective member” means any person who, under the terms of his contract of service and the scheme rules –

- (a) is eligible, at his own option, to become a member of the scheme;
- (b) will become so eligible if he continues in the same employment for a sufficiently long period;
- (c) will be admitted to it automatically unless he makes an election not to become a member, or
- (d) may be admitted to it subject to the consent of his employer;

“relevant trade union” means an independent trade union recognised to any extent for the purposes of collective bargaining in relation to members and prospective members of the scheme in question;

“request” means a request in writing.

(a) Article 7(1) is amended by paragraph 30 of Schedule 10 and Schedule 11 to the Pensions (Northern Ireland) Order 2005

(7) Any question as to whether an organisation is a relevant trade union shall be referred to an industrial tribunal.

(8) Any information which this regulation requires the appointed trustee to furnish as of course to a member who is not in any employment to which the scheme relates shall be deemed to have been so furnished if it was sent to him by ordinary post to his last address known to the trustees.

Revocations

14. The following regulations are hereby revoked –

- (a) the Occupational Pension Schemes (Independent Trustee) Regulations (Northern Ireland) 1997(**a**);
- (b) regulation 9 of the Personal and Occupational Pension Schemes (Miscellaneous Amendments No. 2) Regulations (Northern Ireland) 1997(**b**);
- (c) regulations 2 and 3 of the Occupational Pension Schemes (Winding Up Notices and Reports, etc.) Regulations (Northern Ireland) 2002(**c**).

Sealed with the Official Seal of the Department for Social Development on 25th March 2005.

(L.S.)

John O'Neill

A senior officer of the Department for Social Development

(a) S.R. 1997 No. 99
(b) S.R. 1997 No. 544
(c) S.R. 2002 No. 74

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make provision about the register of trustees and further provision about independent trustees.

Regulation 2 requires the Pensions Regulator to compile and maintain a register of persons who meet the conditions for being in the register. The register is referred to in these Regulations as the trustee register.

Regulation 3 sets out the conditions to be met to be eligible to be registered in the trustee register.

Regulation 4 prescribes the function of refusing to register a trustee in the trustee register as a regulatory function, for the purposes of Article 88(2) of the Pensions (Northern Ireland) Order 2005 (“the 2005 Order”), and enables the Regulator to delegate this function to the Determinations Panel established under section 9 of the Pensions Act 2004 (c. 35).

Regulation 5 amends Schedule 2 to the 2005 Order by adding the function of removing a trustee from the trustee register to the list of reserved regulatory functions, that is, those functions which are exercisable only by the Determinations Panel.

Regulation 6 adds the function of removing trustees from the trustee register to the list of regulatory functions which are eligible to be carried out under the special procedure in cases of urgency.

Regulation 7 provides that an independent trustee’s appointment to a scheme and any actions taken during that appointment are not invalidated by his subsequent removal from the trustee register.

Regulation 8 sets out the information that must be included in a notice given under Article 22(2B) of the Pensions (Northern Ireland) Order 1995 (“the 1995 Order”).

Regulation 9 makes provision for copies of the trustee register to be provided to persons on request, and provides that a charge may be made to meet the costs of providing copies.

Regulations 10, 11 and 12 make certain modifications to Articles 22 to 26 of the 1995 Order, in respect of the application of those Articles to schemes in relation to which there is more than one employer, cases where the employer is a partnership, and schemes which have no members who are employees.

Regulation 13 requires an appointed trustee to notify certain persons of certain information in certain circumstances.

Regulation 14 makes consequential revocations.

Articles 22(2F) and 23(4) of the 1995 Order, some of the enabling provisions under which these Regulations are made, are inserted and substituted respectively by Article 32(2) and (3) of the 2005 Order. The Pensions (2005 Order) (Commencement No. 1 and Consequential and Transitional Provisions) Order (Northern Ireland) 2005 (S.R. 2005 No. 48 (C. 5)) provides for the coming into operation of Articles 7(5)(a), 88(2)(q) and 92(5)(u) of the 2005 Order, some of the other enabling provisions, and Article 32(2) and (3) of the 2005 Order, for the purpose only of authorising the making of regulations on 25th February 2005 and for all other purposes on 6th April 2005. The Pensions (2005 Order) (Commencement No. 2 and Transitional Provisions) Order (Northern Ireland) 2005 (S.R. 2005 No. 166 (C. 12)) provides for the coming into operation of paragraph 2(d) of Schedule 1 to the 2005 Order, another enabling provision, for the purpose only of authorising the making of regulations on 25th March 2005 and for all other purposes on 6th April 2005.

As these Regulations make, in so far as they are made under Part II of the 1995 Order and under the 2005 Order, in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement for consultation under Article 117(1) of the 1995 Order does not apply by virtue of paragraph (2)(e) of that Article and the requirement for consultation under Article 289(1) of the 2005 Order does not apply by virtue of paragraph (2)(e) of that Article.

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