



# Pensions Act 1995

## 1995 CHAPTER 26

### PART I

#### OCCUPATIONAL PENSIONS

##### *Independent trustees*

## 22 Circumstances in which following provisions apply.

- (1) This section applies in relation to a trust scheme—
- (a) if a person (referred to in this section and sections 23 [<sup>F1</sup>to 26] as “the practitioner”) begins to act as an insolvency practitioner in relation to a company which, or an individual who, is the employer in relation to the scheme, or
  - (b) if the official receiver becomes—
    - (i) the liquidator or provisional liquidator of a company which is the employer in relation to the scheme, <sup>F2</sup>...
    - [<sup>F3</sup>(ia) the interim receiver of the property of a person who is the employer in relation to the scheme, or]
    - (ii) the receiver and the manager, or the trustee, of the estate of a bankrupt who is the employer in relation to the scheme.
- (2) Where this section applies in relation to a scheme [<sup>F4</sup>by virtue of subsection (1)], it ceases to do so—
- (a) if some person other than the employer mentioned in subsection (1) becomes the employer, or
  - (b) if at any time neither the practitioner nor the official receiver is acting in relation to the employer;
- but this subsection does not affect the application of this section in relation to the scheme on any subsequent occasion when the conditions specified in subsection (1) (a) or (b) are satisfied in relation to it.

*Status: Point in time view as at 10/03/2022.*

*Changes to legislation: Pensions Act 1995, Cross Heading: Independent trustees is up to date with all changes known to be in force on or before 04 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[<sup>F5</sup>(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
- (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.]

[<sup>F6</sup>(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) In this section and sections 23 [<sup>F7</sup>to 26]—

“acting as an insolvency practitioner” and “official receiver” shall be construed in accordance with sections 388 and 399 of the <sup>M1</sup>Insolvency Act 1986,  
“bankrupt” has the meaning given by section 381 of the Insolvency Act 1986,  
“company” means a company [<sup>F8</sup>as defined in section 1(1) of the Companies Act 2006] or a company which may be wound up under Part V of the Insolvency Act 1986 (unregistered companies), <sup>F9</sup> ...

<sup>F10</sup> .....

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### Textual Amendments

- F1** Words in s. 22(1) substituted (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 12 para. 40](#); [S.I. 2005/695](#), art. 2(7), [Sch. 1](#)
- F2** Word in s. 22(1)(b)(i) repealed (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), ss. 36(2)(a), 322(1), [Sch. 13](#) (with s. 313); [S.I. 2005/275](#), art. 2(3)(a)(b), [Sch. Pt. 3](#)
- F3** S. 22(1)(b)(ia) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), ss. 36(2)(a), 322(1) (with s. 313); [S.I. 2005/275](#), art. 2(3)(a)(b), [Sch. Pt. 3](#)
- F4** Words in s. 22(2) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), ss. 36(2)(b), 322(1) (with s. 313); [S.I. 2005/275](#), art. 2(3)(a)(b), [Sch. Pt. 3](#)
- F5** S. 22(2A) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), ss. 36(2)(c), 322(1) (with s. 313); [S.I. 2005/275](#), art. 2(3)(a)(b), [Sch. Pt. 3](#)
- F6** S. 22(2B)-(2F) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), ss. 36(2)(d), 322(1) (with s. 313); [S.I. 2005/275](#), art. 2(3)(a)(b), [Sch. Pt. 3](#)
- F7** Words in s. 22(3) substituted (6.4.2005) by [Pensions Act 2004 \(c. 35\)](#), s. 322(1), [Sch. 12 para. 40](#); [S.I. 2005/695](#), art. 2(7), [Sch. 1](#)
- F8** Words in s. 22(3) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 1(2), [Sch. 1 para. 155\(3\)](#) (with art. 10)
- F9** Word in s. 22(3) omitted (30.11.2016) by virtue of [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, [Sch. 1 para. 13\(2\)\(b\)](#)
- F10** Words in s. 22(3) omitted (30.11.2016) by virtue of [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, [Sch. 1 para. 13\(2\)\(a\)](#)

### Modifications etc. (not altering text)

- C1** Ss. 22-26 excluded (31.12.2000) by [The Occupational Pension Schemes \(Republic of Ireland Schemes Exemption\) Regulations 2000 \(S.I. 2000/3198\)](#), regs. 1(1), 2, [Sch.](#)
- C2** Ss. 22-26 modified (11.4.2005) by [The Occupational Pension Schemes \(Independent Trustee\) Regulations 2005 \(S.I. 2005/703\)](#), regs. 1(1), [10-12](#)

### Commencement Information

- I1** S. 22 in force at 6.4.1997 by [S.I. 1997/664](#), art. 2(3), [Sch. Pt. 3](#)

### Marginal Citations

- M1** [1986 c. 45.](#)

## [<sup>F11</sup>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—
- is an independent person in relation to the scheme, and
  - is registered in the register maintained by the Authority in accordance with regulations under subsection (4).
- (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).

*Status: Point in time view as at 10/03/2022.*

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- (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.]

#### Textual Amendments

- F11** S. 23 substituted for ss. 23, 24 (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 36(3), 322(1)** (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3

#### Modifications etc. (not altering text)

- C1** Ss. 22-26 excluded (31.12.2000) by [The Occupational Pension Schemes \(Republic of Ireland Schemes Exemption\) Regulations 2000 \(S.I. 2000/3198\)](#), regs. 1(1), 2, **Sch.**
- C2** Ss. 22-26 modified (11.4.2005) by [The Occupational Pension Schemes \(Independent Trustee\) Regulations 2005 \(S.I. 2005/703\)](#), regs. 1(1), **10-12**

### <sup>F11</sup>24 **Members' powers to apply to court to enforce duty.**

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#### Textual Amendments

- F11** S. 23 substituted for ss. 23, 24 (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 36(3), 322(1)** (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3

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## 25 Appointment and powers of independent trustees: further provisions.

- (1) If, immediately before the appointment of an independent trustee under [F12section 23(1)], there is no trustee of the scheme other than the employer, the employer shall cease to be a trustee upon the appointment of the independent trustee.
- (2) While section 22 applies in relation to a scheme [F13and there is an independent trustee of the scheme appointed under section 23(1)]—
  - (a) any power vested in the trustees of the scheme and exercisable at their discretion may be exercised only by the independent trustee, and
  - (b) any power—
    - (i) which the scheme confers on the employer (otherwise than as trustee of the scheme), and
    - (ii) which is exercisable by him at his discretion but only as trustee of the power,may be exercised only by the independent trustee.
- F14 ...
- (3) While section 22 applies in relation to a scheme [F15and there is an independent trustee of the scheme appointed under section 23(1), the independent trustee may not] be removed from being a trustee by virtue only of any provision of the scheme.
- (4) If a trustee appointed under [F16section 23(1)] ceases to be an independent person [F17(within the meaning of section 23(3))], then—
  - [F18(a) he must as soon as reasonably practicable give written notice of that fact to the Authority, and]
  - (b) subject to subsection (5), he shall cease to be a trustee of the scheme.
- (5) If, in a case where subsection (4) applies, there is no other trustee of the scheme than the former independent trustee, he shall not cease by virtue of that subsection to be a trustee until such time as another trustee is appointed.
- [F19(5A) Section 10 applies to any person who, without reasonable excuse, fails to comply with subsection (4)(a).]
- [F20(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)(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.]

### Textual Amendments

**F12** Words in s. 25(1) substituted (6.4.2005) by [Pensions Act 2004 \(c. 35\), s. 322\(1\), Sch. 12 para. 41\(a\)](#); [S.I. 2005/695, art. 2\(7\), Sch. 1](#)

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- F13** Words in s. 25(2) inserted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 41(b)(i)**; S.I. 2005/695, art. 2(7), Sch. 1
- F14** Words in s. 25(2) repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 41(b)(ii), **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1
- F15** Words in s. 25(3) substituted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 41(c)**; S.I. 2005/695, art. 2(7), Sch. 1
- F16** Words in s. 25(4) substituted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 41(d)(i)**; S.I. 2005/695, art. 2(7), Sch. 1
- F17** Words in s. 25(4) inserted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 41(d)(ii)**; S.I. 2005/695, art. 2(7), Sch. 1
- F18** S. 25(4)(a) substituted (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 36(4)(a)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- F19** S. 25(5A) inserted (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 36(4)(b)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7
- F20** S. 25(6)-(8) substituted for s. 25(6) (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 36(4)(c)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7

#### Modifications etc. (not altering text)

- C1** Ss. 22-26 excluded (31.12.2000) by The Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations 2000 (S.I. 2000/3198), regs. 1(1), 2, **Sch.**
- C2** Ss. 22-26 modified (11.4.2005) by The Occupational Pension Schemes (Independent Trustee) Regulations 2005 (S.I. 2005/703), regs. 1(1), **10-12**

#### Commencement Information

- I2** S. 25 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

## 26 Insolvency practitioner or official receiver to give information to trustees.

- (1) Notwithstanding anything in section 155 of the <sup>M2</sup>Insolvency Act 1986 (court orders for inspection etc.), while section 22 applies in relation to a scheme [<sup>F21</sup>by virtue of subsection (1) of that section], the practitioner or official receiver must provide the trustees of the scheme, as soon as practicable after the receipt of a request, with any information which the trustees may reasonably require for the purposes of the scheme.
- (2) Any expenses incurred by the practitioner or official receiver in complying with a request under subsection (1) are recoverable by him as part of the expenses incurred by him in discharge of his duties.
- (3) The practitioner or official receiver is not required under subsection (1) to take any action which involves expenses that cannot be so recovered, unless the trustees of the scheme undertake to meet them.

#### Textual Amendments

- F21** Words in s. 26(1) inserted (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 42**; S.I. 2005/695, art. 2(7), Sch. 1

#### Modifications etc. (not altering text)

- C1** Ss. 22-26 excluded (31.12.2000) by The Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations 2000 (S.I. 2000/3198), regs. 1(1), 2, **Sch.**
- C2** Ss. 22-26 modified (11.4.2005) by The Occupational Pension Schemes (Independent Trustee) Regulations 2005 (S.I. 2005/703), regs. 1(1), **10-12**

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**Commencement Information**

**I3** S. 26 in force at 6.4.1997 by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

**Marginal Citations**

**M2** 1986 c. 45.

**<sup>F22</sup>26A Information to be given to the Authority in a s. 22 case**

.....

**Textual Amendments**

**F22** Ss. 26A-26C repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 43, **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1

**<sup>F22</sup>26B Information to be given in cases where s. 22 disapplied**

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**Textual Amendments**

**F22** Ss. 26A-26C repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 43, **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1

**<sup>F22</sup>26C Construction of ss. 26A and 26B**

.....

**Textual Amendments**

**F22** Ss. 26A-26C repealed (6.4.2005) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 43, **Sch. 13**; S.I. 2005/695, art. 2(7), Sch. 1

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