



Pensions Act 1995

1995 CHAPTER 26

PART I

OCCUPATIONAL PENSIONS

Trustees: general

27 Trustee not to be auditor or actuary of the scheme

- (1) A trustee of a trust scheme, and any person who is connected with, or an associate of, such a trustee, is ineligible to act as an auditor or actuary of the scheme.
- (2) Subsection (1) does not make a person who is a director, partner or employee of a firm of actuaries ineligible to act as an actuary of a trust scheme merely because another director, partner or employee of the firm is a trustee of the scheme.
- (3) Subsection (1) does not make a person who falls within a prescribed class or description ineligible to act as an auditor or actuary of a trust scheme.
- (4) A person must not act as an auditor or actuary of a trust scheme if he is ineligible under this section to do so.
- (5) In this section and section 28 references to a trustee of a trust scheme do not include—
 - (a) a trustee, or
 - (b) a trustee of a scheme,falling within a prescribed class or description.

28 Section 27: consequences

- (1) Any person who acts as an auditor or actuary of a trust scheme in contravention of section 27(4) is guilty of an offence and liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to imprisonment or a fine, or both.

- (2) An offence under subsection (1) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction of the offence.
- (3) Acts done as an auditor or actuary of a trust scheme by a person who is ineligible under section 27 to do so are not invalid merely because of that fact.
- (4) Where—
 - (a) a trustee of a trust scheme acts as auditor or actuary of the scheme, or
 - (b) a person acts as auditor or actuary of a trust scheme when he is ineligible under section 27 to do so by reason of being connected with, or an associate of, a trustee of the scheme,
 section 3 applies to the trustee.

29 Persons disqualified for being trustees

- (1) Subject to subsection (5), a person is disqualified for being a trustee of any trust scheme if—
 - (a) he has been convicted of any offence involving dishonesty or deception,
 - (b) he has been adjudged bankrupt or sequestration of his estate has been awarded and (in either case) he has not been discharged,
 - (c) where the person is a company, if any director of the company is disqualified under this section,
 - (d) where the person is a Scottish partnership, if any partner is disqualified under this section,
 - (e) he has made a composition contract or an arrangement with, or granted a trust deed for the behoof of, his creditors and has not been discharged in respect of it, or
 - (f) he is subject to a disqualification order under the Company Directors Disqualification Act 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order).
- (2) In subsection (1)—
 - (a) paragraph (a) applies whether the conviction occurred before or after the coming into force of that subsection, but does not apply in relation to any conviction which is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974,
 - (b) paragraph (b) applies whether the adjudication of bankruptcy or the sequestration occurred before or after the coming into force of that subsection,
 - (c) paragraph (e) applies whether the composition contract or arrangement was made, or the trust deed was granted, before or after the coming into force of that subsection, and
 - (d) paragraph (f) applies in relation to orders made before or after the coming into force of that subsection.
- (3) Where a person—
 - (a) is prohibited from being a trustee of a trust scheme by an order under section 3, or
 - (b) has been removed as a trustee of a trust scheme by an order made (whether before or after the coming into force of this subsection) by the High Court or

the Court of Session on the grounds of misconduct or mismanagement in the administration of the scheme for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated,
the Authority may, if in their opinion it is not desirable for him to be a trustee of any trust scheme, by order disqualify him for being a trustee of any trust scheme.

- (4) The Authority may by order disqualify a person for being a trustee of any trust scheme where—
- (a) in their opinion he is incapable of acting as such a trustee by reason of mental disorder (within the meaning of the Mental Health Act 1983 or, as respects Scotland, the Mental Health (Scotland) Act 1984), or
 - (b) the person is a company which has gone into liquidation (within the meaning of section 247(2) of the Insolvency Act 1986).
- (5) The Authority may, on the application of any person disqualified under this section—
- (a) give notice in writing to him waiving his disqualification,
 - (b) in the case of a person disqualified under subsection (3) or (4), by order revoke the order disqualifying him,
- either generally or in relation to a particular scheme or particular class of schemes.
- (6) A notice given or revocation made at any time by virtue of subsection (5) cannot affect anything done before that time.

30 Persons disqualified: consequences

- (1) A trustee of a trust scheme who becomes disqualified under section 29 shall, while he is so disqualified, cease to be a trustee.
- (2) Where—
- (a) a trustee of a trust scheme becomes disqualified under section 29, or
 - (b) in the case of a trustee of a trust scheme who has become so disqualified, his disqualification is waived or the order disqualifying him is revoked or he otherwise ceases to be disqualified,
- the Authority may exercise the same jurisdiction and powers as are exercisable by the High Court or, in relation to a trust scheme subject to the law of Scotland, the Court of Session for vesting any property in, or transferring any property to, the trustees.
- (3) A person who purports to act as a trustee of a trust scheme while he is disqualified under section 29 is guilty of an offence and liable—
- (a) on summary conviction to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to a fine or imprisonment or both.
- (4) An offence under subsection (3) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction of the offence.
- (5) Things done by a person disqualified under section 29 while purporting to act as trustee of a trust scheme are not invalid merely because of that disqualification.
- (6) Nothing in section 29 or this section affects the liability of any person for things done, or omitted to be done, by him while purporting to act as trustee of a trust scheme.

- (7) The Authority must keep, in such manner as they think fit, a register of all persons who are disqualified under section 29(3) or (4); and the Authority must, if requested to do so, disclose whether the name of a person specified in the request is included in the register in respect of a scheme so specified.

31 Trustees not to be indemnified for fines or civil penalties

- (1) No amount may be paid out of the assets of a trust scheme for the purpose of reimbursing, or providing for the reimbursement of, any trustee of the scheme in respect of—
- (a) a fine imposed by way of penalty for an offence of which he is convicted, or
 - (b) a penalty which he is required to pay under section 10 or under section 168(4) of the Pension Schemes Act 1993.
- (2) For the purposes of subsection (1), providing for the reimbursement of a trustee in respect of a fine or penalty includes (among other things) providing for the payment of premiums in respect of a policy of insurance where the risk is or includes the imposition of such a fine or the requirement to pay such a penalty.
- (3) Where any amount is paid out of the assets of a trust scheme in contravention of this section, sections 3 and 10 apply to any trustee who fails to take all such steps as are reasonable to secure compliance.
- (4) Where a trustee of a trust scheme—
- (a) is reimbursed, out of the assets of the scheme or in consequence of provision for his reimbursement made out of those assets, in respect of any of the matters referred to in subsection (1)(a) or (b), and
 - (b) knows, or has reasonable grounds to believe, that he has been reimbursed as mentioned in paragraph (a),
- then, unless he has taken all such steps as are reasonable to secure that he is not so reimbursed, he is guilty of an offence.
- (5) A person guilty of an offence under subsection (4) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to imprisonment, or a fine, or both.