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STATUTORY INSTRUMENTS

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**1991 No. 1614**

**INCOME TAX**

**The Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991**

<i>Made</i>	- - - -	<i>15th July 1991</i>
<i>Laid before the House of Commons</i>	- - - -	<i>15th July 1991</i>
<i>Coming into force</i>	- -	<i>5th August 1991</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by section 591(6) of the Income and Corporation Taxes Act 1988<sup>(1)</sup>, hereby make the following Regulations:

**Citation and commencement**

**1.** These Regulations may be cited as the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991 and shall come into force on 5th August 1991.

**Interpretation**

**2.—(1)** In these Regulations unless the context otherwise requires—

“Act” means the Income and Corporation Taxes Act 1988;

“actuary” means—

- (a) a Fellow of the Institute of Actuaries,
- (b) a Fellow of the Faculty of Actuaries, or
- (c) a person with other actuarial qualifications who has been approved as a proper person to act for the purposes of regulation 8 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1986<sup>(2)</sup> in connection with the scheme;

“administrator” in relation to a scheme means the trustees of the scheme or any person appointed by them to have the management of the scheme;

“the Board” means the Commissioners of Inland Revenue;

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(1) 1988 c. 1; section 591(6) was amended by the Finance Act 1988 (c. 39), section 146 and Schedule 13, paragraph 6.  
(2) S.I.1986/1046.

“business” includes a trade or profession and includes any activity carried on by a body of persons, whether corporate or unincorporate, except the activity of making or managing investments where those investments do not consist of shares in 51 per cent. subsidiaries of the body of persons which do not themselves carry on the activity of making or managing investments;

“close company” has the meaning given by sections 414(3) and 415 of the Act;

“company” means any body corporate or unincorporated association, but does not include a partnership;

“control”, in relation to a body corporate or partnership, shall, subject to paragraph (2), be construed in accordance with section 840 of the Act; and the like construction of “control” applies (with the necessary modifications) in relation to an unincorporated association as it applies in relation to a body corporate;

“controlling director” means a director to whom subsection (5)(b) of section 417 of the Act (read with subsections (3), (4) and (6) of that section) applies;

“director” means a director within the meaning of section 612(1) of the Act;

“employer” in relation to a scheme means an employer who, by virtue of the governing instrument, is entitled to pay contributions to the scheme;

“governing instrument” in relation to a scheme means a trust deed, or other document by which the scheme is established, and any other document which contains provisions by which the administration of the scheme is governed;

“pensioner trustee” means a trustee of a scheme who—

- (a) is approved by the Board to act as such, and
- (b) is not connected with—
  - (i) a scheme member,
  - (ii) any other trustee of the scheme, or
  - (iii) a person who is an employer in relation to the scheme.

“relative” means brother, sister, ancestor or lineal descendant;

“residential property” means property normally used, or adapted for use, as one or more dwellings;

“scheme” means a retirement benefits scheme as defined in section 611(1) of the Act;

“small self-administered scheme” means a scheme—

- (a) some or all of the income and other assets of which are invested otherwise than in insurance policies, and
- (b) which, if a scheme member is connected with—
  - (i) another scheme member,
  - (ii) a trustee of the scheme, or
  - (iii) a person who is an employer in relation to the scheme,
 has less than 12 members;

“scheme member” in relation to a scheme means a member of the scheme to whom benefit is currently accruing as a result of service as an employee;

“shares” includes stock;

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(3) Subsections (2) to (2D) were substituted for subsection (2) by the Finance Act 1989 (c. 26), section 104(1) and (4); subsection (3) was repealed by the Finance Act 1989, sections 104(2) and (4) and 187 and Schedule 17, Part V; and subsection (5) was amended by the Finance Act 1989, section 104(3) and (4).

“the trustees” in relation to a scheme includes any person having the management of the scheme;

“unlisted company” means a company which is not officially listed on a recognised stock exchange within the meaning of section 841 of the Act;

“51 per cent. subsidiary” has the meaning given by section 838 of the Act.

(2) The interpretation of “control” in paragraph (1) does not apply in relation to a body corporate which is a close company and in relation to such a body corporate “control” shall be construed in accordance with section 416(4) of the Act.

(3) For the purposes of these Regulations any question whether a person is connected with another shall be determined in accordance with paragraphs (4) to (8) (any provision that one person is connected with another being taken to mean that they are connected with one another).

(4) A person is connected with an individual if that person is the individual’s husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual’s husband or wife.

(5) Without prejudice to paragraph (4) a person, in his capacity as a scheme member, is connected with an employer in relation to a scheme if—

- (a) where the employer is a partnership, he is connected with a partner in the partnership, or
- (b) where the employer is a company, he or a person connected with him is, or at any time during the preceding 10 years has been, a controlling director of the company.

(6) A company is connected with another company—

- (a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other, or
- (b) if a group of two or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.

(7) A company is connected with another person if that person has control of it or if that person and persons connected with him together have control of it.

(8) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected one with another and with any person acting on the directions of any of them to secure or exercise control of the company.

(9) For the purposes of these Regulations a company is associated with an employer if (directly or indirectly) the employer controls that company or that company controls the employer or if both are controlled by a third person.

### **Restrictions on the Board’s discretion**

3. The Board shall not exercise their discretion to approve a scheme by virtue of section 591 of the Act in circumstances where the scheme is a small self-administered scheme and—

- (a) the Board have previously approved such a scheme—
  - (i) of which an employee of any employer in relation to the scheme has at any time been a scheme member, and
  - (ii) to which any such employer was entitled to pay contributions, and
  - (iii) which has not been wound up; or

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(4) Words in subsection (2) were repealed by the Finance Act 1989 (c. 26), section 187 and Schedule 17, Part V.

- (b) subject to regulation 11, the governing instrument of the scheme does not contain provisions of a description specified in regulations 4 to 10.

### **Provisions as to borrowing**

4.—(1) The description of provision specified in this regulation is a provision to the effect that at the time of any borrowing the trustees of the scheme in their capacity as such shall not have borrowed an aggregate amount, including the amount of that borrowing but excluding any amount which has been repaid before that time, in excess of the total of—

- (a) three times the ordinary annual contribution paid by employers;
  - (b) three times the annual amount of contributions paid by scheme members as a condition of membership in the year of assessment ending immediately before that time;
  - (c) 45 per cent. of the market value of the investments held for the purposes of the scheme.
- (2) In this regulation “ordinary annual contribution” means the amount which is the smaller of—
- (a) the amount found by dividing the amount of the contributions paid by employers in the period of three years which ended at the end of the previous accounting period of the scheme by the number of those years or, if the scheme has been established for less than three years at the time of any borrowing, by the number of the years since the scheme was established (a period of less than one year since that time being counted as one year), and
  - (b) the amount of the annual contributions which, within the period of three years immediately before the date of any borrowing, an actuary has advised in writing would have to be paid in order to secure the benefits provided under the scheme.

### **Provisions as to investments**

5.—(1) The description of provision specified in this regulation is a provision to the effect that the trustees of the scheme in their capacity as such shall not directly or indirectly hold as an investment—

- (a) personal chattels other than choses in action (or, in Scotland, movable property other than incorporeal movable property);
- (b) residential property other than that specified in paragraph (2);
- (c) shares in an unlisted company which—
  - (i) carry more than 30 per cent. of the voting power in the company, or
  - (ii) entitle the holder of them to more than 30 per cent. of any dividends declared by the company.

(2) The residential property specified in this paragraph is—

- (a) property which is, or is to be, occupied by an employee who is not connected with his employer and who is required as a condition of his employment to occupy the property; and
- (b) property which is, or is to be, occupied by a person who is neither a scheme member nor connected with a scheme member in connection with the occupation by that person of business premises held by the trustees of the scheme in their capacity as such.

(3) For the purposes of paragraph (1), trustees shall not be regarded as indirectly holding as an investment residential property other than that specified in paragraph (2) where they hold as an investment units in a unit trust scheme—

- (a) which is an authorised unit trust within the meaning of section 468(6) of the Act, or
- (b) where all the unit holders would be wholly exempt from capital gains tax or corporation tax (otherwise than by reason of residence) if they disposed of their units,

and the trustees of the scheme hold such property as an investment subject to the trusts of the scheme.

### **Provisions as to lending and the acquisition of shares**

6.—(1) The description of provision specified in this regulation is a provision to the effect that the trustees of the scheme in their capacity as such shall not directly or indirectly lend money—

- (a) to a member of the scheme or a person connected with him, other than an employer in relation to the scheme or any company associated with that employer, or
- (b) to an employer in relation to the scheme, or any company associated with that employer, unless the lending is within the exception contained in paragraph (2).

(2) Lending is within the exception contained in this paragraph—

- (a) only if the amount lent is utilised for the purposes of the borrower's business, and
- (b) if it is—
  - (i) for a fixed term,
  - (ii) at a commercial rate of interest, and
  - (iii) evidenced by an agreement in writing which contains the provisions specified in paragraph (3) and all the conditions on which it is made.

(3) The provisions specified in this paragraph are provisions to the effect that the amount lent shall be immediately repayable—

- (a) if the borrower—
  - (i) is in breach of the conditions of the agreement,
  - (ii) ceases to carry on business, or
  - (iii) becomes insolvent; or
- (b) if it is required to enable the trustees to pay benefits which have already become due under the scheme.

(4) Subject to paragraphs (5) and (6), for the purposes of this regulation a borrower shall be taken to have become insolvent if—

- (a) he has been adjudged bankrupt or has made a composition or arrangement with his creditors;
- (b) he has died and his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986<sup>(5)</sup> or Article 365 of the Insolvency (Northern Ireland) Order 1989<sup>(6)</sup>;
- (c) where the borrower is a company, a winding-up order or an administration order has been made with respect to it, or a resolution for voluntary winding-up has been passed with respect to it, or a receiver or manager of its undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or a voluntary arrangement is approved under Part I of the Insolvency Act 1986 or Part II of the Insolvency (Northern Ireland) Order 1989.

(5) Until the coming into operation of Article 365 of the Insolvency (Northern Ireland) Order 1989, paragraph (4) above shall have effect in its application to Northern Ireland subject to the following modifications—

- (a) in sub-paragraph (b) of that paragraph for the reference to that Article there shall be substituted a reference to section 30(1) of, and Part I of Schedule 1 to, the Administration of Estates Act (Northern Ireland) 1955<sup>(7)</sup>; and

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(5) 1986 c. 45.

(6) S.I. 1989/2405 (N.I. 19).

(7) 1955 c. 24 (N.I.).

- (b) in sub-paragraph (c) of that paragraph the words from “or an administration order” to “to it” (where those words first occur) and the words from “or a voluntary arrangement” onwards shall be omitted.
- (6) In the application of this regulation to Scotland, for sub-paragraphs (a), (b) and (c) of paragraph (4) above there shall be substituted the following sub-paragraphs—
- (a) an award of sequestration has been made on his estate, or he has executed a trust deed for his creditors or has entered into a composition contract;
  - (b) he has died and a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889<sup>(8)</sup> is required by the provisions of that section to divide his insolvent estate among his creditors; or
  - (c) where the borrower is a company, a winding up order or an administration order has been made, or a resolution for voluntary winding-up is passed with respect to it, or a receiver of its undertaking is duly appointed, or a voluntary arrangement for the purposes of Part I of the Insolvency Act 1986 is approved under that part.
- (7) For the purposes of this regulation and of regulation 8 a member of a scheme includes—
- (a) a scheme member;
  - (b) a person who is in receipt of a pension from the scheme;
  - (c) a person who has left the service of the employer but was a scheme member during that service;
  - (d) a person who is in the service of the employer but is no longer a scheme member.

7.—(1) The description of provision specified in this regulation is a provision to the effect that at the time that any money is lent, or any shares in an employer or any company associated with that employer are acquired, the aggregate of—

- (a) the total amount outstanding of money lent to an employer and any company associated with him in accordance with regulation 6(2) and (3), and
- (b) the market value of shares in an employer and any company associated with him held by the trustees in their capacity as such,

shall not, where that time is during the period of two years from the date on which the scheme was established, exceed the figure specified in paragraph (2) or, where that time is after the end of that period, exceed the figure specified in paragraph (3).

(2) The figure specified in this paragraph is 25 per cent. of the market value of the assets of the scheme which are derived from contributions made by an employer and by employees since the scheme was established.

(3) The figure specified in this paragraph is 50 per cent. of the market value of all the assets of the scheme.

#### **Provisions as to transactions with scheme members and others**

8.—(1) The description of provision specified in this regulation is a provision to the effect that the trustees of the scheme in their capacity as such shall not directly or indirectly purchase, sell or lease any asset—

- (a) from or to a member of the scheme or a person connected with him, other than an employer in relation to the scheme or any company associated with that employer, or
- (b) from or to an employer, or any company associated with that employer, except in accordance with paragraph (2).

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(8) 1889 c. 39; section 11A was inserted by the Bankruptcy (Scotland) Act 1985 (c. 66), section 75(1) and Schedule 7, paragraph 4.

- (2) A purchase, sale or lease is in accordance with this paragraph only when it is made—
  - (a) after the trustees have obtained independent professional advice in writing, and
  - (b) in accordance with that advice.
- (3) For the purpose of this regulation—
  - (a) a purchase by the trustees shall not be regarded as a purchase indirectly from a member of the scheme, or a person connected with him, if the purchase by the trustees took place three years or more after the sale by the member or person connected with him; and
  - (b) a sale by the trustees shall not be regarded as a sale indirectly to a member of the scheme, or a person connected with him, if the purchase by the member or person connected with him took place three years or more after the sale by the trustees.

#### **Provisions as to pensioner trustees**

- 9. The description of provision specified in this regulation is a provision to the effect that—
  - (a) one of the trustees of the scheme shall be a pensioner trustee, and
  - (b) if a pensioner trustee ceases to be qualified to act as such or ceases to be a trustee, the trustees or the remaining trustee or trustees shall—
    - (i) within 30 days after that cessation notify the Board in writing;
    - (ii) within 60 days after that cessation appoint a successor to him as a pensioner trustee;
    - (iii) within 30 days after that appointment notify the Board in writing of the name of the successor.

#### **Provisions as to furnishing of information and documents**

10.—(1) The description of provisions specified in this regulation are provisions to the effect that the administrator of a scheme shall, within 90 days after any transaction by the trustees in their capacity as such as is specified in paragraph (2), furnish to the Board such information and documents as may be specified on the relevant form to be supplied by the Board.

- (2) The transactions specified in this paragraph are—
  - (a) the acquisition or disposal of land,
  - (b) the lending of money to an employer or any company associated with him,
  - (c) the acquisition or disposal of shares in an employer or any company associated with him,
  - (d) the acquisition or disposal of shares in an unlisted company,
  - (e) the borrowing of money,
  - (f) the purchase, sale or lease from or to an employer, or any company associated with him, of any asset other than one specified in sub-paragraph (a), (c) or (d).

#### **Schemes awaiting approval**

11.—(1) Where at the date of coming into force of these Regulations a scheme which is a small self-administered scheme is in existence and either—

- (a) has not yet been submitted to the Board for approval, or
- (b) is before the Board for approval,

the Board shall not be prevented from approving it by virtue of section 591 of the Act by reason only that it contains a provision or provisions of a description specified in any of sub-paragraphs (a), (b) and (c) of paragraph (2).

- (2) The description of provisions specified in this paragraph is—
- (a) a provision which authorises the trustees of the scheme to retain an investment of a description mentioned in sub-paragraph (a), (b) or (c) of regulation 5(1) which is held by them immediately before the day on which these Regulations were made;
  - (b) a provision which authorises the trustees of the scheme to continue to lend money, or retain shares in an employer or any company associated with that employer, which was being lent or held by them immediately before the day on which these Regulations were made, where at the time the money was first lent or the shares were acquired the aggregate referred to in paragraph (1) of regulation 7 exceeded the figure specified in paragraph (2) of that regulation, but did not exceed the figure specified in paragraph (3) of that regulation, notwithstanding that the loan was made or the shares were acquired during the period of two years from the date on which the scheme was established;
  - (c) a provision which authorises the trustees of the scheme to sell assets held by them immediately before that day to a member of the scheme or a person connected with him.

*A. J. G. Isaac  
T. J. Painter*

15th July 1991

Two of the Commissioners of Inland Revenue



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Section 591(6) of the Income and Corporation Taxes Act 1988 provides that regulations made by the Board for the purposes of that section may restrict the Board's discretion to approve a retirement benefits scheme "a scheme" by reference to the benefits provided by the scheme, the investments held for the purposes of the scheme, the manner in which the scheme is administered or any other circumstances whatever; and these Regulations, which come into force on 5th August 1991, impose restrictions in relation to small self-administered schemes.

Regulation 1 provides for citation and commencement.

Regulation 2 contains definitions and provides for the determination for the purposes of the Regulations of any question whether a person is connected with another and whether any company is associated with an employer.

Regulation 3 restricts the Board's discretion in relation to small self-administered schemes where—

- (a) the Board have previously approved such a scheme of which an employee of the employer who would be entitled to make contributions to the scheme is a member;
- (b) subject to regulation 11, the governing instrument of the scheme does not contain provisions of a description specified in regulations 4 to 10.

Regulation 4 specifies provisions which restrict the power of the trustees of a scheme to borrow money.

Regulation 5 specifies provisions which restrict the power of the trustees of a scheme to hold certain assets as investments.

Regulations 6 and 7 specify provisions which restrict the power of the trustees of a scheme to lend money and to acquire shares.

Regulation 8 specifies provisions which restrict the power of the trustees of a scheme to purchase, sell or lease property.

Regulation 9 specifies provisions concerning pensioner trustees.

Regulation 10 specifies provisions for the furnishing of information and documents to the Board by the administrator of a scheme.

Regulation 11 contains transitional provisions with regard to schemes which had not yet been submitted for the Board's approval, or were awaiting the Board's approval, when these Regulations were made.