
STATUTORY INSTRUMENTS

1996 No. 1715

**The Occupational Pension Schemes
(Scheme Administration) Regulations 1996**

**PART II
ADVISERS**

Appointment of professional advisers by trustees or managers

2. For the purposes of section 47(3) of the 1995 Act (legal advisers, fund managers, and persons exercising prescribed functions in relation to the scheme to be appointed by the trustees or managers) the prescribed functions are—

- (a) the examination of, and the expression of an opinion on, the financial statements and accounts of the scheme and any other matter relating to the audit of the scheme;
- (b) the provision of advice on financial questions relating to the funding of, and assets of, the scheme and on questions in respect of probabilities relating to mortality and other contingencies, and any other matter relating to the actuarial affairs of the scheme;
- (c) the custody of cash, securities and any other documents of title to scheme assets.

Exemptions from the professional advisers requirements

3.—(1) Section 47(1)(a) of the 1995 Act (for every occupational pension scheme there shall be an individual, or a firm, appointed by the trustees or managers as auditor) does not apply to—

- (a) any occupational pension scheme in respect of which any Minister of the Crown has given a guarantee or made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities;
- (b) the scheme established by the Salvation Army Act 1963⁽¹⁾;
- (c) occupational pension schemes which provide relevant benefits but are neither approved schemes nor relevant statutory schemes;
- (d) public service pension schemes—
 - (i) under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to additional voluntary contributions); or
 - (ii) which are made under section 7 of the Superannuation Act 1972 (superannuation of persons employed in local government service etc.)⁽²⁾ or section 2 of the Parliamentary and other Pensions Act 1987 (power to provide for pensions for Members of the House of Commons etc.)⁽³⁾;

⁽¹⁾ 1963 c.xxxii.
⁽²⁾ 1972 c. 11.
⁽³⁾ 1987 c. 45.

- (e) unfunded occupational pension schemes;
 - (f) occupational pension schemes with less than 2 members;
 - (g) occupational schemes in which—
 - (i) the only benefits provided are death benefits, and
 - (ii) under the provisions of which no member has accrued rights;
 - (h) occupational money purchase small self-administered schemes in which—
 - (i) all members of the scheme are trustees, and
 - (ii) all decisions are made only by the trustees who are members of the scheme by unanimous agreement and for the purpose of this head the participation of a pensioner trustee in the making of a decision may be disregarded;
 - (i) occupational pension schemes with a superannuation fund such as is mentioned in section 615(6) of the Taxes Act;
 - (j) the Devonport Royal Dockyard Pension Scheme;
 - (k) the Rosyth Royal Dockyard Pension Scheme;
 - (l) the Rosyth Royal Dockyard Superannuation Scheme for Senior Executives;
 - (m) the Atomic Weapons Establishment Scheme; and
 - (n) the BR Shared Cost Section of the Railways Pension Scheme made under section 134 of, and Schedule 11 to, the Railways Act 1993⁽⁴⁾.
- (2) Section 47(1)(b) of the 1995 Act (for every occupational pension scheme there shall be an individual appointed by the trustees or managers as actuary) does not apply to—
- (a) money purchase schemes;
 - (b) approved schemes—
 - (i) which have been categorised by the Commissioners of Inland Revenue for the purpose of their approval as centralised schemes for non-associated employers;
 - (ii) which are not contracted-out; and
 - (iii) under the provisions of which the only benefits which may be provided on or after retirement (other than money purchase benefits derived from the payment of additional contributions by any person) are lump sum benefits (not including benefits paid by way of commuted retirement pension) which are not calculated by reference to any member's salary;
 - (c) schemes mentioned in paragraph (1)(a) to (g) and (i) to (n).
- (3) Section 47(2) of the 1995 Act (for every occupational pension scheme the assets of which consist of or include investments (within the meaning of the Financial Services Act 1986) there shall be an individual or a firm appointed by or on behalf of the trustees or managers as fund manager) does not apply to—
- (a) relevant schemes of a kind described in article 3(2) of the Financial Services Act 1986 (Occupational Pension Schemes) (No. 2) Order 1988⁽⁵⁾;
 - (b) wholly insured schemes; and
 - (c) schemes mentioned in paragraph (1)(a) to (g), (i) and (n).
- (4) Section 47(3) of the 1995 Act (legal advisers, fund managers, and persons exercising prescribed functions in relation to the scheme to be appointed by the trustees or managers) does not apply to schemes mentioned in paragraph (1)(a) to (g), (i) and (n).

(4) 1993 c. 43. See the Railways Pension Scheme Order S.I.1994/1433.

(5) S.I. 1988/724.

Qualifications and experience or approval required for appointment as the auditor or actuary

4.—(1) For the purposes of section 47(5)(b) of the 1995 Act the qualifications and experience or approval required for appointment as—

- (a) the auditor, subject to paragraph (2), are—
 - (i) those specified in section 25 of the Companies Act 1989⁽⁶⁾; or
 - (ii) approval by the Secretary of State;
- (b) the actuary are—
 - (i) Fellowship of the Institute of Actuaries;
 - (ii) Fellowship of the Faculty of Actuaries; or
 - (iii) approval by the Secretary of State.

(2) A person shall not be appointed as the auditor where—

- (a) he is a member of the scheme⁽⁷⁾;
- (b) he is employed under a contract of service by the trustees or managers of the scheme;
- (c) he is an employer in relation to the scheme; or
- (d) he is, by virtue of section 27 of the Companies Act 1989, ineligible to audit the accounts of a company which is an employer in relation to the scheme.

Manner and terms of appointment and removal of professional advisers

5.—(1) An appointment of a professional adviser shall be made in writing (“the notice of appointment”) and shall specify—

- (a) the date the appointment is due to take effect;
- (b) to whom the professional adviser is to report; and
- (c) from whom the professional adviser is to take instructions.

(2) A person appointed as a professional adviser shall—

- (a) acknowledge in writing receipt of the notice of appointment within 1 month of receipt; and
- (b) confirm in writing that he will notify the trustees or managers, immediately he becomes aware, of the existence of any conflict of interest to which he is subject in relation to the scheme.

(3) The resignation of a professional adviser shall be made by serving on the trustees or managers a notice of resignation in writing.

(4) The notice of resignation referred to in paragraph (3) shall, in the case of the auditor or actuary, contain either—

- (a) a statement by the auditor or actuary specifying any circumstances connected with the resignation which, in his opinion, significantly affect the interests of the members or prospective members of, or beneficiaries under, the scheme; or
- (b) a declaration by the auditor or actuary that he knows of no such circumstances as are referred to in sub-paragraph (a).

⁽⁶⁾ 1989 c. 40.

⁽⁷⁾ See section 27 of the Pensions Act 1995 which provides that a trustee of a trust scheme, and any person connected with, or associate of such a trustee, is ineligible to act as auditor. See also regulation 7 of these Regulations.

(5) The resignation shall be effective from the date (if any) specified in the notice by the professional adviser as the date from which he wishes his resignation to be effective, or, if no date is specified, the date on which the trustees or managers receive the notice.

(6) Trustees or managers wishing to remove a professional adviser shall do so by serving on him a notice in writing stating the date with effect from which his appointment terminates.

(7) Where the auditor or actuary is removed in accordance with paragraph (6), he shall, within 14 days of receipt of the removal notice referred to in that paragraph, provide the trustees or managers with either—

- (a) a statement specifying any circumstances connected with the removal which, in his opinion, significantly affect the interests of the members or prospective members of, or beneficiaries under, the scheme; or
- (b) a declaration that he knows of no such circumstances as are referred to in subparagraph (a).

(8) Where the auditor or actuary—

- (a) is removed by the trustees or managers,
- (b) resigns, or
- (c) dies,

the trustees or managers shall appoint a replacement auditor or actuary (as the case may be) within 3 months from the date of the removal, resignation or death.

(9) In a case where paragraph (8) applies, section 47(1)(a) (where the replacement is to be an auditor) or (b) (where the replacement is to be an actuary) of the 1995 Act shall not apply pending the appointment of the replacement.

(10) Where a statement or declaration is made in accordance with paragraphs (4) or (7) the trustees or managers shall furnish the succeeding auditor or actuary and, whichever the case may be, the remaining auditor or actuary to the scheme, with a copy of the statement or declaration, where it is reasonably practical to do so on or before the day he is appointed, and in any event no later than the fourteenth day after the trustees or managers receive the statement or declaration.

(11) This regulation shall not apply in the case of an appointment of a person as a professional adviser to a scheme which falls within the description referred to in regulation 3(1)(b) to (g) and (i).

Duty to disclose information

6.—(1) It shall be the duty of any person—

- (a) who is the employer or has been the employer in relation to an occupational pension scheme and any person who acts as auditor or actuary to such a person, to disclose on request to the trustees or managers such information as is reasonably required for the performance of the duties of trustees or managers or professional advisers;
- (b) who is the employer in relation to an occupational pension scheme within 1 month of the occurrence, to disclose to the trustees or managers the occurrence of any event relating to the employer which there is reasonable cause to believe will be of material significance in the exercise by the trustees or managers or professional advisers of any of their functions.

(2) The information referred to in paragraph (1)(a), in a case where the employer makes provision for the administration of the scheme, includes information in respect of who administers the scheme and the terms on which administrative services are provided.

(3) It shall be the duty of the trustees or managers of an occupational pension scheme—

- (a) to disclose to the professional advisers such information as may reasonably be required for the performance of their duties; and

- (b) to make available to the professional advisers such of the scheme's books, accounts and records, including any books and records which the trustees are required to keep under section 49(2) of the 1995 Act (receipts, payments and records), as may reasonably be required for the performance of their duties.
- (4) This regulation shall not apply in relation to an occupational pension scheme which falls within the description referred to in regulation 3(1)(b) to (g) and (i).