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STATUTORY INSTRUMENTS

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**1997 No. 252**

**PENSIONS**

**The Occupational Pension Schemes  
(Independent Trustee) Regulations 1997**

*Made* - - - - *6th February 1997*  
*Laid before Parliament* *12th February 1997*  
*Coming into force* - - *6th April 1997*

The Secretary of State for Social Security, in exercise of the powers conferred by sections 23(3)(c), 118(1)(a), (b) and (c), 118(2), 124(1)(1), 125(3), 174(2) to (4) and 180(4) of the Pensions Act 1995(2) and sections 113(1)(d), (3) and (4) and 168(1) and (4)(3) of the Pension Schemes Act 1993(4) and all other powers enabling him in that behalf, after consultation with such persons as he considers appropriate(5) and after agreement with the Occupational Pensions Board that regulation 7 of these Regulations should not be referred to them(6), hereby makes the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Independent Trustee) Regulations 1997 and shall come into force on 6th April 1997.

(2) In these Regulations “the 1995 Act” means the Pensions Act 1995 and any expressions used in these Regulations have the same meaning as in Part I of that Act.

**Additional requirement for independent trustee**

2. For the purposes of section 23(3) of the 1995 Act (which sets out the requirements which must be satisfied for a person to be an independent trustee) the prescribed requirements are—

(a) that the person—

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(1) Section 124(1) is cited because of the meaning there given to “prescribed” and “regulations”.

(2) [1995 c. 26](#).

(3) Section 168 is substituted by section 155 of the Pensions Act 1995.

(4) [1993 c. 48](#).

(5) See section 120(1) of the Pensions Act 1995.

(6) See section 185(6) of the Pension Schemes Act 1993 and section 173(1)(b) of the Social Security Administration Act [1992 \(c. 5\)](#), the effect of which is that the requirement to consult the Occupational Pensions Board does not apply where the Board agrees that regulations should not be referred to them.

- (i) has not provided services in relation to the scheme to the trustees or the employer at any time since the day which fell 3 years before section 22 of that Act started to apply in relation to the scheme; and
- (ii) is not connected with, nor an associate of, a person who has provided such services since that day; and
- (b) that the person—
  - (i) has had no interest in the assets of the employer or of the scheme (otherwise than as a trustee of the scheme) at any time since the day referred to in sub-paragraph (a); and
  - (ii) is neither connected with, nor an associate of a person who has such an interest or has had at any time since that day.

### **Multi-employer schemes**

**3.—**(1) Sections 22 to 26 of the 1995 Act are modified as described in this regulation in their application to any trust scheme in relation to which there is more than one employer (“a multi-employer scheme”).

(2) Section 22 applies in relation to a multi-employer scheme only if—

- (a) an employer in relation to whom an insolvency practitioner has begun to act, or the official receiver has become liquidator or provisional liquidator, or of whose estate the official receiver has become receiver and manager or trustee—
  - (i) has, or has had at any time since the day which fell 3 years before section 22 of the 1995 Act started to apply in relation to the scheme, power to appoint or to remove any trustee, or any director of a company which is a trustee, of the scheme; or
  - (ii) is a trustee of the scheme; and
- (b) either—
  - (i) no other employer is a trustee of the scheme or has power to appoint or to remove any trustee, or any director of a company which is a trustee, of the scheme; or
  - (ii) another employer is a trustee or has such power, but he is an employer in relation to whom an insolvency practitioner has begun to act or the official receiver has become liquidator or provisional liquidator or of whose estate the official receiver has become receiver and manager or trustee.

(3) Where section 22 applies in relation to a multi-employer scheme, references to the employer in that section and in sections 23 to 25 are to be treated as references to each employer referred to in paragraph (2)(a).

(4) Where section 22 applies in relation to a multi-employer scheme, it shall not cease to do so by virtue of subsection (2)(a) of that section unless the power to appoint or to remove any trustee of the scheme is transferred to the new employer or to any person who is independent for the purposes of section 23(1).

### **Cases where a partnership is the employer**

**4.—**(1) Sections 22 to 26 of the 1995 Act are modified as described in this regulation 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 courts of England and Wales have jurisdiction to wind up the insolvent partnership<sup>(7)</sup>.

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(7) See Part V of the Insolvency Act 1986 (c. 45) and the Insolvent Partnerships Order 1986 (S.I. 1986/2142).

(2) Section 22 applies 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 section 22 applies in relation to the scheme, references to a company are to be treated as including any insolvent partnership that a court in England and Wales has jurisdiction to wind up.

### **Exemptions**

5.—(1) Sections 22 to 26 of the 1995 Act shall not apply to any of the following schemes—

- (a) a scheme of which each member is a trustee;
- (b) a money purchase scheme;
- (c) a scheme—
  - (i) the only benefits provided by which are death benefits; and
  - (ii) under the provisions of which no member has accrued rights;
- (d) a scheme under which all the benefits to be provided are secured by one or more policies of insurance or annuity contracts and such policies or contracts are specifically allocated to the provision of benefits for individual members or any other person who has a right to benefits under the scheme;
- (e) a scheme which would be a money purchase scheme but for the fact that it provides guaranteed minimum pensions;
- (f) a scheme which provides relevant benefits but is neither an approved scheme nor a relevant statutory scheme;
- (g) a section 615(6) scheme.

(2) In this regulation—

“approved scheme” means a scheme which is approved or was formerly approved under section 590 or 591 of the Income and Corporation Taxes Act 1988<sup>(8)</sup> (“the Taxes Act”) or in respect of which an application for such approval has been duly made but has not been determined;

“guaranteed minimum pension” has the same meaning as in the Pension Schemes Act 1993<sup>(9)</sup>;

“relevant benefits” has the same meaning as in section 612(1) of the Taxes Act;

“relevant statutory scheme” has the same meaning as in section 611A of the Taxes Act<sup>(10)</sup>;

“section 615(6) scheme” means a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act.

### **Meaning of “employer” in relation to schemes with no members in employment to which the scheme relates**

6. For the purposes of sections 22 to 26 of the 1995 Act and these Regulations, where there are no members in employment to which the scheme in question relates, references to the employer shall include the person who last employed persons in the description or category of employment to which the scheme in question relates.

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<sup>(8)</sup> 1988 c. 1.

<sup>(9)</sup> 1993 c. 48.

<sup>(10)</sup> Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 (c. 26).

### **Disclosure requirements and penalty**

7.—(1) The trustees of a scheme to which section 22 of the 1995 Act applies must furnish the information specified in paragraph (2) in accordance with the following provisions of this regulation.

(2) The information referred to in paragraph (1) is—

- (a) the name and address of any person who has been appointed as an independent trustee of the scheme under section 23(1)(b) of the 1995 Act;
- (b) the scale of fees that will be chargeable by any independent trustee and payable by the scheme;
- (c) details of the amounts charged to the scheme by any independent trustee in the past 12 months;
- (d) the name and address of any trustee who is an independent person for the purposes of section 23(1)(a) of that Act.

(3) The trustees must furnish the information referred to in paragraph (2)(a) in writing to every member or relevant trade union as of course within 2 months of the appointment of the independent trustee.

(4) Where section 22 of the 1995 Act applies in relation to a scheme and no independent trustee has been appointed under section 23(1)(b) of that Act, the trustees must, as soon as practicable, and in any event within 2 months of the date on which the insolvency practitioner or official receiver first advises any of the trustees that he is satisfied that at least one of the trustees of the scheme is an independent person, furnish in writing to each member the information referred to in paragraph (2) (d).

(5) The trustees must furnish any of the information referred to 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) as soon as practicable and in any event within 2 months after the request is made.

(6) Where a person fails, without reasonable excuse, to comply with any requirement imposed upon him by this regulation, the Occupational Pensions Regulatory Authority may require him to pay, within 28 days, a penalty which—

- (a) in the case of an individual shall not exceed £1,000; and
- (b) in any other case shall not exceed £10,000.

(7) In this regulation—

“member” 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;

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

- (a) is able, at his own option, to become a member of the scheme,
- (b) will become so able 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; and

“relevant trade union” in relation to any scheme 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.

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

(9) Any information which this regulation requires the trustees 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 furnished if it was sent to him by post to his last address known to the trustees.

### **Transitional arrangements**

**8.**—(1) Paragraphs (2) and (3) of this regulation apply in relation to a scheme in respect of which section 119 of the Pension Schemes Act 1993(**11**) (“the 1993 Act”) applied immediately before 6th April 1997.

(2) Section 22 of the 1995 Act shall apply in relation to such a scheme (notwithstanding that the scheme falls within any of the categories specified in sub-paragraphs (a) to (g) of regulation 5(1)) but the day referred to in regulation 2(a)(i) shall be the day which fell 3 years before section 119 of the 1993 Act started to apply in relation to the scheme.

(3) Where, before 6th April 1997, a person has been appointed as an independent trustee in accordance with section 119 of the 1993 Act, then so long as that person continues to satisfy the requirements of subsection (3) of that section (test of independence) and regulations made under it, regulation 2 (additional requirement for independent trustee) shall not apply.

(4) Except as provided in paragraphs (2) and (3), section 22 of the 1995 Act shall not apply in a case where the date on which the insolvency practitioner began to act or, as the case may be, the official receiver became the liquidator, provisional liquidator, receiver or trustee in relation to the employer fell before 6th April 1997.

### **Revocation**

**9.** Subject to regulation 8, the Occupational Pension Schemes (Independent Trustee) Regulations 1990(**12**) are revoked.

Signed by authority of the Secretary of State for Social Security.

6th February 1997

*MacKay of Ardbrecknish*  
Minister of State,  
Department of Social Security

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(11) Section 119 is repealed by the Pensions Act 1995, Schedule 3, paragraph 30.

(12) [S.I. 1990/2075](#).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

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

These Regulations concern trust schemes and the duties imposed by sections 22 to 26 of the Pensions Act 1995 (“the 1995 Act”) on an insolvency practitioner or the official receiver acting in relation to an employer (that is to ensure that there is an independent trustee and to appoint one if there is not).

These Regulations replace the Occupational Pension Schemes (Independent Trustee) Regulations 1990. Regulations 1 to 6 remake those regulations, with amendments, under new provisions in Part I of the Pensions Act 1995. In accordance with section 120(1) of the 1995 Act the Secretary of State has consulted such persons as he considers appropriate. In relation to regulation 7, which is made under section 113 of the Pension Schemes Act 1993, the Occupational Pensions Board has agreed that it should not be consulted.

Regulation 1 relates to preliminary matters.

Regulation 2 prescribes some additional requirements to be satisfied for a person to be independent for the purposes of section 23 of 1995 Act.

Regulation 3 modifies sections 22 to 26 of the 1995 Act in relation to schemes, which apply to earners in employment under different employers.

Regulation 4 modifies those sections in relation to cases where the employer is a partnership.

Regulation 5 provides for exemptions from the requirements of those sections.

Regulation 6 extends the meaning of employer in relation to those sections.

Regulation 7 imposes requirements on the trustees of a scheme to provide information concerning the appointment of an independent trustee. It also provides for a penalty to be imposed by the Occupational Pensions Regulatory Authority where those requirements are breached.

Regulation 8 provides for transitional arrangements.

Regulation 9 revokes the Occupational Pension Schemes (Independent Trustee) Regulations 1990.

An assessment of the compliance costs for employers of the measures arising from the Pensions Act 1995, including Regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, the Adelphi, 1—11 John Adam Street, London WC2N 6HT.