

SCHEDULE 1

Regulation 5

FIT AND PROPER PERSONS REQUIREMENT

1. For the purposes of section 7(4)(a) of the Act, the Regulator must take account of the following matters when assessing whether a person is fit and proper to act in a capacity mentioned in section 7(2) or (3) of the Act—

- (a) whether, in Northern Ireland, the person has—
 - (i) made any arrangement with the person's creditors;
 - (ii) petitioned the court for a bankruptcy order;
 - (iii) been served with a bankruptcy petition;
 - (iv) been adjudged bankrupt;
 - (v) been the subject of a bankruptcy restrictions order made under paragraph 1 of Schedule 2A(1) to the Insolvency Order (including an interim bankruptcy restrictions order made under paragraph 5 of that Schedule), or
 - (vi) offered a bankruptcy restrictions undertaking made under paragraph 7 of Schedule 2A to the Insolvency Order;
- (b) whether, in England and Wales, the person has—
 - (i) made any arrangement with the person's creditors;
 - (ii) applied to an adjudicator under section 263H(2) of the Insolvency Act for a bankruptcy order within the meaning given by section 381(2)(3) of the Insolvency Act;
 - (iii) been served with a bankruptcy petition within the meaning given by section 381(3) of the Insolvency Act;
 - (iv) been made bankrupt within the meaning given by section 381(1)(4) of the Insolvency Act;
 - (v) been the subject of a bankruptcy restrictions order made under paragraph 1 of Schedule 4A(5) to the Insolvency Act (including an interim bankruptcy restrictions order made under paragraph 5 of that Schedule), or
 - (vi) offered a bankruptcy restrictions undertaking made under paragraph 7 of Schedule 4A to the Insolvency Act;
- (c) whether, in Scotland, the person has—
 - (i) made any arrangement with the person's creditors;
 - (ii) made a debtor application to the Accountant in Bankruptcy for sequestration;
 - (iii) been served with a petition for sequestration;
 - (iv) been the subject of an award of sequestration in accordance with section 22 of the Bankruptcy Act, or
 - (v) been the subject of a bankruptcy restrictions order within the meaning given by section 155(1) of the Bankruptcy Act (including an interim bankruptcy restrictions order within the meaning given by section 160 of that Act);

(1) Schedule 2A was inserted by Schedule 5 to the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10))

(2) Section 263H was inserted by Schedule 18 to the Enterprise and Regulatory Reform Act 2013 (c. 24)

(3) Section 381(2) was amended by paragraph 52(4) of Schedule 19 to the Enterprise and Regulatory Reform Act 2013

(4) Section 381(1) was amended by paragraph 52(2) of Schedule 19 to the Enterprise and Regulatory Reform Act 2013

(5) Schedule 4A was inserted by Schedule 20 to the Enterprise Act 2002 (c. 40)

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- (d) whether the person has been a director⁽⁶⁾ or partner of, or otherwise concerned in the management of, a business that has gone into insolvency, liquidation or administration while the person was concerned with that business or within one year of their being so concerned;
- (e) whether—
 - (i) in Northern Ireland, the person has been convicted of any criminal offence, excluding convictions that are spent within the meaning of the Rehabilitation of Offenders (Northern Ireland) Order 1978⁽⁷⁾, or
 - (ii) in Great Britain, the person has been convicted of any criminal offence, excluding convictions that are spent within the meaning of the Rehabilitation of Offenders Act 1974⁽⁸⁾;
- (f) whether there has been a judgment against the person or the person has reached a settlement in civil proceedings, particularly in connection with investment or other financial business, misconduct, fraud or the formation or management of a body corporate;
- (g) whether—
 - (i) in Northern Ireland, the person has been subject to a disqualification order under Article 3(1) of, or a disqualification undertaking under Article 4(1) of, the Company Directors Disqualification (Northern Ireland) Order 2002⁽⁹⁾, or
 - (ii) in Great Britain, the person has been subject to a disqualification order under section 1(1) of, or a disqualification undertaking under section 1A(1) of, the Company Directors Disqualification Act 1986⁽¹⁰⁾;
- (h) whether the person has contravened any of the requirements or standards of—
 - (i) a regulator, including the Regulator, or
 - (ii) the registrar of companies⁽¹¹⁾;
- (i) any information received from—
 - (i) a regulator, or
 - (ii) the registrar of companies;
- (j) the person’s conduct in relation to, or arising out of or in connection with, any work the person has carried out in one or more of the capacities specified in section 7(2) or (3) of the Act—
 - (i) in the 5 years before the date of the application for authorisation of the scheme, and
 - (ii) at any time since the date of the application for authorisation of the scheme;
- (k) whether—
 - (i) in Northern Ireland, the person has been prohibited from being a trustee of any trust, including any trust scheme within the meaning of Article 121(1) of the 1995 Order (interpretation of Part 2), under—
 - (aa) Article 3⁽¹²⁾ of the 1995 Order (prohibition orders), or

⁽⁶⁾ “Director” is defined in section 250 of the Companies Act 2006

⁽⁷⁾ S.I. 1978/1908 (N.I.27)

⁽⁸⁾ 1974 c. 53

⁽⁹⁾ S.I. 2002/3150 (N.I.4); Article 3(1) was amended by Article 4(3) of the Company Directors Disqualification (Amendment) Order (Northern Ireland) 2005 (S.I. 2005/1454 (N.I. 9))

⁽¹⁰⁾ 1986 c. 46. Section 1(1) was amended by section 5(1) of the Insolvency Act 2000 (c. 39) and section 204(3) of the Enterprise Act 2002 (c. 40). Section 1A was inserted by section 6(2) of the Insolvency Act 2000 and amended by paragraph 3 of Schedule 7 to the Small Business, Enterprise and Employment Act 2015 (c. 26)

⁽¹¹⁾ “Registrar of companies” is defined in section 1060(3) of the Companies Act 2006

⁽¹²⁾ Article 3 was substituted by Article 29 of the Pensions (Northern Ireland) Order 2005 and amended by paragraph 3 of Schedule 1 to the Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4 (N.I.))

- (bb) any other legislation, or
 - (ii) in Great Britain, the person has been prohibited from being a trustee of any trust, including any trust scheme within the meaning of section 124(1) of the Pensions Act 1995(13) (interpretation of Part 1), under—
 - (aa) section 3 of the Pensions Act 1995(14) (prohibition orders), or
 - (bb) any other legislation;
 - (l) whether—
 - (i) in Northern Ireland, the person has been disqualified from being a trustee of any trust, including any trust scheme within the meaning of Article 121(1) of the 1995 Order (interpretation of Part 2), under—
 - (aa) Article 29(15) of the 1995 Order (persons disqualified from being trustees), or
 - (bb) any other legislation, or
 - (ii) in Great Britain, the person has been disqualified from being a trustee of any trust, including any trust scheme within the meaning of section 124(1) of the Pensions Act 1995, under—
 - (aa) section 29 of the Pensions Act 1995(16) (persons disqualified for being trustees), or
 - (bb) any other legislation.
2. For the purposes of section 7(3)(b) of the Act, the Regulator may assess whether a person who exercises a core function is fit and proper to act in such a capacity.
3. For the purposes of section 7(4)(a) of the Act, the Regulator must take into account—
- (a) the knowledge and skills gained from a person’s significant experience as a trustee, in assessing whether the person is fit and proper to act in that capacity;
 - (b) whether a person has successfully completed the Regulator’s on-line learning program known as the Toolkit, or an equivalent learning program, in assessing whether the person is fit and proper to act in the capacity of a trustee of the scheme;
 - (c) the collective expertise and experience of persons acting together in the capacity of trustees, in assessing whether they are fit and proper to act in that capacity;
 - (d) a person’s relevant experience and professional competence, in assessing whether the person is fit and proper to act in the capacity of a scheme strategist;
 - (e) the collective expertise and experience of persons acting together in the capacity of a scheme strategist, in assessing whether they are fit and proper to act in that capacity.
- 4.—(1) In this Schedule—
- “arrangement” means a voluntary agreement entered into by an individual with their creditors;
 - “the Bankruptcy Act” means the Bankruptcy (Scotland) Act 2016(17);

(13) 1995 c. 26

(14) Section 3 was substituted by section 33 of the Pensions Act 2004 (c. 35) and amended by paragraph 22 of Schedule 2 to S.I. 2010/22

(15) Article 29 was amended by paragraph 11 of Schedule 3 to the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I.1)), paragraph 39 of Schedule 10 and Schedule 11 to the Pensions (Northern Ireland) Order 2005, paragraph 5 of the Schedule to S.R. 2008 No. 94 and paragraph 16(2)(c) of the Schedule to S.R. 2016 No. 108

(16) Section 29 was amended by paragraph 45 of Schedule 12 and Schedule 13 to the Pensions Act 2004, paragraph 6 of the Schedule to S.I. 2004/1941, paragraph 5 of Schedule 2 to S.I. 2006/1722, paragraph 155(4) of Schedule 1 to S.I. 2009/1941, paragraph 34(3) of Schedule 2 to S.I. 2012/2404 and paragraph 11(3) of Schedule 1 to S.I. 2016/481

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“core function” includes a strategic, executive or management role carried out in respect of, or on behalf of, a person mentioned in section 7(2) or (3) of the Act;

“the Insolvency Act” means the Insolvency Act 1986⁽¹⁸⁾;

“the Insolvency Order” means the Insolvency (Northern Ireland) Order 1989⁽¹⁹⁾.

(2) In paragraph 1(a)—

“bankrupt”, “bankruptcy order”, “bankruptcy petition” have the meanings given in Article 9(1) of the Insolvency Order;

“the court” is defined in rule 0.2 of the Insolvency Rules (Northern Ireland) 1991⁽²⁰⁾;

“creditor” has the meaning given in Article 9(1) of the Insolvency Order.

(3) In paragraph 1(b)—

“adjudicator” has the meaning given by section 385(1)⁽²¹⁾ of the Insolvency Act;

“creditor” has the meaning given by section 383(1)⁽²²⁾ of the Insolvency Act.

(4) In paragraph 1(c)—

“the Accountant in Bankruptcy” has the meaning given by section 199(1) of the Bankruptcy Act;

“creditor” has the meaning given by section 383(1) of the Insolvency Act;

“debtor application” has the meaning given by section 228(1) of the Bankruptcy Act;

“sequestration” has the meaning given by section 1 of the Bankruptcy Act.

⁽¹⁸⁾ 1986 c. 45

⁽¹⁹⁾ S.I. 1989/2405 (N.I.19)

⁽²⁰⁾ S.R. 1991 No. 364

⁽²¹⁾ The definition of “adjudicator” was inserted by paragraph 55(a) of Schedule 19 to the Enterprise and Regulatory Reform Act 2013

⁽²²⁾ Section 383(1) was amended by Schedule 16 to the Criminal Justice Act 1988 (c. 33) and paragraph 53 of Schedule 19 to the Enterprise and Regulatory Reform Act 2013