

1990 No. 2075

PENSIONS

The Occupational Pension Schemes (Independent
Trustee) Regulations 1990

<i>Made - - - -</i>	<i>22nd October 1990</i>
<i>Laid before Parliament</i>	<i>22nd October 1990</i>
<i>Coming into force</i>	<i>12th November 1990</i>

The Secretary of State for Social Security, in exercise of his powers under sections 166(1) to (3) and 168(1) of, and Schedule 20 to, the Social Security Act 1975(a), sections 57C(3)(c), 57D(9) and (10) and 66(2) of the Social Security Pensions Act 1975(b) and section 21(3) of the Social Security Act 1990(c), and of all other powers enabling him in that behalf, not being required to refer the proposals in respect of these Regulations to the Occupational Pensions Board because this instrument contains only regulations made consequential upon paragraph 1 of Schedule 4 to the Social Security Act 1990 and is made before the end of the period of 6 months beginning with the coming into force of that enactment(d), hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Independent Trustee) Regulations 1990.

(2) These Regulations come into force on 12th November 1990.

Additional requirement for “independent trustee”

2.—(1) For the purposes of section 57C(2), a person is “independent” only if he satisfies the requirements of paragraphs (2) and (3) of this regulation as well as the requirements of section 57C(3)(a) and (b).

(2) This paragraph requires that the person has not provided services to the trustees or managers of the scheme, or the employer, in relation to the scheme. This requirement is, however, satisfied if the last occasion on which the person provided services was more than 3 years before section 57C started to apply in relation to the scheme.

(3) This paragraph requires that the person is neither connected with, nor an associate of —

- (a) a person who has an interest in the assets of the employer or of the scheme, otherwise than as trustee of the scheme; or
- (b) a person to whom paragraph (2) of this regulation applies.

(a) 1975 c.14. See definitions of “prescribe” and “regulations” in Schedule 20. Sections 166(1) to (3) and 168(1) apply, by virtue of section 66(2) of the Social Security Pensions Act 1975 (c.60), to the exercise of certain powers conferred by that Act. (b) 1975 c.60. Sections 57C and 57D were inserted by paragraph 1 of Schedule 4 to the Social Security Act 1990 (c.27). (c) 1990 c.27. (d) See section 61(2) of the Social Security Pensions Act 1975 and section 61(5) of the Social Security Act 1986 (c.50). Section 61(5) of the 1986 Act was amended by paragraph 12(3) of Schedule 8 to the Social Security Act 1989 (c.24).

Centralised schemes

3.—(1) Sections 57C and 57D are modified as described in this regulation in their application to any occupational pension scheme which applies to earners in employments under different employers (“centralised schemes”).

(2) Section 57C applies in relation to a centralised scheme only if an insolvency practitioner, or the official receiver, starts to act in relation to any employer of persons in the description or category of employment to which the scheme relates and –

- (a) the employer concerned has power to appoint or remove any trustee of the scheme; or
- (b) the employer concerned is a trustee of the scheme.

(3) Where section 57C applies in relation to a centralised scheme, references to “the employer” in that section and in section 57D are to be treated as references to the employer in relation to whom the practitioner or official receiver is acting.

(4) Where section 57C applies in relation to a centralised scheme, it shall not cease to do so by virtue of section 57C(7)(a) unless the power to appoint or remove any trustee of the scheme is transferred to the person other than the employer concerned, or to any person who is “independent” for the purposes of section 57C(2).

Paid-up schemes

4.—(1) Sections 57C and 57D are modified as described in this regulation in their application to any occupational pension scheme of which there are no members who are in pensionable service under the scheme, as defined in paragraph 3 of Schedule 16 to the Social Security Act 1973(a) (“paid-up schemes”).

(2) Section 57C applies in relation to a paid-up scheme only if –

- (a) the employer has power to appoint or remove any trustee of the scheme; or
- (b) the employer is a trustee of the scheme.

Cases where a partnership is the employer

5.—(1) Sections 57C and 57D 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 an occupational pension scheme;
- (b) the partnership is insolvent; and
- (c) the courts of England and Wales have jurisdiction to wind up the insolvent partnership(b).

(2) Section 57C(1) applies in relation to the scheme –

- (a) if a person commences 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 57C applies in relation to the scheme, references to “a company” are to be treated as including any insolvent partnership that the courts in England and Wales have jurisdiction to wind up.

Schemes to which sections 57C and 57D do not apply

6.—(1) Sections 57C and 57D shall not apply in relation to occupational pension schemes of a description prescribed by this regulation.

(2) Sections 57C and 57D do not apply to a scheme of which each member is a trustee. For this purpose, “member” means any employee or former employee of the employer who has rights under the scheme arising from that employment.

(a) 1973 c.38. (b) See Part V of the Insolvency Act 1986 (c.45) and the Insolvent Partnerships Order 1986 (S.I. 1986/2142).

(3) Sections 57C and 57D do not apply to schemes under which all the benefits that may be provided are –

(a) money purchase benefits, or

(b) benefits payable only on an earner's death while employed in employment to which the scheme applies.

(4) Sections 57C and 57D do not apply to any scheme under which all the benefits to be provided are secured by means of insurance policies that are specifically allocated to the provision of benefits for, or in respect of, particular members.

Transitional provision and saving

7.—(1) This regulation is made in connection with the coming into force of paragraph 1 of Schedule 4 to the Social Security Act 1990 (which inserted sections 57C and 57D into the Social Security Pensions Act 1975)(a).

(2) Sections 57C and 57D of the Social Security Pensions Act 1975 do not apply where an insolvency practitioner or the official receiver started to act in relation to the employer before 12th November 1990.

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

22nd October 1990

Nicholas Scott
Minister of State,
Department of Social Security

(a) See S.I. 1990/1942.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under sections 57C and 57D of the Social Security Pensions Act 1975 and section 21 of the Social Security Act 1990.

Sections 57C and 57D were inserted into the Social Security Pensions Act 1975 by paragraph 1 of Schedule 4 to the Social Security Act 1990. Section 57C requires that, when an insolvency practitioner or the official receiver is acting in relation to an employer, the practitioner or official receiver must ensure that there is an independent trustee of any occupational pension scheme of which the employer's employees are members.

Regulation 2 adds to the requirements that must be satisfied by a person before that person can be regarded as "independent".

Regulations 3 and 4 respectively modify sections 57C and 57D in their application to "centralised schemes" and "paid-up schemes".

Regulation 5 modifies sections 57C and 57D in their application to cases where the employer is a partnership which the courts in England and Wales have jurisdiction to wind up. The sections apply without these modifications in cases where the employer is a Scottish partnership.

Regulation 6 describes those occupational pension schemes to which sections 57C and 57D are not to apply.

Regulation 7 says that sections 57C and 57D do not apply where an insolvency practitioner or the official receiver started to act in relation to the employer before those sections came into force.

The proposals in respect of these Regulations were not referred to the Occupational Pensions Board because these Regulations are made before the end of the period of 6 months beginning with the coming into force of paragraph 1 of Schedule 4 to the Social Security Act 1990 and are made consequential upon that enactment. Consequently, by virtue of section 61(5) of the Social Security Act 1986, section 61(2) and (3) of the Social Security Pensions Act 1975 (which requires the Secretary of State to refer proposals to make any regulations for the purposes of Part IV of that Act to the Occupational Pensions Board and the Board to make a report on them) does not apply to these Regulations.

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