

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 England and Wales, the person has—
 - (i) made any arrangement with the person’s creditors;
 - (ii) applied to an adjudicator under section 263H of the Insolvency Act(1) for a bankruptcy order within the meaning given by section 381(2) of the Insolvency Act(2);
 - (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) of the Insolvency Act(3);
 - (v) been the subject of a bankruptcy restrictions order made under paragraph 1 of Schedule 4A 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;
- (b) 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);
- (c) 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 to the Insolvency Order (including an interim bankruptcy restrictions order made under paragraph 5 that Schedule); or
 - (vi) offered a bankruptcy restrictions undertaking made under paragraph 7 of Schedule 2A to the Insolvency Order;
- (d) whether the person has been a director(4) or partner of, or otherwise concerned in the management of, a business that has gone into insolvency, liquidation or administration

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

(2) Section 381(2) was amended by the Enterprise and Regulatory Reform Act 2013, Schedule 19, paragraph 52.

(3) Section 381(1) was amended by the Enterprise and Regulatory Reform Act 2013, Schedule 19, paragraph 52.

(4) “Director” is defined in section 250 of the Companies Act.

while the person was concerned with that business or within one year of their being so concerned;

- (e) whether—
- (i) 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⁽⁵⁾; or
 - (ii) 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⁽⁶⁾.
- (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 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⁽⁷⁾; or
 - (ii) 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⁽⁸⁾;
- (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⁽⁹⁾;
- (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 five 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 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 1995 Act (interpretation of Part 1), under—
 - (aa) section 3 of the 1995 Act⁽¹⁰⁾ (prohibition orders), or
 - (bb) any other legislation; or

⁽⁵⁾ 1974 c. 53.

⁽⁶⁾ S.I. 1978/1908 (N.I. 27).

⁽⁷⁾ 1986 c. 46; section 1(1) was amended by section 5(1) of the Insolvency Act 2000 (c. 39) and section 204(1) and (3) of the Enterprise Act 2002 (c. 40). Section 1A was inserted by section 6(1) and (2) of the Insolvency Act 2000 and amended by section 111 of, and paragraphs 1 and 3(1), (2) and (3) of Part 1 of Schedule 7 to, the Small Business, Enterprise and Employment Act 2015 (c. 26).

⁽⁸⁾ S.I. 2002/3150 (N.I. 4). Article 3(1) was amended by Article 4(3) of S.I. 2005/1454 (N.I. 9).

⁽⁹⁾ "Registrar of companies" is defined in section 1060(3) of the Companies Act.

⁽¹⁰⁾ Section 3 was substituted by section 33 of the 2004 Act and amended by S.I. 2010/22.

- (ii) 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 Pensions (Northern Ireland) Order 1995⁽¹¹⁾ (interpretation of Part 2), under—
 - (aa) Article 3 of the Pensions (Northern Ireland) Order 1995⁽¹²⁾ (prohibition orders), or
 - (bb) any other legislation;
- (l) whether—
 - (i) 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 1995 Act, under—
 - (aa) section 29 of the 1995 Act⁽¹³⁾ (persons disqualified from being trustees), or
 - (bb) any other legislation; or
 - (ii) 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 Pensions (Northern Ireland) Order 1995 (interpretation of Part 2), under—
 - (aa) Article 29 of the Pensions (Northern Ireland) Order 1995⁽¹⁴⁾ (persons disqualified from being trustees), or
 - (bb) any other legislation.

Commencement Information

11 Sch. 1 para. 1 in force at 1.10.2018, see [reg. 1\(2\)](#)

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.

Commencement Information

12 Sch. 1 para. 2 in force at 1.10.2018, see [reg. 1\(2\)](#)

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.

⁽¹¹⁾ S.I. 1995/3213 (N.I. 22).

⁽¹²⁾ Article 3 was substituted by Article 29 of S.I. 2005/255 (N.I. 1).

⁽¹³⁾ Section 29 was amended by paragraph 45 of Schedule 12, and Schedule 13, to the 2004 Act and S.I. 2004/1941, 2006/1722, 2009/1941, 2012/2404 and 2016/481.

⁽¹⁴⁾ Article 29 was amended by S.I. 2002/3150 (N.I. 1) and S.R. 2008/94 and 2016/108.

Commencement Information

I3 Sch. 1 para. 3 in force at 1.10.2018, see [reg. 1\(2\)](#)

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**(15)**;

“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**(16)**;

“the Insolvency Order” means the Insolvency (Northern Ireland) Order 1989**(17)**.

(2) In paragraph 1(a)—

“adjudicator” has the meaning given by section 385(1) of the Insolvency Act**(18)**;

“creditor” has the meaning given by section 383(1) of the Insolvency Act 1986**(19)**.

(3) In paragraph 1(b)—

“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 1986**(20)**;

“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.

(4) In paragraph 1(c)—

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

“court” is defined in rule 0.2 of the Insolvency Rules (Northern Ireland) 1991**(21)**;

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

Commencement Information

I4 Sch. 1 para. 4 in force at 1.10.2018, see [reg. 1\(2\)](#)

(15) 2016 asp 21.

(16) 1986 c. 45.

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

(18) Section 385(1) was amended by the Enterprise and Regulatory Reform Act 2013, Schedule 19, paragraph 55(a).

(19) Section 383(1) was amended by the Criminal Justice Act 1988 (c. 33), Schedule 16, and the Enterprise and Regulatory Reform Act 2013 (c. 24), Schedule 19, paragraph 53.

(20) Section 383(1) was amended by the Criminal Justice Act 1988 (c. 33), Schedule 16, and the Enterprise and Regulatory Reform Act 2013 (c. 24), Schedule 19, paragraph 53.

(21) S.R. 1991 No. 364.

Changes to legislation:

There are currently no known outstanding effects for the The Occupational Pension Schemes (Master Trusts) Regulations 2018, SCHEDULE 1.