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STATUTORY RULES OF NORTHERN IRELAND

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**1997 No. 99**

**PENSIONS**

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

*Made* - - - - *24th February 1997*

*Coming into operation* *6th April 1997*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by sections 109(1)(d), (2), (3) and (4) and 164(1) and (4) of the Pension Schemes (Northern Ireland) Act 1993<sup>(1)</sup> and Articles 1(5), 23(3)(c), 115, 122(3) and 166 of the Pensions (Northern Ireland) Order 1995<sup>(2)</sup> and of all other powers enabling it in that behalf, hereby makes the following Regulations:

**Citation, commencement and interpretation**

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

(2) In these Regulations “the Order” means the Pensions (Northern Ireland) Order 1995 and other expressions have the same meaning as in Part II of the Order.

(3) Subject to paragraph (4), the Interpretation Act (Northern Ireland) 1954<sup>(3)</sup> shall apply to these Regulations as it applies to a Measure of the Assembly.

(4) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954, where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

(5) In these Regulations any reference—

- (a) to a numbered Article is a reference to the Article of the Order bearing that number; and
- (b) to a numbered section is a reference to the section of the Pension Schemes (Northern Ireland) Act 1993 bearing that number.

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(1) 1993 c. 49; section 164 was substituted by Article 151(1) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))  
(2) S.I. 1995/3213 (N.I. 22)  
(3) 1954 c. 33 (N.I.)

### **Additional requirements for independent trustee**

2. For the purposes of Article 23(3) (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—
  - (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 Article 22 started to apply in relation to the scheme; and
  - (ii) is neither 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 paragraph (a)(i); 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) Articles 22 to 26 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) Article 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 Article 22 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 Article 22 applies in relation to a multi-employer scheme, references to the employer in that Article and in Articles 23 to 25 are to be treated as references to each employer referred to in paragraph (2)(a).

(4) Where Article 22 applies in relation to a multi-employer scheme, it shall not cease to do so by virtue of paragraph (2)(a) of that Article 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 Article 23(1).

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

4.—(1) Articles 22 to 26 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 High Court has jurisdiction to wind up the insolvent partnership<sup>(4)</sup>.
- (2) Article 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 Article 22 applies in relation to the scheme, references to a company are to be treated as including any insolvent partnership that the High Court has jurisdiction to wind up.

### **Exemptions**

- 5.—(1) Articles 22 to 26 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 Taxes Act 1988 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 section 4(2);
- “relevant benefits” has the meaning given in section 612(1) of the Taxes Act 1988;
- “relevant statutory scheme” has the meaning given in section 611A of the Taxes Act 1988<sup>(5)</sup>;
- “section 615(6) scheme” means a scheme with such a superannuation fund as is mentioned in section 615(6) of the Taxes Act 1988.

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

6. For the purposes of Articles 22 to 26 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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(4) See Part VI of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) and S.R. 1991 No. 366

(5) 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 Article 22 applies must furnish the information specified in paragraph (2) in accordance with paragraphs (3) to (9).

(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 Article 23(1)(b);
- (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 Article 23(1)(a).

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

(4) Where Article 22 applies in relation to a scheme and no independent trustee has been appointed under Article 23(1)(b), 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 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;

“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 ordinary post to his last address known to the trustees.

### **Transitional arrangements**

**8.**—(1) Paragraphs (2) and (3) apply in relation to a scheme in respect of which section 115(6) applied immediately before 6th April 1997.

(2) Article 22 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 115 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 115, 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), Article 22 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 and manager, or trustee, in relation to the employer fell before 6th April 1997.

### **Revocations**

**9.** Subject to regulation 8, the regulations specified in column (1) of the Schedule are revoked to the extent mentioned in column (3) of the Schedule.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland  
on

L.S.

24th February 1997.

*John O'Neill*  
Assistant Secretary

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

## SCHEDULE

Regulation 9

## Regulations Revoked

Column (1) Citation	Column (2) Reference	Column (3) Extent of revocation
The Occupational Pension Schemes (Independent Trustee) Regulations (Northern Ireland) 1990	<a href="#">S.R. 1990 No. 384</a>	The whole Regulations
The Occupational Pension Schemes (Independent Trustee) (Amendment) Regulations (Northern Ireland) 1991	<a href="#">S.R. 1991 No. 409</a>	The whole Regulations
The Occupational and Personal Pension Schemes (Consequential Amendments) Regulations (Northern Ireland) 1994	<a href="#">S.R. 1994 No. 300</a>	In Schedule 2, paragraph 24

**EXPLANATORY NOTE**

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

These Regulations concern trust schemes and the duties imposed by Articles 22 to 26 of the Pensions (Northern Ireland) Order 1995 (“the Order”) on an insolvency practitioner or the official receiver acting in relation to an employer to ensure that there is an independent trustee and to appoint one if there is not. They replace the Occupational Pension Schemes (Independent Trustee) Regulations (Northern Ireland) 1990 (“the 1990 Regulations”) which are, subject to transitional provisions, now revoked. Regulations 1 to 6 consolidate and amend the 1990 Regulations. In addition to minor and drafting amendments the Regulations make the following changes of substance—

they clarify the additional requirements for a person to be independent by making clear that the person, except as a trustee, must have had no interest in the assets of the employer or the scheme;

they prescribe new conditions for multi-employer schemes;

they extend the meaning of “employer” in relation to frozen schemes;

they provide for additional exemptions from the independent trustee requirements; and

they provide for the disclosure of information and empower the Occupational Pensions Regulatory Authority (“the Authority”) to impose penalties where the disclosure requirements are not complied with.

Regulation 1 relates to citation, commencement and interpretation.

Regulation 2 prescribes some additional requirements to be satisfied for a person to be independent for the purposes of Article 23 of the Order.

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

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

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

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

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 Authority where those requirements are breached.

Regulation 8 provides for transitional arrangements.

Regulation 9 makes consequential revocations.

The Pensions (1995 Order) (Commencement No. 2) Order (Northern Ireland) 1996 ([S.R. 1996 No. 91 \(C. 4\)](#)) provides for the coming into operation of Article 166 of the Order, in so far as it was not already in operation, on 6th April 1996. The Pensions (1995 Order) (Commencement No. 4) Order (Northern Ireland) 1996 ([S.R. 1996 No. 307 \(C. 18\)](#)) provides for the coming into operation of Article 23 and Article 151 (which substituted section 164 of the Pension Schemes (Northern Ireland) Act 1993) of the Order, for the purpose of authorising the making of regulations, on 23rd July 1996. The Pensions (1995 Order) (Commencement No. 5) Order (Northern Ireland) 1996 ([S.R. 1996 No. 534 \(C. 25\)](#)) provides for the coming into operation of Article 122(3) of the Order, in so far as it was not already in operation, on 19th November 1996.

As these Regulations make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Social Security in relation to Great Britain, the requirement for consultation under Article 117(1) of the Order does not apply by virtue of paragraph (2)(e) of that Article.