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STATUTORY INSTRUMENTS

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**1996 No. 1715**

**The Occupational Pension Schemes  
(Scheme Administration) Regulations 1996**

[<sup>F1</sup> PART V

GOVERNANCE OF RELEVANT SCHEMES]

[<sup>F1</sup> CHAPTER 3

RELEVANT MULTI-EMPLOYER SCHEMES

**[<sup>F1</sup> Appointment of trustees: trustees who are non-affiliated**

**28.**—(1) The appointment process for a trustee who is to count as non-affiliated for the purposes of regulation 27(2) must be open and transparent.

(2) For the purposes of paragraph (1), an appointment process which is open and transparent includes (but is not limited to) a process which—

- (a) includes advertisement of the vacancy for a trustee in at least one appropriate national publication;
- (b) includes engagement of the services of a recruitment agency to assist in the selection of candidates; or
- (c) meets the requirements of section 241(2) or, as the case may be, 242(2) of the 2004 Act (nomination and selection of member-nominated trustees and member-nominated directors of corporate trustees).

(3) For the purposes of determining whether a person is non-affiliated, the following matters must be taken into account—

- (a) whether the person—
  - (i) is a director, manager, partner or employee of an undertaking which provides advisory, administration, investment or other services in respect of the scheme (a “service provider”) or an undertaking which is connected to a service provider; or
  - (ii) has been such a director, manager, partner or employee during the period of five years ending with the date of the person’s appointment as a trustee;
- (b) whether the person receives any payment or other benefit from a service provider, other than—
  - (i) a payment or other benefit in respect of a role in the governance of a personal pension scheme in which the person is required to act in the interests of some or all of the scheme members; or
  - (ii) a payment in respect of the person’s role as trustee of the relevant multi-employer scheme;

- (c) whether or not, in the person’s relationship with a service provider, the person’s obligations to the service provider conflict with their obligations as a trustee of the relevant multi-employer scheme and whether their obligations as a trustee will take priority in the case of a conflict.
- (4) A trustee who is an individual is not to count as non-affiliated for the purposes of regulation 27(2) for—
  - (a) any one period of more than five years; or
  - (b) subject to paragraph (5), more than ten years in total.
- (5) No period of appointment of a trustee who is an individual is to be taken into account for the purposes of paragraph (4)(b) if more than five years have elapsed since the trustee last held office as a trustee of the same relevant multi-employer scheme.
- (6) Paragraphs (1) to (5) apply to an individual who is a director of a corporate trustee and to whom regulation 27 applies as if he or she were a trustee as they apply to a trustee who is an individual.
- (7) Where a trustee who is to count as non-affiliated for the purposes of regulation 27(2) is a professional trustee body—
  - (a) the trustee is not to count as non-affiliated for any one period of more than five years;
  - (b) a nominated individual must act as representative of the trustee; and
  - (c) the nominated individual may not act as representative of the trustee for more than ten years in total.
- (8) For the purposes of paragraph (3)(a), two undertakings are “connected” if they are—
  - (a) part of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 1159(1) of the Companies Act 2006; or
  - (b) partnerships, each having the same persons as at least half of its partners.]

<p><b>F1</b> It is provided that Ch. 3 is inserted (6.4.2015) by <a href="#">The Occupational Pension Schemes (Charges and Governance) Regulations 2015 (S.I. 2015/879)</a>, regs. 1(2), <b>22</b></p>
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**Changes to legislation:**

There are currently no known outstanding effects for the The Occupational Pension Schemes (Scheme Administration) Regulations 1996, Section 28.