

---

STATUTORY INSTRUMENTS

---

**2010 No. 917**

**The National Employment Savings Trust Order 2010**

**PART 3**

Functions of the Trustee

**Disclosure of requested data to the Secretary of State**

**10.**—(1) This article applies where the Secretary of State (S) requests the disclosure of data held by the Trustee (“requested data”) which are—

- (a) not personal data; and
- (b) in any event, anonymised.

(2) The Trustee must disclose requested data to S if those data are necessary for S or the Trustee—

- (a) to comply with any—
  - (i) legal obligation (in particular the duty of S to establish a pension scheme, contained in section 67 of the Act); or
  - (ii) requirement to notify or otherwise inform another person, which, if S did not receive those data, would result in a breach of that obligation or requirement; or
- (b) to comply with any request made by a person appointed by S under section 74 of the Act to review any of the matters listed in subsection (1) of that section.

(3) The Trustee must disclose requested data to S for the purpose of the matters listed in paragraph (5) where the Trustee considers that to comply with S’s request would not involve disproportionate cost, time or effort.

(4) Where the Trustee—

- (a) considers that to comply with S’s request would involve disproportionate cost, time or effort; and
- (b) gives to S its reasons for considering that this is the case,

it need disclose to S only so much of the requested data as is agreed with S.

(5) The matters are —

- (a) the assessment by S of the performance, administration or management of the Scheme; or
- (b) the use by S for functions relating to private pensions policy or retirement planning.

(6) In this article, “private pensions policy” has the same meaning as in paragraph 4 of Schedule 10 to the Pensions Act 2004<sup>(1)</sup> and “retirement planning” has the same meaning as in paragraph 2 of that Schedule.

---

(1) Paragraph 4 of Schedule 10 to the Pensions Act 2004 was inserted by the Act, section 63(1).

### **Disclosure of relevant personal data to the Secretary of State**

**11.**—(1) This article applies where the Trustee is requested by the Secretary of State (S) to obtain the consent of one or more—

- (a) members of the Scheme; or
- (b) participating employers,

in order that those members or participating employers may be contacted by S for the purpose of research.

(2) The Trustee may contact any number of members or participating employers to obtain their consent, as the Trustee sees fit to comply with the request of S.

(3) Where—

- (a) consent is given, the Trustee may then disclose relevant personal data to S; or
- (b) consent is not given, the Trustee must not disclose any relevant personal data to S.

(4) Where paragraph (3)(a) applies—

- (a) the Trustee must only disclose relevant personal data to S after satisfying itself that there is a secure means of disclosing them, agreed with S;
- (b) S may contact the person from whom the consent was obtained; and
- (c) S must state to that person S’s specified and lawful purposes related to research.

(5) In this article, “relevant personal data” means personal data which enable S to contact a member of the Scheme or a participating employer of a member of the Scheme, and may include a person’s—

- (a) email address;
- (b) address; or
- (c) telephone number.

### **Disclosure: references to the Secretary of State**

**12.**—(1) In articles 10 and 11, references to the Secretary of State apply equally to—

- (a) a person providing services to, or on behalf of, the Secretary of State or the Northern Ireland Department; or
- (b) the Northern Ireland Department.

(2) In this article, “the Northern Ireland Department” means the Department for Social Development in Northern Ireland.

### **Protection**

**13.**—(1) Subject to paragraph (3), the Trustee and the members and staff of the corporation shall not be liable for any act or omission in connection with the administration or management of the Scheme except—

- (a) an act or omission which amounts to a breach of trust and arises from its or their own wilful act or omission, fraud or dishonesty; or
- (b) where the liability is a liability that cannot be excluded or restricted, by virtue of—
  - (i) in Great Britain, section 33 of the Pensions Act 1995; or
  - (ii) in Northern Ireland, Article 33 of the Pensions (Northern Ireland) Order 1995.

(2) Without prejudice to the generality of paragraph (1), the reference in paragraph (1) to liability for any act or omission in connection with the administration or management of the Scheme includes a reference to liability for any loss, however caused, occasioned to a member of the Scheme by—

- (a) the arrangement by the Trustee of investment funds under article 29(2); or
- (b) the member's choice to direct assets of the Scheme attributable to their pension account to any particular investment fund.

(3) In so far as paragraph (1) would exclude liability for the acts or defaults of a fund manager in the exercise of a discretion delegated to such a person under—

- (a) in Great Britain, section 34(5)(b) of the Pensions Act 1995(2); or
- (b) in Northern Ireland, Article 34(5)(b) of the Pensions (Northern Ireland) Order 1995(3),

liability for such acts or defaults is only excluded provided that the steps set out in the provision specified in paragraph (4) have been taken by the Trustee.

(4) The specified provision is—

- (a) in Great Britain, section 34(6) of the Pensions Act 1995; and
- (b) in Northern Ireland, Article 34(6) of the Pensions (Northern Ireland) Order 1995.

(5) The Trustee may in accordance with paragraph (6) indemnify itself or the members or staff of the corporation against any losses, costs and damages it or they may incur in connection with the administration or management of the Scheme except for losses, costs or damages arising from—

- (a) an act or omission which amounts to a breach of trust and arises from its or their own wilful act or omission, fraud or dishonesty;
- (b) a liability which cannot be excluded or restricted, by virtue of—
  - (i) in Great Britain, section 33 of the Pensions Act 1995; or
  - (ii) in Northern Ireland, Article 33 of the Pensions (Northern Ireland) Order 1995; or
- (c) a liability to pay a fine or penalty—
  - (i) in Great Britain, as described in section 256(1) of the Pensions Act 2004; or
  - (ii) in Northern Ireland, as described in Article 233(1) of the Pensions (Northern Ireland) Order 2005(4).

(6) The Trustee may insure—

- (a) the Scheme against any loss caused by itself, the members or staff of the corporation, or its agents; or
- (b) itself, the members or staff of the corporation against any losses, costs or damages arising from a liability in connection with the administration or management of the Scheme except for a liability—
  - (i) which arises from an act or omission which amounts to a breach of trust and arises from its or their own wilful act or omission, fraud or dishonesty;
  - (ii) that cannot be excluded or restricted, by virtue of section 33 of the Pensions Act 1995 (in relation to Great Britain) or Article 33 of the Pensions (Northern Ireland) Order 1995 (in relation to Northern Ireland); or
  - (iii) to pay a fine or penalty as described in section 256(1) of the Pensions Act 2004 (in relation to Great Britain) or Article 233(1) of the Pensions (Northern Ireland) Order 2005 (in relation to Northern Ireland).

---

(2) Section 34(5)(b) was amended by [S.I. 2001/3649](#), article 139(1) and (3).

(3) Article 34(5)(b) was amended by [S.I. 2001/3649](#), article 150(1) and (3).

(4) [S.I. 2005/255 \(N.I. 1\)](#).

(7) Where the Trustee decides to indemnify itself, or the members or staff of the corporation, under paragraph (5), the losses, costs or damages in question shall be regarded for the purposes of article 27 as part of the general costs of administration and management of the Scheme.

(8) Where the Trustee decides to take out insurance under paragraph (6), the costs of taking out the insurance shall be regarded, for the purposes of article 27, as part of the general costs of administration and management of the Scheme.

### **Steps for increasing awareness of the Scheme**

14. The Trustee may take such steps as it considers appropriate for increasing awareness and understanding of the Scheme in order that employers and individuals who may be admitted as members of the Scheme may assess whether they wish to use the Scheme.

### **Power to make rules**

15. The Trustee may make rules and may revoke, amend or re-enact any rules made by it or the Secretary of State.

### **Application of the Trustee Act 2000**

16. The Trustee Act 2000(5) applies as if this Order and any rules were a trust instrument.

### **Information about the Scheme**

17.—(1) The Trustee must as soon as possible following the preparation of any of the documents specified in paragraph (2), make the document available by placing a copy of it on the internet.

(2) The specified documents are—

(a) a document of the kind referred to—

(i) in Great Britain, in regulation 6(1) of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996(6); or

(ii) in Northern Ireland, in regulation 6(1) of the Occupational Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1997(7);

(b) the annual report of the corporation sent to the Secretary of State under paragraph 17 of Schedule 1 to the Act; and

(c) the annual statement of accounts of the corporation prepared under paragraph 20 of Schedule 1 to the Act.

---

(5) 2000 c.29.

(6) S.I. 1996/1655; regulation 6(1) was amended by S.I. 1997/786 and S.I. 2005/3377.

(7) S.R. 1997 No.98; regulation 6(1) was amended by S.R. 1997 No. 160 and S.R. 2005 No. 568.