STATUTORY RULES OF NORTHERN IRELAND

2005 No. 169

PENSIONS

The Occupational Pension Schemes (Independent Trustee) Regulations (Northern Ireland) 2005

Made - - - -	*25th March 2005*
Coming into operation	*11th April 2005*

The Department for Social Development, in exercise of the powers conferred on it by sections 109(1)(d), (2), (3) and (4), 164(1) and (4) and 177(2) and (3) of the Pension Schemes (Northern Ireland) Act 1993(**1**) and Articles 22(2F), 23(4), (5)(a) and (6), 115(1), 122(3) and 166(3) of the Pensions (Northern Ireland) Order 1995(**2**), and now vested in it(**3**), and Articles 7(5)(a), 88(2)(q), 92(5)(u) and 287(2) and (3) of, and paragraph 2(d) of Schedule 1 to, the Pensions (Northern Ireland) Order 2005(**4**) 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) 2005 and shall come into operation on 11th April 2005.

(2) In these Regulations –

"the 1995 Order" means the Pensions (Northern Ireland) Order 1995;

"the 2005 Order" means the Pensions (Northern Ireland) Order 2005;

"applicant" means a person who applies to be registered in the trustee register;

"controller" means, where the applicant is a company, a person who holds 10 per cent. or more of the shares in the applicant and exercises significant influence over the management of the applicant by virtue of that shareholding;

"key person" in relation to an applicant who is not an individual means a person who has overall management responsibility for the pension trustee work conducted by the applicant;

"officer" means –

(**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); Article 22(2F) is inserted, and Article 23 is substituted, by Article 32(2)(d) and (3) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))
(**3**) *See* Article 8(b) of S.R. 1999 No. 481
(**4**) S.I. 2005/255 (N.I. 1)

(a) a relevant individual who has significant influence over the management of the pension trustee work, or

(b) any person whose signature may authorise, in part or in full, a transaction involving the assets of any scheme for which the applicant acts as trustee;

"pension trustee work" means the work as a trustee carried out by the applicant in relation to trust schemes;

"pension scheme registration number", in relation to a scheme, refers to the number given to the scheme when it is placed on the register of occupational and personal pension schemes compiled and maintained by the Regulator(**5**);

"the Regulator" means the Pensions Regulator;

"relevant individual" means a director, member of the committee of management, chief executive, designated member in relation to a limited liability partnership, partner or controller;

"trustee register" means the register compiled and maintained by the Regulator under regulation 2 below,

and other expressions used in these Regulations have the same meaning as in Part II of the 1995 Order (occupational pensions).

(3) In these Regulations, any reference to a numbered Article is a reference to the Article of the 1995 Order bearing that number.

(4) The Interpretation Act (Northern Ireland) 1954(**6**) shall apply to these Regulations as it applies to an Act of the Assembly.

The trustee register

2. The Regulator must compile and maintain a register of persons who satisfy the conditions set out in regulation 3.

Conditions for registration

3. The conditions for registration prescribed for the purposes of Article 23(4) (power to appoint independent trustees) are –

(a) the applicant must not, at the time he is making the application or at any time while he is registered in the trustee register, be any of the following –

(i) the subject of a prohibition order made under Article 3(**7**) (prohibition orders);

(ii) the subject of a suspension order made under Article 4(**8**) (suspension orders), or

(iii) disqualified for being a trustee of any trust scheme on any of the grounds set out in Article 29(1) (persons disqualified for being trustees), or by virtue of being the subject of an order made under Article 29(3) or (4)(**9**);

(b) the Regulator is satisfied that –

(i) the applicant has sufficient relevant experience of occupational pension schemes;

(ii) the applicant is a fit and proper person to act as a trustee of an occupational pension scheme;

(**5**) Under section 59(1) of the Pensions Act 2004 (c. 35) the Regulator is required to compile and maintain a register of occupational and personal pension schemes which are or have been "registrable schemes"; *see also* regulation 2 of S.R. 2005 No. 93

(**6**) 1954 c. 33 (N.I.)

(**7**) Article 3 is substituted by Article 29 of the Pensions (Northern Ireland) Order 2005

(**8**) Article 4 is amended by Article 30 of, and paragraph 29 of Schedule 10 to, the Pensions (Northern Ireland) Order 2005

(**9**) Article 29(3) and (4) is amended by Schedule 11 to the Pensions (Northern Ireland) Order 2005

(iii) the applicant operates sound administrative and accounting procedures, and

(iv) the applicant has adequate indemnity insurance cover;

(c) where the applicant is not an individual –

(i) each officer of the applicant must satisfy the conditions specified in paragraphs (a) and (b)(ii), and

(ii) each key person must satisfy the conditions specified in paragraphs (a) and (b)(i) and (ii);

(d) the applicant has premises in the United Kingdom from which he conducts his business as a trustee of an occupational pension scheme, and he discloses the address of those premises to the Regulator;

(e) the applicant agrees –

(i) to have his fees and costs scrutinised by an independent adjudicator and to be bound by that adjudicator's final adjudication as to his fees and costs;

(ii) to the Regulator disclosing his name, business address and the areas of trustee work in which he specialises on the version of the trustee register which is to be publicly available;

(iii) to comply with reasonable requests of the Regulator to provide information to the Regulator, and

(iv) to inform the Regulator as soon as is reasonably practicable if he becomes disqualified under Article 29 –

(aa) for one of the reasons set out in paragraph (1) of that Article, or

(bb) by virtue of being the subject of a court order referred to in paragraph (3)(b) of that Article.

Refusing to register an applicant in the trustee register

4.—(1) The function set out in paragraph (2) is prescribed for the purposes of Article 88(2)(q) of the 2005 Order (the Regulator's procedure in relation to its regulatory functions).

(2) The function referred to in paragraph (1) is the Regulator's duty under Article 23(4) and regulation 2 to compile and maintain a register of persons who satisfy prescribed conditions to act as independent trustees, but only in so far as that duty entails refusing to register an applicant in that register.

(3) The Regulator may, in such circumstances as it sees fit, delegate the function specified in paragraph (2) to the Determinations Panel(**10**).

Removal from the trustee register – amendment of Schedule 2 to the 2005 Order

5. In Schedule 2 to the 2005 Order (the reserved regulatory functions) after paragraph 13 there shall be inserted the following paragraph –

"**13A.** The duty under Article 23(4), and regulations made thereunder, to compile and maintain a register of persons who satisfy prescribed conditions to act as independent trustees, but only in so far as that duty entails the removal of a person from that register if he does not satisfy, or no longer satisfies, any such prescribed condition.".

(**10**) The Determinations Panel is established under section 9 of the Pensions Act 2004

Removal from the trustee register – prescribed regulatory function

6.—(1) The function set out in paragraph (2) is prescribed for the purposes of Article 92(5)(u) of the 2005 Order (special procedure: applicable cases).

(2) The function referred to in paragraph (1) is the Regulator's duty under Article 23(4), and regulations made thereunder, to compile and maintain a register of persons who satisfy prescribed conditions to act as independent trustees, but only in so far as that duty entails the removal of a person from that register if he does not satisfy, or no longer satisfies, any such prescribed condition.

Removal from the trustee register – supplementary provision

7. The validity of the appointment of an independent trustee under Article 23(1) or any action taken by him during that appointment is not to be affected by that trustee's subsequent removal from the register.

Notification

8.—(1) A notice given under Article 22(2B)(**11**) (circumstances in which provisions relating to independent trustees apply) shall contain the information specified in paragraph (2).

(2) The information specified for the purposes of paragraph (1) is –

(a) that the notice is a notice given under Article 22(2B);

(b) the date of the notice;

(c) the name and address of the scheme;

(d) the pension scheme registration number;

(e) the names and addresses of all trustees of the scheme;

(f) the name of the employer or employers to which the circumstances set out in Article 22(1)(**12**) apply;

(g) the name and address of the responsible person giving the notice, and

(h) the date of the responsible person's appointment, or the date on which that appointment is to end.

Access to the trustee register

9.—(1) The Regulator shall provide the most recent copy of the register to any person on request, and may do so either –

(a) free of charge, or

(b) on the payment by that person of a charge determined by the Regulator which does not exceed the expense incurred in copying, packing and posting the copy.

(2) The Regulator may publish the register in any way.

Multi-employer schemes

10.—(1) Where Article 22 applies in relation to a trust scheme which is a multi-employer scheme, by virtue of the circumstances set out in paragraph (1)(a) or (b) of that Article applying to at least one

(**11**) Article 22(2B) is inserted by Article 32(2)(d) of the Pensions (Northern Ireland) Order 2005

(**12**) Article 22 was amended by section 43(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and is amended by Article 32(2) of, and paragraph 34 of Schedule 10 to, and Schedule 11 to, the Pensions (Northern Ireland) Order 2005