



Statutory Document No. 148/06

THE PENSION SCHEMES ACT 1995

THE PENSION SCHEMES LEGISLATION (APPLICATION) (No. 4) ORDER 2006

*Approved by Tynwald*                      *26<sup>th</sup> April 2006*

*Coming into operation in accordance with Article 1*

In exercise of the powers conferred on the Department of Health and Social Security by section 1 of the Pension Schemes Act 1995(a), and of all other enabling powers, the following Order is hereby made:-

**Citation and commencement**

1. (1) This Order may be cited as the Pension Schemes Legislation (Application) (No. 4) Order 2006 and shall, subject to section 1(4) of the Pension Schemes Act 1995, come into force as provided in paragraph (2).

(2) This Article and Articles 2 and 3 shall come into force forthwith and each provision of the applied legislation, as modified, shall be deemed to have come into force on 6<sup>th</sup> April 2006.

**Interpretation**

2. (1) In this Order “the applied legislation” means the Occupational Pension Schemes (Independent Trustee) Regulations 2005(b).

(2) Unless the context otherwise requires -

- (a) any reference in any of the applied legislation to any provision in an instrument of a legislative character which is not itself a provision of any of the applied legislation shall be construed as if the provision so referred to had been in force in the Island from the date on which that instrument of a legislative character had effect in Great Britain;
- (b) reference in any legislation applied by this Order to any provision of any such legislation or of any other legislation applied to the Island by an order under section 1 of the Pension Schemes Act 1995 or section 1 of the Social Security Act 2000(c) shall be construed as a reference to that legislation as it has effect in the Island.

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(a) 1995 c.11; (b) S.I. 2005/703; (c) 2000 c.5.

### **Application to the Island of the applied legislation**

3. The applied legislation, as modified and shown in the Schedule to this Order, shall apply to the Island as part of the law of the Island.

## SCHEDULE

This Schedule sets out the text of regulations 1, 8 and 10 to 14 of the Occupational Pension Schemes (Independent Trustee) Regulations 2005 (S.I. 2005/703) with such exceptions, adaptations and modifications made where necessary.

Note: Modifications subject to which the legislation is applied to the Island are in *bold italic* type

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### STATUTORY INSTRUMENTS

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2005 No. 703

### PENSIONS

#### The Occupational Pension Schemes (Independent Trustee) Regulations 2005

##### Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Occupational Pension Schemes (Independent Trustee) Regulations 2005, and shall *be deemed to have* come into force on 6<sup>th</sup> April 2006.

(2) In these Regulations -

"the 1995 Act" means the Pensions Act 1995<sup>1</sup>;

"the *Department*" means the *Department of Health and Social Security*;

"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 *retirement benefits* schemes compiled and maintained by the *Insurance and Pensions Authority pursuant to section 24 of the Retirement Benefits Schemes Act 2000 (of Tynwald) and Regulations made under that section*;

and other expressions used in these Regulations have the same meaning as in Part 1 of the 1995 Act (occupational pension schemes).

##### The trustee register, etc.

2. to 7. *Omitted.*

##### Notification

8. (1) A notice given under section 22(2B) of the 1995 Act<sup>2</sup> (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 section 22(2B) of that Act;
- (b) the date of the notice;

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<sup>1</sup> See S.D. 501/97.

<sup>2</sup> Sections 22, 23, 25 and 26 were inserted by article 7 of the Pensions Act 1995 (Application) (Amendment) Order 2006 (S.D. 17/06).

- (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 section 22(1) of the 1995 Act apply (*insolvency*);
- (g) the name and address of the responsible person (*see section 22(2D) of the 1995 Act*) 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. *Omitted.*

#### **Multi-employer schemes**

10. (1) Where section 22 of the 1995 Act applies in relation to a trust scheme which is a multi-employer scheme, by virtue of the circumstances set out in section 22(1) or of that Act applying to at least one employer in that scheme, sections 22 to 26 of that Act (provisions relating to independent trustees) are modified so that references to the employer in those sections are to be treated as if they were references to each employer to which section 22 applies.

(2) In this regulation "multi-employer scheme" means a trust scheme in relation to which there is more than one employer.

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

11. (1) Sections 22 to 26 of the 1995 Act are modified as specified in paragraphs (2) and (3) of 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 of Justice of the Isle of Man* has jurisdiction to *dissolve* the insolvent partnership.

(2) Section 22(1) shall be modified so as to apply in relation to the scheme -

- (a) if a person begins to act as an insolvency practitioner in relation to the insolvent partnership;
- (b) *omitted.*

(3) Where, by virtue of paragraph (2)(a), section 22 applies in relation to the scheme, subsections (2) to (3) of that section and sections 23 to 26 shall have effect as if references in those provisions to a company included references to the insolvent partnership.

## Extension of the meaning of "employer"

12. For the purposes of sections 22 to 26 of the 1995 Act and these Regulations, references to the employer shall include a person who would have been an employer to whom the circumstances set out in section 22(1)(a) of that Act apply but for the fact that, immediately before an insolvency practitioner began to act as set out in *that section*, that person no longer employed any persons in the description of employment to which the scheme in question relates.

## Disclosure requirements and penalty

13. (1) An independent trustee appointed to a scheme by order made under section 23(1) of the 1995 Act must furnish the information specified in paragraph (2) in accordance with the following provisions of this regulation.

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

- (a) the name and address of the *independent* trustee;
- (b) the scale of fees that will be chargeable by the *independent* trustee and payable by the scheme;
- (c) details of each of the amounts charged to the scheme by the *independent* trustee in the past 12 months.

(3) The *independent* trustee must furnish the information specified in paragraph (2)(a) in writing to every member or relevant trade union as of course within a reasonable period following his appointment.

(4) The *independent* trustee must furnish any of the information specified 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) within a reasonable period following the request being made.

(5) Where the *independent* trustee fails to take all reasonable steps to comply with any requirement imposed upon him by this regulation, the *Department* may require him to pay, within 28 days, a penalty which -

- (a) in the case of an individual, shall not exceed £5,000; and
- (b) in any other case, shall not exceed £50,000.

(6) In this regulation -

"member" -

- (a) 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, and
- (b) includes a person who is in receipt of benefits under the scheme by virtue of having been a dependant of someone who was a member;

"prospective member" means any person who, under the terms of his contract of service and the scheme rules -

- (a) is eligible, at his own option, to become a member of the scheme;
- (b) will become so eligible if he continues in the same employment for a sufficiently long period;

- (c) will be admitted to membership of the scheme 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" means *a* trade union –

- (a) *registered in accordance with the Trade Unions Act 1991 (of Tynwald); and*
- (b) recognised to any extent for the purposes of collective bargaining in relation to members and prospective members of the scheme in question;

*Here "collective bargaining" has the same meaning as in section 32(2) of the Employment Act 1991 (of Tynwald); and*

"request" means a request in writing.

(7) *Omitted.*

(8) Any information which this regulation requires the *independent* trustee 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 so furnished if it was sent to him by post to his last address known to the trustees.

#### **Revocation**

14. (1) The Occupational Pension Schemes (Independent Trustee) Regulations 1990<sup>3</sup> are hereby revoked.

(2) Regulation 26 of the Occupational *and Personal* Pension Schemes (*Consequential Amendments*) Regulations 1994<sup>4</sup> ((amendment of the Occupational Pension Schemes (Independent Trustee) Regulations 1990) is hereby revoked.

(3) *Omitted.*

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Made 24th February 2006



Minister for Health and Social Security

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<sup>3</sup> S.I. 1990/2075 (see S.D. 139/96).

<sup>4</sup> S.I. 1994/1062 (see S.D. 590/95).

## EXPLANATORY NOTE

(This note is not part of the Order)

1. Section 1 of the Pension Schemes Act 1995 enables the Department by Order to apply to the Island, as part of the law of the Island and incorporating such exceptions, adaptations and modifications as may be specified by the Order, any legislation to which that Act applies.
2. *Inter alia*, the Act applies to the Pension Schemes Act 1993 and the Pensions Act 1995 (Acts of the United Kingdom Parliament) and to any statutory instrument made or having effect as if made under either of those Acts.
3. This Order applies to the Island (in part) the Occupational Pension Schemes (Independent Trustee) Regulations 2005, the provisions of which are summarised in the following paragraphs. The applied legislation shall be deemed to have come into force on 6<sup>th</sup> April 2006.
4. **The Occupational Pension Schemes (Independent Trustee) Regulations 2005 (S.I. 2005/703) (regulations 1, 8 and 10 to 14 only)**
  - 4.1 Sections 22, 23, 25 and 26 were recently inserted into the Pensions Act 1995 (as that Act of the United Kingdom Parliament has effect in the Isle of Man and referred to as “the 1995 Act”). Those new provisions (in particular) passed the responsibility for appointing an independent person to act as trustee of an occupational pension scheme whose sponsoring employer is insolvent from the insolvency practitioner dealing with the employer’s winding up to the DHSS for it to make such an appointment (where the DHSS feels it is appropriate). These Regulations supplement those new sections as follows.
    - 4.2 Regulation 1 provides for the citation, commencement and interpretation of the Regulations.
    - 4.3 Under section 22(2B) of the 1995 Act the person appointed as the insolvency practitioner in relation to the insolvent employer must notify the DHSS and the scheme trustees when they started to act in that capacity, when they stopped doing so and provide such other information as would be prescribed in regulations. Regulation 8 specifies what that other information is.
    - 4.4 Regulations 10, 11 and 12 modify sections 22 to 26 of the 1995 Act as they apply to pension schemes where –
      - there is more than one employer sponsoring the scheme;
      - the sponsoring employer is a partnership, and
      - the scheme no longer has any members who are employees of the sponsoring employer.
    - 4.5 Regulation 13 requires an independent trustee to notify members and prospective members of the scheme and any relevant trade union of certain information (including the independent trustee’s name and address and the scale of fees they will charge to be met by the scheme and the amounts they have charged in the past 12 months).
    - 4.6 Regulation 14 revokes the legislation these Regulations are replacing.

