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Statutory Document No. 594/04

RETIREMENT BENEFITS SCHEMES ACT 2000

THE RETIREMENT BENEFITS SCHEMES (INDEPENDENT AND NOMINATED TRUSTEE REQUIREMENT) REGULATIONS 2004

Approved by Tynwald

21st October 2004

Coming into operation

1st November 2004

In exercise of the powers conferred on the Treasury by sections 1, 3, 6 and 51 of the Retirement Benefits Schemes Act 2000¹, and of all other enabling powers, and having consulted the Insurance and Pensions Authority and such other organisations and persons as appear to it to be likely to be affected, the following Regulations are hereby made:—

¹ 2000 c.14 (as amended by 2004 c.3)

Citation and commencement

1. These Regulations may be cited as the Retirement Benefits Schemes (Independent and Nominated Trustee Requirement) Regulations 2004 and, subject to section 51(5) of the Act, shall come into operation on the 1st November 2004.

Definitions

2. In these Regulations –

“the Act” means the Retirement Benefits Schemes Act 2000;

“active member”, “controller”, “director” and “member” have the same meanings as given to them by section 54 of the Act;

“chief executive” has the same meaning as in section 19 of the Act;

“eligible members” means all persons who are active members of the scheme (including any member who is serving as a trustee of the scheme) together with such other members or class of members as may be specified in the notification issued in accordance with regulation 3(4), but excludes any person –

- (a) not satisfying the requirement of regulation 3(1)(a)(ii) (disregarding any person holding shares, or potentially holding shares under an employer operated savings scheme, in the employer of an amount not exceeding 1 per cent. of the issued share capital of that employer),
- (b) not satisfying the requirement of regulation 3(1)(a)(iii); or
- (c) who, by reason of any provision contained in his contract of employment with the employer, is or would be unduly restricted by the employer from attending meetings held by the trustees of the scheme;

“employee” and “employer” have the same meanings as given to them by section 53 of the Act;

“person connected” means –

- (a) where the employer is a company –
 - (i) any person who is a director of that company or an associate of that director,
 - (ii) any person who controls that company;
- (b) where the employer is a partnership, any person who is a partner in that partnership or an associate of a partner;
- (c) where the employer is an individual, any person who is an associate of the individual,

and, for the purpose of this definition, –

a person shall be taken as having ‘control’ of a company (or any company which has control of it) if he is a controller of that company; and

‘an associate’ means any person who is an individual’s husband, wife or relative (‘brother, sister, uncle, aunt, nephew, niece or lineal ancestor or descendant’), or the husband or wife of a relative of the individual or the individual's former husband or wife.

Independence from scheme employer

3. (1) A person who is a trustee of an occupational scheme shall, for the purpose of section 3(7)(e) of the Act (authorisation requirement for a trustee which is independent of the employer of the member), be treated as independent if –

- (a) where that person is not a company –
 - (i) he is not an employee of the employer or does not provide services to the employer (otherwise than as a trustee of the scheme);
 - (ii) he has no interest in the assets of the employer (otherwise than as an employee of the employer);
 - (iii) he is not a person connected with the employer;
- (b) where that person is a company –
 - (i) at least one-half of the directors of the company satisfy the requirements set out in sub-paragraphs (a)(i) to (iii);
 - (ii) any person who is a controller of the company is not also a controller of the employer.

(2) A company that is a trustee of an occupational scheme shall, for the purpose of section 3(7)(e) of the Act (authorisation requirement for a trustee which is independent of the employer of the member), be treated as independent if –

- (a) at least one-half of the directors of the company –
 - (i) satisfy the requirements set out in sub-paragraphs (1)(a)(i) to (iii),
 - (ii) are treated as independent having been appointed in accordance with the provisions of paragraph (4); and
- (b) the company is not an employer participating in the scheme.

(3) A person selected and appointed as a trustee of an occupational scheme in accordance with the provisions of paragraph (4) shall, for the purpose of section 3(7)(e) of the Act (authorisation requirement for a trustee which is independent of the employer of the member), be treated as independent.

(4) For the purpose of paragraph (3) and paragraph (2)(a)(ii), the manner of selection and appointment of the trustee or, as the case may be, director of a trustee must have provided that –

- (a) notification of the proposed selection and appointment was furnished in writing to each of the eligible members or was otherwise furnished by such other means that ensured that all eligible members were made aware of the vacancy and the content of the notification;
- (b) the notification included –
 - (i) details of the vacancy,
 - (ii) confirmation that any eligible member may be nominated for election (or re-election) as a trustee or director of a trustee of the scheme or may nominate any other eligible member to be a trustee or director of a trustee of the scheme,

- (iii) the method by which the making of nominations by eligible members may be made (which must be in writing, supported by at least one other eligible member and subject to the consent of the person nominated), and
- (iv) the last date on which such nominations may be made;
- (c) where more qualifying nominations were made than the vacancies available, the vacancy or vacancies would be filled by the nominees for whom the most votes were cast under a ballot, participation into which was notified to, and open to, all eligible members;
- (d) any ballot held for the purpose of sub-paragraph (c) was organised such that all eligible members were notified of the procedure to be used for the ballot (including whether it was to be conducted so as to secure that those voting do so in secret) and each eligible member –
 - (i) was entitled to vote only once (otherwise than as a proxy), and
 - (ii) was notified of the last date on which votes could be cast (being a date not less than 14 days after the date on which the procedure notice was given);
- (e) the appointment of the elected trustee or director of a trustee be on such terms that it will continue for a period of at least one year but not more than 6 years.

(5) A person who is a trustee of an occupational scheme shall, for the purpose of section 3(7)(e) of the Act (authorisation requirement for a trustee which is independent of the employer of the member), not be treated as independent if any arrangements are in place that would provide for the functions exercisable by that person to differ from the functions exercisable by any other trustee of the scheme by reason only of the fact that that person is treated as independent for the purpose of section 3(7)(e) of the Act.

Exceptions

4. (1) Subject to paragraph (2), for the purpose of section 3(7)(e) of the Act (qualification requirements for a scheme to be registered as an authorised scheme) the requirement for the appointment of a trustee which is independent of the employer of the member shall not apply to –

- (a) an occupational scheme in which all members of the scheme are also trustees of the scheme;
- (b) an occupational scheme in which the employer (being a body corporate and the employer of persons in the description or category of employment to which the scheme relates) or, where there is more than one employer, each employer is a trustee of the scheme and –
 - (i) at least half of the directors of each employer are members of the scheme; and
 - (ii) each member of the scheme is either a director, chief executive, company secretary or controller of the employer or employers, as the case may be, or a trustee of the scheme; or
- (c) an occupational scheme established prior to the 1st May 2005 where –
 - (i) the scheme has less than two members;

- (ii) the member of the scheme is a director, chief executive, company secretary or controller of a company that is sole trustee of the scheme; and
- (iii) all of the income and other assets of the scheme are invested in policies of insurance or annuity contracts.

(2) Paragraph (1) applies only in relation to an occupational scheme which provides that each trustee of the scheme is identified as a trustee of the scheme on all documentation evidencing the ownership of the assets of the scheme, except in cases where this is not permitted by any law governing such documentation.

Made 15th September 2004

A J Earnshaw MHK

Signed by authority of the Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations are made under sections 1, 3, 6 and 51 of the Retirement Benefits Schemes Act 2000.

Regulation 1 provides for citation and commencement.

Regulations 2 sets out relevant definitions.

Regulation 3 provides for the treatment as being independent for the purpose of section 3 of the Act. This section requires that at least one of the trustees of an occupational scheme must be independent of the employer of the members in order for the scheme to qualify for registration as an authorised scheme. In addition to dealing with general independence, the regulation provides that a scheme member may be treated as being independent of the employer when appointed as a trustee of the scheme (or as a director of a company acting as a trustee of the scheme) by nomination of other scheme members, in accordance with the provisions therein set out.

Regulation 4 provides that where all of the scheme members also act as trustees of the scheme (or as directors of a company that is the trustee of the scheme) the requirement for one of the trustees to be independent of the employer of the member in order for the scheme to be registered as an authorised scheme may not apply.

These regulations are separate from, and supplemental to, existing regulations [SD139/96 q.v.] governing the appointment, qualification and powers of an 'independent trustee' to be appointed by an interim receiver, trustee in bankruptcy, or liquidator or provisional liquidator on appointment in relation to any employer participating in an occupational scheme.