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## **Statutory Document No. 589/04**

### RETIREMENT BENEFITS SCHEMES ACT 2000

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## **THE RETIREMENT BENEFITS SCHEMES (DOMESTIC SCHEMES) (GENERAL ADMINISTRATION) REGULATIONS 2004**

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*Approved by Tynwald*

*21st October 2004*

*Coming into operation*

*1st November 2004*

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In exercise of the powers conferred on the Treasury by sections 6, 11, 12, 45 and 51 of the Retirement Benefits Schemes Act 2000<sup>1</sup>, 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:—

## PART I GENERAL

### **Citation and commencement**

1. These Regulations may be cited as the Retirement Benefits Schemes (Domestic Schemes) (General Administration) 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 2008 Act**” means the Insurance Act 2008;

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

“**administrator**” means the person in the Island who is –

- (a) responsible for the management of the scheme, and
- (b) a registered schemes administrator under section 36(1)(a) of the Act or a person exempted under section 36(1)(b) of that Act;

“**accepted insurer**” means an insurer which is –

- (a) authorised under section 8 of the 2008 Act;
- (b) holds a permit issued under section 22 of the 2008 Act; or
- (c) authorised to carry on insurance business in –
  - (i) the United Kingdom;
  - (ii) the Channel Islands;
  - (iii) any other Member State of the European Union, or
  - (iv) elsewhere, if the insurer is subject to regulation that is to the satisfaction of the Authority equivalent to that operating in the Isle of Man;

“**accepted investment scheme**” means a collective investment scheme –

- (a) authorised under paragraph 2 of Schedule 1 to the Collective Investment Schemes Act 2008;
- (b) authorised (or having effect as if authorised) under section 243 of the Financial Services and Markets Act 2000<sup>2</sup> (an Act of Parliament) or

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<sup>1</sup> 2000 c.14

<sup>2</sup> 2000 c. 8

under Regulation 14 of the Open-Ended Investment Companies Regulations 2001<sup>3</sup> (made under that Act) or recognised under sections 264, 270 or 272 of that Act;

- (c) authorised under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law 1987;
- (d) in receipt of a permit under article 7 of the Collective Investment Funds (Jersey) Law 1988; or
- (e) authorised to carry on business elsewhere, if the scheme is subject to regulation that is to the satisfaction of the Authority equivalent to that operating in the Isle of Man;

**“accrued rights”** in relation to any scheme member means the rights which at any time have accrued to or in respect of that member at that time to future benefits under the scheme;

**“active member”** has the same meaning as in section 54 of the Act;

**“Authority”** means the Isle of Man Financial Services Authority;

**“business days”** means any day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a bank holiday within the meaning of the Bank Holidays Act 1989<sup>4</sup>;

**“closed scheme”** means a scheme to which no new members may be admitted, but to which contributions are or may be payable by or in respect of, and under which benefits accrue to, existing members;

**“connected person”** means in relation to an employer or, as the case may be, the trustee –

- (a) where the employer or trustee is a company –
  - (i) any person who is a director, (or who is occupying the position of director, by whatever name called) of the company or is a person in accordance with whose directions or instructions (other than advice given in a professional capacity) the directors of the company are accustomed to act, and
  - (ii) any company in which a person, or an associate of that person, either jointly with an associate or separately, controls both that company and the employer or trustee; or
- (b) where the employer is a partnership, any person who is a partner in that partnership or an associate of a partner; or
- (c) where the employer or trustee is an individual, any person who is an associate of the individual;

and, for the purpose of this definition, –

**“an associate”** means any person who is under a contract of service by a partnership or an individual, or who is an individual’s husband,

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<sup>3</sup> SI 2001/1228

<sup>4</sup> 1989 c.5

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; and a person shall be taken as having 'control' of a company (or any company which has control of it) if he is entitled to control the exercise of 20 per cent. or more of the voting power at a general meeting of the company, or the company directors are accustomed to act in accordance with his directions or instructions;

**"custodian"** means a person appointed to exercise custody of cash, securities and any other documents of title to scheme assets on behalf of the scheme trustee;

**"domestic retirement benefits scheme"** means a retirement benefits scheme, other than a retirement benefits scheme that is registered as an 'international scheme' as defined in regulation 2 of the Retirement Benefits Schemes (International Schemes) Regulations 2001<sup>5</sup>;

**"domestic authorised retirement benefits scheme"** means a domestic retirement benefits scheme that is or was formerly registered as an authorised scheme under section 3 of the Act;

**"employer payment arrangement"** means any arrangement under which contributions fall to be paid by or on behalf of an employer toward a scheme either –

- (a) on the employer's own account (but in respect of an employee); or
- (b) on behalf of an employee out of deductions from the employee's earnings;

**"Financial Services Rule Book"** means the rules, or any part of the rules, made by the Authority under section 18 of the Financial Services Act 2008;

**"frozen scheme"** means a scheme under which benefits continue to be payable to existing members and to which –

- (a) no new members may be admitted,
- (b) no further contributions are payable by or in respect of existing members, and
- (c) no further benefits accrue to existing members although benefits which have already accrued to them may be increased;

**"insurer"** has the same meaning as in section 54 of the 2008 Act;

**"investment business"** has the same meaning as in the Financial Services Act 2008;

**"investment manager"** means the person appointed by the trustee in accordance with regulation 7 to manage the investments held for the purposes of the scheme;

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<sup>5</sup> SD 645/01

**“money purchase benefits”** means benefits the rate or amount of which are calculated by reference to a payment or payments made by a member or by any other person in respect of that member;

**“money purchase scheme”** means a scheme under which all the benefits that may be provided other than death benefits are money purchase benefits;

**“occupational scheme”** has the same meaning as in section 53 of the Act;

**“open scheme”** means a scheme that is not a closed scheme, a frozen scheme or a scheme that has been wound-up;

**“pensionable service”** in relation to a member of an occupational scheme means service in any description or category of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme;

**“personal scheme”** has the same meaning as in section 53 of the Act;

**“policy of insurance”** means a contract the effecting of which constitutes the carrying on of insurance business (within the meaning of the 2008 Act);

**“professional adviser”** has the same meaning as in section 6(2)(d) of the Act (actuary, auditor and investment manager);

**“prospective member”** in relation to an occupational scheme means any person who, under the terms of his contract of service or the scheme rules or both –

- (a) is able, either immediately or after completion of a specific period in the same employment, at his own option, to become a member of the scheme,
- (b) will become a member of the scheme automatically unless he makes an election not to become a member, or
- (c) may become a member of the scheme subject to the consent of his employer, and who –
  - (i) has been invited to membership of the scheme, but
  - (ii) has not yet accepted the invitation;

**“retirement benefits scheme”** has the same meaning as in section 53 of the Act;

**“scheme”** means a domestic authorised retirement benefits scheme; and

**“scheme year”** in relation to a scheme, means –

- (a) a year specified for the purposes of the scheme in any document comprising the scheme or, if none, a period of 12 months commencing on 1st April or on such other date as the trustee selects; or
- (b) such other period (if any) exceeding 6 months but not exceeding 18 months as is selected by the trustee –
  - (i) in connection with the commencement or termination of the scheme, or

- (ii) in connection with a variation of the date on which the year or period referred to in paragraph (a) is to commence.

**“Supervisor”** [*Revoked*]

### **Application of these regulations**

- 3. These regulations apply to retirement benefits schemes which are domestic authorised retirement benefits schemes.

## **PART II AUTHORISATION**

### **Certification of Authorisation**

- 4. In registering a scheme as an authorised scheme under section 3 of the Act, the Authority may issue a certificate of authorisation.

### **Annual return**

- 5. (1) For the purpose of section 3(7)(g) of the Act (prescribed requirement for qualification to be registered as an authorised scheme) the trustee of a scheme shall, in relation to and not more than 6 months after the end of each scheme year, ensure that an annual report is prepared and submitted to the Authority which shall contain –

- (a) a copy of the annual accounts or, where regulation 12(4) applies, a copy of the audited annual accounts and report by the scheme auditor, prepared in accordance with regulation 12 and section 15 of the Act for the scheme year;
- (b) where, by virtue of regulation 12(2), annual accounts have not been prepared, a statement that the scheme complies with the conditions for exclusion set out in that regulation;
- (c) where regulation 12(6) applies, a copy of the statement about contributions prepared by the scheme auditor or, as the case may be, the administrator in respect of the scheme year;
- (d) where section 11 of the Act applies, a copy of the payment schedule prepared in accordance with prescribed requirements of regulation 11 and effective at the end of the scheme year;
- (e) where the scheme is not a money purchase scheme, a copy of the latest actuarial valuation report and any related statements issued by the scheme actuary;
- (f) where any payment has been made during the scheme year by the trustee to any employer, who is currently or was formerly participating in the scheme, details of that or those payments;
- (g) where regulation 15(5) applies, a copy of the written statement of the principles governing decisions about investments effective at the end of the scheme year;
- (h) the information contained in Schedule 1;



- (i) where a statement or declaration has been made on the resignation or removal of a professional adviser in accordance with regulation 7(6), a copy of that statement or declaration;
- (j) a copy of any appointment letters issued during the scheme year in accordance with regulation 7(4); and
- (k) details of any changes in information previously provided to the Authority which have not otherwise been provided to the Authority during the scheme year.

(2) Subject to paragraph (4), the trustee of a scheme shall, within 2 months of receipt of a request being made by an eligible person –

- (a) furnish that person free of charge with a copy of the latest annual report prepared in accordance with and containing the information required by paragraphs (1)(a) to (i), or any particular part thereof, as may be requested; and
- (b) make available to that person free of charge for inspection, at a place which is reasonable having regard to the circumstances of the request and of the person making it, a copy of the latest annual report prepared in accordance with and containing the information required by paragraphs (1)(a) to (i), or any of the five previous annual reports similarly containing the information required by paragraphs (1)(a) to (i), as may be requested; and
- (c) furnish that person with a copy of any of the five previous annual reports prepared in accordance with and containing the information required by paragraphs (1)(a) to (i), or any particular part thereof, as may be requested.

(3) [*Revoked*]

(4) In the provision of information under paragraph (2)(c), or in complying with a second or subsequent request for a copy of the same information under paragraph (2)(a), the trustee may make a reasonable charge, but not exceeding the expense incurred in copying, posting and packing such information.

(5) In this regulation –

**“eligible person”** means –

- (a) in respect of an occupational scheme –
  - (i) members and prospective members of the scheme;
  - (ii) spouses of members and of prospective members;
  - (iii) beneficiaries under the scheme;
  - (iv) any trade union or employers’ association, registered under section 2 of the Trade Unions Act 1991<sup>6</sup>, which is recognised by the employer of any members of the scheme for the purpose of consultation and negotiation of terms and conditions of employment, and
- (b) in respect of a personal scheme –

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<sup>6</sup> 1991 c. 20

- (i) members of the scheme;
- (ii) beneficiaries under the scheme.

and, for the purpose of this definition, –

“beneficiary” means any person, other than a member of the scheme, who is entitled to the payment of benefits under the scheme.

### PART III PUBLIC REGISTER

#### **Public register of authorised schemes**

6. For the purpose of section 45 of the Act (the Authority shall keep public registers), the prescribed particulars and information to be contained in the public register of authorised domestic retirement benefits schemes is set out as follows –

- (a) name of scheme;
- (b) date of authorisation;
- (c) conditions (if any) attaching to authorisation;
- (d) whether the scheme is a personal or an occupational scheme; and
- (e) whether the scheme is open, closed, frozen or wound-up.

### PART IV ADVISERS

#### **Appointment of advisers**

7. (1) A person shall not be qualified to act as an auditor for a scheme if that person –

- (a) is a member of the scheme;
- (b) is a trustee of the scheme, a connected person or a person employed under a contract of service by the trustee;
- (c) does not hold a policy of professional indemnity insurance which –
  - (i) must be for an amount of at least £10,000,000, or such lesser amount being the higher of –
    - (a) £250,000, or
    - (b) an amount which is no less than the aggregate value of the current liabilities, determined on the basis of an open market valuation, of all schemes authorised under section 3 of the Act for which he acts as auditor;
  - (ii) must not be subject to an excess (deductible) of more than 1% of the limit of indemnity;

- (d) is not qualified for appointment as auditor of a company under section 14 of the Companies Act 1982<sup>7</sup>; and
  - (e) where the scheme is an occupational scheme, is –
    - (i) an employer who is currently or was formerly participating in the scheme or, in relation to that employer, a connected person or a person employed under a contract of service by the employer, or
    - (ii) by virtue of section 14(4) of the Companies Act 1982<sup>8</sup>, ineligible to audit the accounts of a company and that company is an employer in relation to the scheme.
- (2) A person shall not be qualified to act as an actuary for a scheme if that person is –
- (a) a member of the scheme;
  - (b) a trustee of the scheme; and
  - (c) not a Fellow of the Institute and Faculty of Actuaries or a person who has otherwise satisfied the Authority that the person holds qualifications equivalent to those required for membership of that body.
- (3) A person shall not be qualified to act as an investment manager for a scheme if that person –
- (a) has not satisfied the trustee that he is qualified by his ability in and practical experience of financial matters and has appropriate knowledge and experience of the management of investments of retirement benefits schemes or equivalent long term investment plans; and
  - (b) is not, in respect of any activity that constitutes investment business, authorised by a regulatory body in the jurisdiction of residence of that person, to carry on investment business.
- (4) The appointment by the trustee of a custodian, legal adviser or professional adviser for a scheme, shall be made in writing and shall –
- (a) specify the date the appointment is due to take effect;
  - (b) specify from whom the professional adviser, custodian or legal adviser is to take instructions;
  - (c) outline the requirements of paragraph (5) and (6); and
  - (d) specify to whom the professional adviser, custodian or legal adviser is to report.
- (5) Any person appointed in accordance with paragraph (4) shall –
- (a) acknowledge in writing receipt of the notice of appointment within 1 month of its receipt;
  - (b) confirm in writing that he will notify the trustee immediately on becoming aware of the existence of the revocation of any authorisation required by paragraph 3(b);

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<sup>7</sup> 1982 c.2

<sup>8</sup> 1982 c.2

- (c) confirm in writing that, in the event of his electing to resign from his appointed position, he will serve on the trustee a written notice of resignation stating the date on which he wishes his resignation to be effective, being a date not earlier than the date of receipt by the trustee of the notice; and
- (d) confirm in writing that he will notify the trustee immediately on becoming aware of the existence of any conflict of interest to which he is subject, in relation to the scheme; provided that where an investment manager is subject to requirements in relation to conflicts of interest set out in the Financial Services Rule Book, he shall confirm in writing that he will notify the trustee of any conflict of interest to which he is or may be subject, in relation to the scheme, in accordance with those requirements.

(6) Where a professional adviser, appointed in accordance with the requirements of section 17 of the Act, resigns or is removed from office he shall, within 7 days of resignation or removal, furnish the Authority and the trustee with –

- (a) a written statement specifying any circumstances connected with the resignation or removal which, in the professional adviser's opinion, significantly affect the interests of the members or prospective members of, or beneficiaries under, the scheme, or
- (b) a written declaration that he knows of no such circumstances as are referred to in sub-paragraph (a).

(7) Where a statement or declaration is made in accordance with paragraph (6), the trustee shall –

- (a) furnish the remaining professional advisers and the administrator with a copy of the statement or declaration no later than 14 days after its receipt; and
- (b) furnish any succeeding professional adviser with a copy of the statement or declaration no later than 14 days after its receipt or the date of appointment of the succeeding professional adviser, whichever is the later.

(8) Where a proposal to remove a professional adviser, appointed in accordance with the requirements of section 17 of the Act, becomes effective in accordance with the provisions of section 18(3) of the Act, the trustee wishing to remove the professional adviser shall do so by serving on him a written notice of removal stating the date with effect from which his appointment shall terminate.

(9) In the event of the death or resignation of a professional adviser, appointed in accordance with the requirements of section 17 of the Act, or the issue of a notice of removal in accordance with paragraph (8) –

- (a) section 17 of the Act shall not apply in respect of any period during which an appointment is being made in accordance with sub-paragraph (b);
- (b) the appointment of a replacement professional adviser shall be made by the trustee –
  - (i) within one month of the date of death, resignation or removal, or

- (ii) within such longer period, where the trustee is able to demonstrate that adequate steps are being taken to appoint a suitable replacement, as may be permitted by the Authority but not exceeding 3 months.

### **Exemption from requirement to appoint a scheme actuary**

**8.** (1) For the purpose of section 17 of the Act (appointment of professional advisers), the requirement for the trustee to appoint a scheme actuary shall not apply in respect of any scheme which is a money purchase scheme.

(2) Where the provisions of paragraph (1) apply in relation to any particular scheme, the notification requirements of section 18(1)(a)(iv) and (v) and section 18(1)(b)(i) of the Act (requirement to give notice of the resignation of, or any proposal to appoint or remove, a professional adviser) shall not apply to the trustee of that scheme in respect of the appointment, removal or resignation of a scheme actuary.

## **PART V INFORMATION DISCLOSURE AND RECORD KEEPING**

### **Duty to disclose and obtain information**

**9.** (1) It shall be the duty of any person who is an employer participating in a scheme which is an occupational scheme, to disclose to the trustee of that scheme –

- (a) such information as may reasonably be required, for the performance by the trustee or the administrator of their duties;
- (b) the occurrence of any event relating to the employer (as soon as reasonably practicable either before or after the occurrence of the event and no later than 1 month of its occurrence) where there is reasonable cause to believe this event will be materially significant in the performance of any of the trustee or administrator's duties.

(2) It shall be the duty of the trustee of a scheme –

- (a) to make available to the professional advisers and the administrator such of the scheme's books, accounts, records; and
- (b) to disclose to the professional advisers and the administrator such information,

as may be reasonably required for the performance of their duties.

(3) Where it is proposed that a member transfers his or her accrued rights to a retirement benefits scheme that is not —

- (a) registered as an authorised scheme under section 3 of the Act;
- (b) registered as a recognised scheme under section 21 of the Act;
- (c) a statutory scheme within the meaning of section 14 of the Income Tax (Retirement Benefit Schemes) Act 1978; or

- (d) a registered pension scheme within the meaning of the Retirement Benefits Schemes (Recognised Schemes) (United Kingdom) Order 2004<sup>9</sup>,

then prior to the transfer being made the scheme trustee must obtain from the member the confirmations set out in paragraph (4).

- (4) The confirmations set out in this paragraph are —
  - (a) that the member has received a statement from the receiving scheme showing the benefits to be awarded in respect of the transfer payment to be made and the conditions (if any) on which these could be forfeited or withheld; and
  - (b) that the member accepts that the scheme to which the transfer payment is to be made is not subject to the supervision of the Isle of Man Financial Services Authority and may not be regulated in any way by the law of the Island and that as a consequence there may be no obligation under that law on the receiving scheme or its trustees to provide any particular value or benefit in return for the transfer payment.

### **Books and records**

**10.** (1) The trustee of a scheme shall keep –

- (a) books and records relating to any of the following transactions –
  - (i) payments of benefits;
  - (ii) any amount received in respect of any contribution payable in respect of any member of the scheme;
  - (iii) payments made by or on behalf of the trustee to any person, including a professional adviser, and such records to include the name and address of the person to whom payment was made and the reason for that payment;
  - (iv) any movement or transfer of assets from the trustee to any person, including a professional adviser or custodian, and such records to include the name and address of the person to whom the assets were moved or transferred and the reason for that transaction;
  - (v) the appointment, removal or resignation of a professional adviser, administrator, custodian or legal adviser, including copies of any statement or declaration made in accordance with regulation 7(5) or (6);
  - (vi) the date on which a member joins the scheme and the receipt or payment of money or assets in respect of the transfer of a member's accrued rights into or out of the scheme and such records to include, the name of the member who has transferred such rights, the terms of the transfer, the name of the transferring scheme or the scheme transferred to, the date of the transfer and the date of receipt or payment of money or assets;

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<sup>9</sup> SD 591/04

- (vii) payments made to a member who leaves the scheme, other than on a transfer, and such records to include the name of that member, the date of leaving, the member's entitlement at that date, the method used for calculating any entitlement under the scheme and how that entitlement was (or is being) discharged; and
  - (viii) payments made to an employer who is currently or was formerly participating in the scheme or, in relation to that employer, to a connected person;
  - (ix) [*Revoked*]
  - (x) any other payments to, and withdrawals from, the scheme, including the name and address of the person the payment was made to or from whom it was received;
- (b) records of any of their meetings (including meetings of any of their number) which must be in writing and state –
- (i) the date, time and place of the meeting;
  - (ii) the names of all trustees invited to the meeting;
  - (iii) the names of the trustees who attended the meeting;
  - (iv) the names of any professional advisers or any other person who attended the meeting;
  - (v) any decisions made at the meeting; and
  - (vi) whether since the previous meeting there has been any occasion when a decision has been made by the trustee and if so the date, time and place of such a decision, and the names of the trustees who participated in the making of this decision.
- (2) The trustee of a scheme shall maintain at the principal place of business of the administrator in the Island originals or copies (including in the case of records held on a computer, records maintained in visible and legible form) of –
- (a) all of the books and records specified in paragraph (1)(a);
  - (b) the trust deed and rules of the scheme;
  - (c) the statement of investment principles prepared in accordance with regulation 15(5);
  - (d) annual accounts prepared in accordance with regulation 12 and, where required by regulation 12(6), the statement about contributions prepared by the scheme auditor or, as the case may be, the administrator;
  - (e) actuarial valuation reports and any related statements issued by the scheme actuary;
  - (f) payment schedules prepared, maintained and revised in accordance with regulation 11 and section 11 of the Act.
- (3) The trustee of a scheme shall maintain at the principal place of residence of the trustee in the Island or, if the trustee is not locally based, at the principal place of business of the administrator in the Island originals or copies (including in the case of

records held on a computer, records maintained in visible and legible form) of the records specified in paragraph (1)(b).

(4) The books and records referred to in this regulation shall be kept in the Island for a period of at least 6 years from the end of the scheme year to which they relate.

## PART VI CONTRIBUTIONS

### **Contribution deductions, payment schedules and refunds**

**11.** (1) For the purpose of section 11(1) of the Act (schedules of payments to certain schemes), the prescribed class or description (of schemes exempt from the requirement to prepare payment schedules) is any –

- (a) scheme in which the only benefits provided are death benefits, and under the provisions of which no member has accrued rights;
- (b) money purchase scheme in which all members of the scheme are trustees and under the provisions of which decisions to be made by the trustees must be made by unanimous agreement, or by unanimous agreement of the trustees if any of the trustees who are not members of the scheme are disregarded;
- (c) scheme which is a personal scheme in which no employer payment arrangement is in operation.

(2) For the purposes of section 11(2)(b) of the Act (such other amounts payable towards the scheme to be shown in the payment schedules), the prescribed amounts are –

- (a) in respect of any scheme which is a personal scheme, the rate of contributions payable under any employer payment arrangement; and
- (b) in respect of any scheme which is an occupational scheme, any amounts payable towards the scheme by an employer in respect of expenses likely to be incurred in the scheme year.

(3) For the purposes of section 11(3) of the Act (payment schedule must satisfy prescribed requirements), the prescribed requirements are –

- (a) in respect of any scheme which is a personal scheme, that the payment schedule shows the rates of contributions payable under the relevant employer payment arrangement and contains separate entries for the rates and due dates of any contributions –
  - (i) payable on the employer's own account in respect of the relevant employee; and
  - (ii) that fall to be paid on behalf of the relevant employee out of deductions from the employee's salary;
- (b) in respect of any scheme which is an occupational scheme, that the payment schedule contains separate entries for the rates and due dates of all contributions, other than voluntary contributions paid by a member, payable towards the scheme by or on behalf of –
  - (i) the employer, and in the case of a scheme in relation to which there is more than one employer, each employer; and



- (ii) the active members of the scheme:

Provided that, in any case where an insurance premium is payable, the payment schedule need not contain separate entries for identifying the contributions payable by or on behalf of the employer and the members of the scheme in respect of that premium and in respect of any scheme where there is more than one employer and the scheme is divided into separate parts, each of which relates to an employer and their employees, the scheme may be treated as if those separated parts are separate schemes for the purpose of the preparation of payment schedules.

(4) For the purposes of section 12(1) of the Act (trustee must give notice of any failure to pay contributions outlined in the payment schedule) –

- (a) the prescribed period is –
  - (i) where notice is to be given to the Authority, 60 days from the due date;
  - (ii) where notice is to be given to a member, 90 days from the due date; and
- (b) the prescribed circumstances are –
  - (i) where an amount, payable in accordance with the payment schedule, has been paid no later than 60 days after the due date, notice of non-payment in respect of that amount on or before the due date need not be given to the members of the scheme;
  - (ii) in the case of an occupational scheme in relation to which there is more than one employer, notice of non-payment in respect of an amount payable in accordance with the payment schedule need not be given to members where their pensionable service is not with the employer who has not paid any amount in accordance with that payment schedule.

(5) Notice need not be given under paragraph (4)(a)(i) if –

- (a) payment has been made no later than 30 days after the due date; and
- (b) the default is only the first or second such default in the period of 12 months ending on and including the due date.

(6) On entering into an employer payment arrangement with an employee, who is a member of a scheme which is a personal scheme, it shall be the duty of the employer to notify the scheme trustee or administrator of the establishment of the arrangement.

(7) Where on making a payment of any earnings in respect of any employment there is deducted any amount corresponding to any contribution payable on behalf of an employee who is a member of a money purchase scheme –

- (a) the amount deducted shall be paid to the trustee of the scheme within 19 days commencing from the end of the month in which the amount is deducted from the earnings in question, and
- (b) in the event of the payment not being so made, the trustees shall treat the unpaid deduction as a payment not paid on or before the due date for the purpose of section 12 of the Act and shall give notice in accordance with the provisions of paragraph (4).

(8) For the purpose of section 3(8)(d) of the Act (restrictions on the repayment of employee contributions), the constitutional documents of an occupational scheme may provide for the repayment of any contributions made to the scheme by a member where that member has no entitlement to short service benefits within the meaning of section 71 of the Pension Schemes Act 1993<sup>10</sup>, as it has effect in the Island.

## PART VII ACCOUNTS AND AUDIT REQUIREMENTS

### **Accounts**

**12.** (1) Subject to paragraph (2), the trustee of a scheme, including one which is or has been wound-up during a scheme year, shall ensure that annual accounts are prepared in respect of each scheme year ending on or after the coming into operation of these regulations, or if the scheme has been in operation for only part of a scheme year, for that part of the scheme year, in accordance with this regulation.

(2) For the purpose of section 15 of the Act (annual accounts), the requirement for the trustee to produce annual accounts shall not apply in respect of any personal scheme the assets of which consist wholly of policies of insurance which are specifically allocated to the provision of benefits for, and which provide all of the benefits payable under the scheme to, particular members or other persons in respect of particular members or both.

(3) Annual accounts shall contain the information specified in Schedule 2 and show a true and fair view of –

- (a) the financial transactions of the scheme during the scheme year;
- (b) the amount and disposition of the assets at the end of the scheme year; and
- (c) the liabilities of the scheme, other than the liabilities to pay relevant benefits after the end of the scheme year.

(4) Subject to paragraph (5), the trustee of a scheme shall arrange for the annual accounts to be audited by the scheme auditor and contain a report by the scheme auditor –

- (a) as to whether or not in his opinion the requirements of paragraph (3) are satisfied; and
- (b) where he considers that he has failed to obtain all the information which, to the best of his knowledge and belief, is necessary for the purposes of his audit, a statement to that effect and, so far as he knows them, the reasons for the failure.

(5) Paragraph (4) shall not apply to any scheme of the following description –

- (a) a money purchase scheme in which all members of the scheme are trustees and under the provisions of which decisions to be made by the trustees must be made by unanimous agreement, or by unanimous agreement of the

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<sup>10</sup> SD 531/95 (modified by GC494/92 and amended by SD590/95)

trustees if any of the trustees who are not members of the scheme are disregarded;

- (b) a personal scheme which is an ear-marked scheme in which no employer payment arrangement is in operation;
- (c) an occupational scheme which is an ear-marked scheme;
- (d) a personal scheme which is an ear-marked scheme in which an employer payment arrangement is in operation;
- (e) a money purchase scheme which has less than two members where, in respect of each year's annual accounts, the member has specified in writing to the scheme trustee that the provisions of paragraph (4) shall not apply.

(6) Subject to paragraph (7), the trustee of a scheme shall, in respect of each scheme year ending after the coming into operation of these regulations, arrange for the preparation of a statement by the scheme auditor or, in relation to any scheme which falls within the description referred to in paragraph (5)(c) or (d), a statement by the administrator, about contributions under the scheme which shall contain –

- (a) a statement as to whether or not in his opinion contributions have been paid during the scheme year in accordance with the payment schedule;
- (b) where there is no payment schedule, either for the whole or part of the scheme year, a statement as to whether or not in his opinion contributions payable to the scheme during that year, or that part, have been paid in accordance with the scheme rules or contracts under which they were payable, and (where appropriate) with the recommendation of the scheme actuary;
- (c) if the statement under sub-paragraph (a) or (b), as the case may be, is negative or qualified, a statement of the reasons.

(7) Paragraph (6) shall not apply to any scheme of the following description –

- (a) one which falls within the description referred to in paragraph (5)(a) or (b), or
- (b) one which falls within the description referred to in paragraph (5)(c) and which during the scheme year had no active members.

(8) For the purpose of section 17 of the Act (appointment of professional advisers), the requirement for the trustee to appoint a scheme auditor shall not apply in respect of any scheme that falls within the description referred to in paragraph (2) or (5).

(9) Where the provisions of paragraph (8) apply in relation to any particular scheme, the notification requirements of section 18(1)(a)(iv) and (v) and section 18(1)(b)(i) of the Act (requirement to give notice of the resignation of, or any proposal to appoint or remove, a professional adviser) shall not apply to the trustee of that scheme in respect of the appointment, removal or resignation of a scheme auditor.

(10) In this regulation –

“ear-marked scheme” means a scheme under which all benefits, other than death benefits, are money purchase benefits and all benefits are secured by relevant policies or contracts under which –

- (a) the policies or contracts, or units in such policies or contracts, are specifically allocated to the provision of benefits for individual members or any other person who has a right to benefits under the scheme; and
- (b) the terms of the policies of insurance, the investment contracts and the rules of the scheme, taken together, are such that the trustee has no discretion as to how any of the monies held in the relevant policies or contracts for the benefit of the trustee, the members or any other beneficiaries under the scheme are invested, nor as to whether any assets purchased with such monies are retained or disposed of by the accepted insurer or the manager of the accepted investment scheme:

Provided that, for the purpose of this definition, cash held on deposit by the trustee pending payment to the relevant policies or contracts or otherwise to members of the scheme or to meet administrative expenses, may be disregarded;

“payment schedule” means the schedule prepared, maintained and revised under regulation 11 and section 11 of the Act;

“relevant policies or contracts” means policies of insurance taken out with an accepted insurer, or investment contracts with an accepted investment scheme.

## PART VIII BANK ACCOUNTS AND INVESTMENT MATTERS

### **General**

**13.** (1) The trustee of a scheme which is an occupational scheme may, subject to any restriction imposed by the scheme, make any kind of investment that the trustee could make if the trustee were absolutely entitled to the assets of the scheme.

(2) Any discretion of the trustee of a scheme to make any decision about investments may be delegated by the trustee to the investment manager.

(3) No amount may be paid out of the assets of a scheme for the purpose of reimbursing or providing for the reimbursement of any trustee, professional adviser or administrator of the scheme in respect of any –

- (a) fine imposed by way of penalty for an offence of which he is convicted, or
- (b) penalty which he is required to pay under these regulations or section 50 of the Act (Civil penalties).

### **Bank accounts**

**14.** (1) Subject to paragraph (2), the trustee of a scheme must keep any money received by the trustee in an authorised account.

(2) Paragraph (1) shall not apply where the trustee –

- (a) has entered into an arrangement or contract with a person to the effect that the money is to be paid into a separate authorised account held by that person; and

- (i) it is a condition of that arrangement or contract that a record by that person shall be kept of the information referred to in paragraph (3) and such records should be retained for a period of at least 6 years;
  - (ii) any interest earned on the account shall be credited to the scheme in respect of which the money is deposited; and
  - (iii) where the scheme is an occupational scheme, the account is separate from one held by or on behalf of any employer who is currently or was formerly participating in the scheme;
- (b) has an account kept by the trustee at National Savings and Investments (an executive agency of the Chancellor of the Exchequer of the United Kingdom); and
- (i) money received by the trustee is to be held in that account; and
  - (ii) where the scheme is an occupational scheme, the account is separate from one held by or on behalf of any employer who is currently or was formerly participating in the scheme.
- (3) The information referred to in paragraph (2)(a)(i) is –
- (a) the amount of money paid into the account, the date of payment and from whom it was received;
  - (b) the amount of money paid out of the account, the date of withdrawal and to whom payment was made; and
  - (c) the interest earned on the account of each scheme in respect of which money is deposited.
- (4) An employer must, in cases where payments of benefits to members of an occupational scheme are made by him, make into a separate authorised account any payment of benefit, which has not been made to a member within 2 business days from the date of receipt by the employer.
- (5) In this regulation –
- "authorised account"** means a banking or deposit-taking account, established and held with an institution which is -
- (a) licensed under the Financial Services Act 2008,
  - (b) *[Revoked]*
  - (c) in receipt of a Part 4A permission (or having effect as if in receipt of such a permission) under the Financial Services and Markets Act 2000<sup>11</sup> (an Act of Parliament) for accepting deposits,
  - (d) registered under the Banking Business (Jersey) Law 1991, to carry on banking business,
  - (e) licensed to carry on banking business under the Banking Supervision (Bailiwick of Guernsey) Law 1994, or

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<sup>11</sup> 2000 c. 8

- (f) otherwise licensed or authorised to carry on banking business in a Member State of the European Union.

### **Written investment statements**

**15.** (1) This regulation shall apply in relation to any scheme, except any scheme which is –

- (a) a scheme in which the only benefits provided are death benefits, and under the provisions of which no member has accrued rights;
- (b) a scheme in which all members of the scheme are trustees of that scheme and all decisions relating to the investment of the resources of the scheme are required to include all members acting –
  - (i) unanimously and without recourse to any other person (apart from any person who is a trustee of the scheme but not a member of the scheme), or
  - (ii) jointly with such other person who is qualified in accordance with regulation 7(3) to act as an investment manager;
- (c) a scheme which, subject to paragraph (2), has no investments other than policies of insurance, or investment contracts in a collective investment scheme which satisfy the following requirements –
  - (i) the policies of insurance are taken out with an accepted insurer, or
  - (ii) the investment contracts are with an accepted investment scheme; and
  - (iii) the terms of the policies of insurance, the investment contracts and the rules of the scheme, taken together, are such that the trustee has no discretion as to how any of the monies held by the accepted insurer or accepted investment scheme for the benefit of the trustee, the members or any other beneficiaries under the scheme, are invested, nor as to whether any assets purchased with such monies are retained or disposed of by the accepted insurer or the manager of the accepted investment scheme; or
- (d) a personal scheme in which all investments, other than investments falling within the description referred to in sub-paragraph (c), have been made by the trustee in accordance with instructions received from a member in exercise of any powers given by the scheme rules for the member to choose how funds, in respect of the member, should be invested.

(2) For the purpose of paragraph (1)(c) –

- (a) investments shall not include cash held on deposit by the trustee pending payment to the accepted insurer or the accepted investment scheme; or to members of the scheme or to meet accrued liabilities or administrative expenses; and
- (b) the requirements of paragraph (1)(c)(iii) shall be deemed to be satisfied where the trustee may choose in which of a number of investment funds held by the accepted insurer or accepted investment scheme held for the benefit of the trustee, members or other beneficiaries are invested, provided that –

- (i) the trustee has no other discretion as to how those monies are invested nor as to whether any assets purchased with such monies are retained or disposed of by the accepted insurer or the accepted investment scheme; and
- (ii) monies held by the accepted insurer or the accepted investment scheme for the benefit of the trustee, members or any other beneficiaries of more than one scheme are held in each such investment fund (and for the purposes of this paragraph if the employer in relation to one scheme is a connected person in relation to the employer of another scheme those schemes shall be treated as one scheme); and
- (iii) the investment management in relation to each such investment fund is undertaken by the accepted insurer or the accepted investment scheme, as the case may be, without direction or influence by the trustee; and
- (iv) no individual asset held in any such investment fund is attributed to monies invested for the benefit of the trustee, members or any other beneficiaries of any particular scheme.

(3) For the purpose of section 17 of the Act (appointment of professional advisers), the requirement for the trustee to appoint an investment manager shall not apply in respect of any scheme that falls within a description referred to in paragraphs (1)(a) to (d).

(4) Where the provisions of paragraph (3) apply in relation to any particular scheme, the notification requirements of section 18(1)(a)(iv) and (v) and section 18(1)(b)(i) of the Act (requirement to give notice of the resignation of, or any proposal to appoint or remove, a professional adviser) shall not apply to the trustee of that scheme in respect of the appointment, removal or resignation of a scheme investment manager.

(5) The trustee of a scheme to which this regulation applies must in accordance with the following provisions of this regulation secure that there is prepared, maintained and from time to time, and in any event at least once every three years, revised a written statement of the principles governing decisions about investments for the purposes of the scheme.

(6) The written statement under paragraph (5) must cover the trustee's policy for meeting the requirements of paragraph (10) and their policy about –

- (a) the kinds of investments to be held,
- (b) the balance between different kinds of investments,
- (c) risk,
- (d) the expected return on investments, and
- (e) the realisation of investments.

(7) Before a statement under paragraph (5) is prepared or revised, the trustee must –

- (a) obtain in writing and consider appropriate investment advice; and
- (b) where the scheme is an occupational scheme, consult with –
  - (i) all of the employers participating in the scheme, unless all of the participating employers have notified the trustee that they need not be consulted, provided that where the employers have not all notified the trustee they need not be consulted and the trustee has specified a

reasonable period, not being less than 28 days, within which they must receive representations, they need not consider any representations received after that period; or

- (ii) the nominated person, where a person has been nominated by all of the participating employers to act as their representative.

(8) The investment manager to whom any discretion has been delegated under regulation 13(2) must –

- (a) exercise the delegated power of investment with a view to giving effect to the principles contained in the statement under paragraph (5), so far as reasonably practicable; and
- (b) in exercise of the delegated powers of investment have regard to the need for diversification of investments and the suitability of the proposed investments in so far as appropriate to the circumstances of the scheme.

(9) Except in relation to the exercise of any delegated powers of investment under paragraph (8), the trustee of a scheme to which this regulation applies must –

- (a) before making any investments obtain and consider appropriate investment advice on the question whether the investment is satisfactory having regard to the matters mentioned in paragraph (8)(b) and the principles contained in the statement under paragraph (5); and
- (b) in retaining any investment –
  - (i) determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain appropriate investment advice, and
  - (ii) obtain and consider such advice accordingly.

(10) The trustee shall not be treated as having complied with paragraph (9) unless the appropriate investment advice was given or has subsequently been confirmed in writing, except where the trustee is qualified to give this advice, and the trustee has recorded in writing the reasons why it considers any investment made is satisfactory having regard to the matters mentioned in paragraph (7)(b) and the principles contained in the statement under paragraph (4).

(11) Liability for breach of an obligation under any rule of law to take care or exercise skill in the performance of any investment functions where the function is exercisable by the trustee, or the investment manager where this function has been delegated under regulation 13(2), cannot by any instrument or agreement be excluded or restricted in any way.

(12) Where the trustee has taken all such steps as are reasonable to be satisfied that the investment manager is carrying out his work competently and complying with paragraph (8), the trustee shall not –

- (a) be responsible for the act or default of the investment manager in the exercise of any discretion delegated under regulation 13(2), or
- (b) be prevented by the operation of paragraph (11) from the exclusion or restriction of any liability of the trustee for the acts or defaults of the investment manager in the exercise of a discretion delegated under regulation 13(2).



(13) In this regulation –

“**appropriate investment advice**” means advice given by –

- (a) the investment manager; or
- (b) such other person who is otherwise qualified to be the investment manager.

### **Restriction on Employer-related Investments**

**16.** (1) This regulation shall apply in relation to any scheme which is an occupational scheme, except –

- (a) any scheme in which the only benefits provided are death benefits, and under the provisions of which no member has accrued rights;
- (b) any scheme in which all members of the scheme are trustees and the rules of which provide that before any investment of the resources of the scheme in employer-related investments is made each of the members shall agree in writing to the making of that investment.

(2) Subject to paragraphs (5), (7) and (9) the trustee of an occupational scheme must secure that –

- (a) not more than 5 per cent. of the current market value of the resources of the scheme are at any time invested in employer-related investments,
- (b) none of the resources of the scheme may at any time be invested in any employer-related loan; and
- (c) none of the resources of the scheme are at any time invested in any employer-related investment the making of which involves the entering by the trustee into a transaction at an undervalue.

(3) [*Revoked*]

(4) To the extent (if any) that sums due and payable by a person to the trustee of an occupational scheme remain unpaid –

- (a) they shall be regarded for the purposes of this regulation as loans made to that person by the trustee, and
- (b) resources of the scheme shall be regarded as invested accordingly.

(5) Subject to paragraph (6), if either a loan, or a security falling within paragraph 2 of Schedule 2 of the Investment Business Order 2004<sup>12</sup>, becomes an employer-related loan as a result of a change in the ownership of the employer or the person to whom the loan was made, the loan or security may be retained until whichever is the later of –

- (a) the date falling two years after the date on which it became an employer-related loan; or
- (b) where repayment cannot by virtue of contractual or other legal obligations be required or, in the case of securities, disinvestment effected before the date

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<sup>12</sup> SD 673/04

mentioned in paragraph (a), the earliest date on which repayment can be enforced, or disinvestment effected.

(6) For the purpose of paragraph (5) –

- (a) **“loan”** does not include any sum regarded as a loan under paragraph (2); and
- (b) **“retained”** means left undercharged.

(7) Subject to paragraph (8), where the disposal of assets on the winding-up of an occupational scheme would otherwise result in a contravention of this regulation, any employer-related investments held before the commencement of the winding-up may be retained while the scheme is being wound-up, but there shall be no new investment in employer-related investments while the resources retained under this paragraph exceed five per cent. of the current market value of the resources of the scheme.

(8) Paragraph (7) does not apply to permit the retention of employer-related investments which were, prior to the commencement of the winding-up, held in contravention of these Regulations.

(9) Paragraph (2) shall apply to any occupational scheme which has two or more participating employers and which is divided into two or more sections, as if each section of the scheme were a separate scheme, where the provisions of the scheme are such that –

- (a) the different sections of the scheme apply to different employers or groups of employers (whether or not more than one section applies to any particular employer or groups including any particular employer); and
- (b) contributions payable to the scheme by an employer, or by a member in employment under that employer, are allocated to that employer’s section (or, if more than one section applies to the employer, to the section which is appropriate in respect of the employment in question); and
- (c) a specified part or proportion of the assets of the scheme is attributable to each section and cannot (disregarding any provisions of the scheme by virtue of which on the winding up of the scheme assets attributable to one section may be used for the purposes of another section) be used for the purposes of any other section:

Provided that,

- (i) where –
  - (a) a scheme which has been such a scheme as is mentioned in paragraph (a) is divided into two or more sections some or all of which apply only to members who are not in pensionable service under the section; and
  - (b) the provisions of the scheme have not been amended so as to prevent the conditions mentioned in paragraphs (a) to (c) being satisfied in relation to two or more sections; but
  - (c) those conditions have ceased to be satisfied in relation to one or more sections (whether before or after the commencement date) by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

paragraph (2) shall apply as if the section in relation to which those conditions have ceased to be satisfied were a separate scheme; and

- (ii) where contributions or transfers of assets are made to a section of the scheme, the assets of which may only be applied for the provision of death benefits, that section shall also be treated as if it were a separate scheme for the purposes of paragraph (2).

(10) In this regulation –

**“collective investment scheme”** has the same meaning as in section 1 of the Collective Investment Schemes Act 2008;

**“employer-related investments”** means –

- (a) shares or other securities issued by the employer;
- (b) land which is occupied or used by, or subject to a lease in favour of, the employer;
- (c) property (other than land) which is used for the purposes of any business carried on by the employer;
- (d) loans to the employer;
- (e) any guarantee of, or security given to secure, obligations of the employer, and any guarantee or security given by the trustee shall be regarded as an investment of the resources of the scheme equal to the amount of the obligations guaranteed or secured;
- (f) any loan arrangement entered into with any person whereby the trustee’s right to or expectation of repayment depends on the employer’s actions or situation unless it was not the trustee’s purpose in entering into the arrangement to provide financial assistance to the employer;
- (g) the proportion attributable to the scheme’s resources (whether directly or through any intervening collective investment scheme) of any investments which –
  - (i) have been made by the operator of any collective investment scheme, and which
  - (ii) would have been employer-related investments if they had been made by the trustee;
- (h) where any of a scheme’s resources are invested in a policy of insurance the terms of which permit the premiums or other consideration for the rights acquired under the policy, or any monies otherwise credited to or for the benefit of the trustee or the members, to be invested in a fund created only for the purposes of that policy, the proportion of the scheme’s resources invested in that policy which is the same proportion as B is of A where –
  - A represents all the assets of the insurer held in the fund, and
  - B represents that part of A which, if invested by the trustee, would be employer-related investments;
- (i) where any of a scheme’s resources are invested in a policy of insurance (not being resources invested in a fund created only for the purposes of

that policy) the terms of which permit the trustee or the employer to direct that some or all of the premiums or other consideration for the rights acquired under the policy, or any monies otherwise credited to or for the benefit of the trustee or the members, are invested in employer-related investments, any investments made by the insurer from those premiums or other consideration or monies which would have been employer-related investments if they had been made by the trustee:

Provided that, and for the purposes of this definition, –

- (i) employer means any employer who is currently or was formerly participating in the scheme and, in relation to that employer, a connected person;
- (ii) an employer that is a company shall not be connected with another company solely by reason of one or more of its directors being a director of that other company;
- (iii) securities means any asset, right or interest falling within paragraph 1, 2, 4 or 5 of Schedule 2 to the Investment Business Order 2004<sup>13</sup>;
- (iv) employer-related investments shall not include –
  - (a) any investment in an account (including a current, deposit or share account) with a deposit-taking institution which is licensed under section 7 of the Financial Services Act 2008;
  - (b) any sums, in relation to any investment prescribed as an employer-related investment by sub-paragraph (g) above, where –
    - (i) the effecting of the policy of insurance constitutes the carrying on of long term business, within the meaning of regulation 3 of the Insurance Regulations 1986<sup>14</sup>; and
    - (ii) the policy of insurance is issued by the employer in its capacity as an insurer which is authorised under section 8 of the 2008 Act;
  - (c) any sums which are treated as debts due from the employer to the trustee by virtue of –
    - (i) section 10(2) of the Act (determination of contributions);
    - (ii) section 12(2) of the Act (schedule of payments);
    - (iii) section 13(5) of the Act (serious underprovision);
    - (iv) section 75 of the Pensions Act 1995<sup>15</sup>, as it has effect in the Island (deficiencies in assets),and any sums which would fall to be so treated by virtue of any of these sections were they not already debts due from the

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<sup>13</sup> SD 673/04

<sup>14</sup> GC 319/86

<sup>15</sup> SD 501/97 (section 75 was inserted by SD 17/06)

employer to the trustee;

- (d) any investment derived from a member's voluntary contributions which has been made with the written agreement of the member who paid those contributions, and which apart from this sub-paragraph would otherwise be invested in employer-related investments;
- (v) investments made by the operator of a collective investment scheme shall not be taken into account as an employer-related investment, where –
  - (a) the collective investment scheme in question is an accepted investment scheme;
  - (b) there are at least ten participants in the collective investment scheme in question;
  - (c) not more than ten per cent. of the assets of the collective investment scheme in question are attributable, whether directly or through any intervening collective investment scheme, to the scheme's resources; and
  - (d) not more than ten per cent. of the investments of the collective investment scheme in question are invested in securities falling within the meaning of Paragraph 1 of Schedule 2 to the Investment Business Order 2004<sup>16</sup> and issued by any one issuer, and

in respect of any collection of schemes in relation to which the respective employers are within the same group of companies, then –

- (i) for the purposes of sub-paragraph (b), the employers shall be treated as a single participant;
- (ii) for the purposes of sub-paragraph (c), the collection of schemes shall be treated as one scheme; and
- (iii) for the purposes of sub-paragraph (d) all issues within the group of companies shall be treated as issued by a single issuer;

**“employer-related loan”** means –

- (a) a loan to any employer (including any sums due and payable by an employer that are unpaid and which, by virtue of paragraph (4), are regarded as a loan);
- (b) a security issued by any employer which falls within paragraph 2 of Schedule 2 to the Investment Business Order 2004<sup>17</sup>, except any such security which is listed on a recognised stock exchange;

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<sup>16</sup> SD673/04

<sup>17</sup> SD673/04

- (c) any employer-related investment which is a guarantee, security or loan within the meaning of paragraphs (e) or (f) of the definition of employer-related investments:

Provided that, and for the purposes of this definition, –

- (i) employer means any employer who is currently or was formerly participating in the scheme and, in relation to that employer, a connected person;
- (ii) an employer that is a company shall not be connected with another company solely by reason of one or more of its directors being a director of that other company;
- (iii) employer-related loans shall not include –
  - (a) a loan to the employer, where –
    - (i) the scheme provides benefits for directors of a company which is the employer, or such directors and others;
    - (ii) there is a policy of insurance taken out under the scheme which is specifically allocated to the provision of benefits under the scheme and the directors' interests under which are used as security for the loan;
    - (iii) the policy concerned is effected with an insurer which is authorised under section 8 of the 2008 Act to carry on insurance business;
    - (iv) where the scheme is an approved scheme, within the meaning of the Income Tax (Retirement Benefit Schemes) Act 1978<sup>18</sup>, the requirements of the Assessor of Income Tax concerning the loan have been satisfied;
    - (v) the directors agreeing to their interests under the policy concerned being used as security for the loan, have so agreed in writing; and
    - (vi) the loan was made and the security given before the 9th August 1999;
  - (b) any security given over a policy of insurance to secure obligations of the employer, where –
    - (i) the scheme provides benefits for any director of a company which is the employer where that director has agreed in writing to the security being given;
    - (ii) the policy is specifically allocated to the provision of benefits under the scheme for that director;
    - (iii) the policy concerned is effected with an insurer which is authorised under section 8 of the 2008 Act to carry on

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<sup>18</sup> 1978 c. 9

insurance business and the obligations secured are to the same insurer;

- (iv) where the scheme is an approved scheme, within the meaning of the Income Tax (Retirement Benefit Schemes) Act 1978<sup>19</sup>, the requirements of the Assessor of Income Tax concerning the loan and the giving of the security have been satisfied;

**“group of companies”** means a group of companies consisting of a holding company and one or more subsidiaries where ‘holding company’ and ‘subsidiary’ have the same meaning as in section 37 of the Companies Act 1982<sup>20</sup>;

**“transaction at an undervalue”** means any transaction between the trustee and a person in which –

- (a) the trustee makes a gift to that person or otherwise enters into the transaction with that person on terms that provide for the trustee to receive no consideration, or
- (b) the trustee enters into the transaction with that person for a consideration the value of which, in money or money’s worth, is significantly less than the value, in money or money’s worth, of the consideration provided by the trustee.

## PART IX MISCELLANEOUS

### Consequential Amendments

**17.** The Retirement Benefits Schemes (International Schemes) Regulations 2001<sup>21</sup> are amended in accordance with Schedule 3.

### Offences

**18.** (1) Any person who acts as a professional adviser in contravention of regulation 7(1), (2) or (3) shall be guilty of an offence.

(2) Any employer who, without reasonable cause, fails to comply with the requirements of regulation 11(6), 11(7) or 14(4) shall be guilty of an offence.

(3) Any person who receives monies in contravention of regulation 13(3) shall be guilty of an offence.

(4) Where the resources of a scheme are invested in contravention of regulation 16, any trustee who agreed in the determination to make the investment shall be guilty of an offence.

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<sup>19</sup> 1978 c. 9

<sup>20</sup> 1982 c.2

<sup>21</sup> SD 645/01

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Made 15th September 2004

*A J Earnshaw MHK*  
Signed by authority of the Minister for the Treasury

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## SCHEDULE 1

### *Regulation 5.*

#### INFORMATION TO BE INCLUDED IN ANNUAL REPORT

1. The names of the persons who were trustees of the scheme, and the names of the directors of any company that was a trustee of the scheme, during the scheme year.
2. The names of the professional advisers, banks and other persons who acted for or were retained by the trustee during the scheme year, with an indication of any change since the previous scheme year.
3. Details of any delegation by the trustee during the scheme year in the management of the investments of the scheme and the names of any persons to whom management has been delegated.
4. The name and address of the administrator and any other person to which enquiries about the scheme generally or about an individual's entitlement to benefit should be sent.
5. Where the scheme is one to which regulation 12(4) applies, a statement as to whether the annual accounts attached to the annual report have been audited in accordance with regulation 12.
6. Where the scheme is one to which regulation 12(6) applies and the statement about contributions prepared by the auditor or, as the case may be, the administrator attached to the annual report is negative or qualified, an account of the reasons why and a statement as to how the situation has been or is likely to be resolved.
7. Where the scheme is one to which regulation 15(5) of these regulations applies, an investment report containing –
  - (a) a review of the investment performance of the funds of the scheme during the scheme year and during a period of not less than 3 scheme years (except where the scheme has existed for less than 3 years), together with an assessment of the nature, disposition, marketability, security and valuation of the scheme assets; and
  - (b) a statement by the trustee or the investment manager, containing details of any investments made during the scheme year which were not made in accordance with the statement of the principles governing decisions about investments prepared under regulation 15(5) and the reasons why these investments were made and in respect of such investments (or any made in a previous scheme year and continued to be held at the end of the current year) explaining what action (if any) it is proposed to take or has already been taken to remedy the position.
8. The total number of members of the scheme at the end of the scheme year.
9. A statement as to whether at the end of the scheme year the scheme is an open scheme, closed scheme or frozen scheme.
10. Where the scheme is a money purchase scheme in which a member's death benefits under the scheme may exceed the value of the member's interest in the funds of the scheme, details of whether any insurance cover has been established in respect of that liability and whether the premiums due in relation to that insurance have been paid.

## SCHEDULE 2

### *Regulation 12.*

#### INFORMATION TO BE INCLUDED IN THE ACCOUNTS

1. An account of the financial additions to, withdrawals from and changes in value of the resources of the scheme during the scheme year to which the accounts relate.
2. (1) A statement, as at the end of the scheme year to which the accounts relate, of the assets of the scheme at market value, or trustee's estimate thereof where market value is not readily ascertainable, and liabilities of the scheme, other than liabilities to pay pensions and benefits after the end of that scheme year –
  - (a) giving, in the case of any assets which are stated as an estimate of their market value, the reason why the valuation is an estimate;
  - (b) showing the distribution of the investments and other assets of the scheme between each of the following categories (where none of the investments falls within a particular category, that fact is not required to be stated), namely –
    - (i) insurance policies;
    - (ii) public sector fixed interest investments;
    - (iii) other fixed interest investments;
    - (iv) index-linked securities;
    - (v) equities (including convertible shares), separately showing quoted equities and unquoted equities;
    - (vi) property (which in this paragraph means any right or interest in freehold or leasehold land or buildings);
    - (vii) unit trusts invested in property;
    - (viii) other unit trusts;
    - (ix) managed funds (other than unit trusts) invested in property;
    - (x) other managed funds (not being unit trusts);
    - (xi) loans (whether or not secured by mortgages);
    - (xii) cash deposits and cash in hand;
    - (xiii) investments and other assets not included in (i) to (xii) above; and
  - (c) showing separately, in the case of investments in each category, investments in the Island and investments outside the Island, and in the case of investments mentioned in paragraphs (vii) to (x) of sub-paragraph (b) investments where the company operating the unit trust or managed funds is, and investments where it is not, a company registered in the Island.
- (2) Where the assets of the scheme include policies of insurance which are specifically allocated to the provision of benefits for, and which provide all the benefits payable under the scheme to particular members, or other persons in respect of particular members or both, the entry in the statement given under paragraph (1) in respect of these policies need not include the value of those policies.

- (3) Where the assets of the scheme are –
- (a) invested only for the purposes of securing additional money purchase benefits derived from voluntary contributions to which section 111 of the Pension Schemes Act 1993<sup>22</sup>, as it has effect in the Island, applies; and
  - (b) specifically allocated to the provision of additional benefits for particular members or other persons in respect of particular members or both,
- an entry must be made in the statement under paragraph (1) giving details of these investments, but this entry need not include the value of these assets.
- 3.** Where any assets or liabilities of the scheme are denominated in currencies other than sterling, a translation of those assets or liabilities into sterling and an explanation of the basis on which they have been translated.
- 4.** Particulars of any investment in which more than 5 per cent. of the total value of the net assets of the scheme is invested, and if any such investment is an insurance policy, a statement of its main characteristics.
- 5.** Where any of the resources of the scheme constitute employer-related investments, within the meaning of regulation 16(10), –
- (a) a list of those employer-related investments; and
  - (b) a statement as to the proportion of the scheme’s assets represented by those investments;
- 6.** In respect of every amount shown in the accounts (other than the amounts referred to in paragraph 7), a statement of the corresponding amount for the preceding scheme year, except where regulation 12 is complied with by the trustee for the first time.
- 7.** The total amount of the purchases and the total amount of the sales of investments during the scheme year to which the accounts relate.
- 8.** A statement whether the accounts have been prepared in accordance with –
- (a) regulation 12 of the Retirement Benefits Schemes (Domestic Schemes) (General Administration) Regulations 2004;
  - (b) section 15 of the Retirement Benefits Schemes Act 2000; and
  - (c) the Statement of Recommended Practice “Financial Reports of Pension Schemes”, the guidelines published by the Pensions Research Accountants Group, or such other guidelines that supersede this publication issued by the Pensions Research Accountants Group or any other organisation approved for this purpose by the Accounting Standards Board of the United Kingdom, current at the end of the scheme year to which the accounts relate and, if not, an indication of where there are any material departures from those guidelines.

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<sup>22</sup> SD 531/95 (amended by SD501/97)

## SCHEDULE 3

### *Regulation 17.*

#### CONSEQUENTIAL AMENDMENTS TO THE RETIREMENT BENEFITS SCHEMES (INTERNATIONAL SCHEMES) REGULATIONS 2001

##### 1. In regulation 2 –

###### (1) For the definition of “open scheme” there is substituted –

““open scheme” means a scheme that is not a closed scheme, a frozen scheme or a scheme that has been wound-up;”.

###### (2) After the definition of “professional adviser” there is inserted –

““prospective member” in relation to an occupational scheme means any person who, under the terms of his contract of service or the scheme rules or both –

- (a) is able, either immediately or after completion of a specific period in the same employment, at his own option, to become a member of the scheme,
- (b) will become a member of the scheme automatically unless he makes an election not to become a member, or
- (c) may become a member of the scheme subject to the consent of his employer, and who –
  - (i) has been invited to membership of the scheme, but
  - (ii) has not yet accepted the invitation;”.

##### 2. In regulation 3 –

###### (1) Before the word “These” there is inserted “(1) ”.

###### (2) After paragraph (1) there is inserted –

“(2) Sections 3(8)(a) and 53 of the Act shall apply to international retirement benefits schemes with the following modifications –

- (a) section 3(8)(a) shall have effect as if for the word “sole” there was substituted the word “principal”;
- (b) in section 53, the definition of “occupational scheme” shall have effect as if for the word “only” there was substituted the word “principally”.

##### 3. In regulation 5(b), regulation 10(3)(d) and paragraph 6 of Schedule 1 for the words “auditor’s statement”, in each place where they occur, there shall be substituted the words “statement about contributions prepared by the scheme auditor or, as the case may be, the administrator”.

##### 4. In regulation 7 –

###### (1) In paragraph (6) after the words “professional adviser”, where they first occur, there are inserted the words “, appointed in accordance with the requirements of section 17 of the Act.”.

(2) After paragraph (7) there is inserted –

“(8) Where a proposal to remove a professional adviser, appointed in accordance with the requirements of section 17 of the Act, becomes effective in accordance with the provisions of section 18(3) of the Act, the trustee wishing to remove the professional adviser shall do so by serving on him a written notice of removal stating the date with effect from which his appointment shall terminate.

(9) In the event of the death or resignation of a professional adviser, appointed in accordance with the requirements of section 17 of the Act, or the issue of a notice of removal in accordance with paragraph (8) –

- (a) section 17 of the Act shall not apply in respect of any period during which an appointment is being made in accordance with subparagraph (b);
- (b) the appointment of a replacement professional adviser shall be made by the trustee –
  - (i) within one month of the date of death, resignation or removal, or
  - (ii) within such longer period, where the trustee is able to demonstrate that adequate steps are being taken to appoint a suitable replacement, as may be permitted by the Authority but not exceeding 3 months.”.

5. In regulation 8 after paragraph (2) there is inserted –

“(3) Where the provisions of paragraph (1) apply in relation to any particular scheme, the notification requirements of section 18(1)(a)(iv) and (v) and section 18(1)(b)(i) of the Act (requirement to give notice of the resignation of, or any proposal to appoint or remove, a professional adviser) shall not apply to the trustee of that scheme in respect of the appointment, removal or resignation of a scheme actuary.”.

6. In regulation 10(3) and (4) after the word “Island”, where last occurring in each paragraph, there are inserted the words “originals or copies (including in the case of records held on a computer, records maintained in visible and legible form) of”.

7. In regulation 11 –

- (1) In paragraph (2) for the words “the rate of contributions payable under any employer payment arrangement in respect of a personal scheme.” there shall be substituted the words “–
  - (a) in respect of any scheme which is a personal scheme, the rate of contributions payable under any employer payment arrangement; and
  - (b) in respect of any scheme which is an occupational scheme, any amounts payable towards the scheme by an employer in respect of expenses likely to be incurred in the scheme year.”.
- (2) In paragraph (4)(a)(i) for the words “30 days” there shall be substituted the words “60 days”.

- (3) In paragraph (5)(a) for the words “10 days” there shall be substituted the words “30 days”.
- (4) In paragraph (5)(b) for the words “the only” there shall be substituted the words “only the first or second”.
- (5) In paragraph (7) for the words “, the amount deducted shall be paid to the trustee of the scheme within 30 days commencing from the end of the month in which the amount is deducted from the earnings in question.” there shall be substituted the words “–
  - (a) the amount deducted shall be paid to the trustee of the scheme within 30 days commencing from the end of the month in which the amount is deducted from the earnings in question, and
  - (b) in the event of the payment not being so made, the trustees shall treat the unpaid deduction as a payment not paid on or before the due date for the purpose of section 12 of the Act and shall give notice in accordance with the provisions of paragraph (4).”.

**8. In regulation 13 –**

- (1) After paragraph (3) there is inserted –

“(3A) Where the provisions of paragraph (3) apply in relation to any particular scheme, the notification requirements of section 18(1)(a)(iv) and (v) and section 18(1)(b)(i) of the Act (requirement to give notice of the resignation of, or any proposal to appoint or remove, a professional adviser) shall not apply to the trustee of that scheme in respect of the appointment, removal or resignation of a scheme investment manager.”.
- (2) For sub-paragraph (6)(a) there shall be substituted, “(a) obtain in writing and consider appropriate investment advice; and”.
- (3) In paragraph (14) for the word “Community” in each place where it occurs there shall be substituted the word “Union”.

**9. In regulation 14 –**

- (1) In paragraph (5) for the words from the beginning to “statement” there shall be substituted the words “Subject to paragraph (5A), the trustee of a scheme shall, in respect of each scheme year ending after the coming into operation of these regulations, arrange for the preparation of a statement by the scheme auditor or, in relation to any scheme which falls within the description referred to in paragraph (4)(d) or (e), a statement by the administrator”.
- (2) After paragraph (5) there is inserted –

“(5A) Paragraph (5) shall not apply to any scheme of the following description –

  - (a) one which falls within the description referred to in paragraph (4)(b) or (c), or
  - (b) one which falls within the description referred to in paragraph (4)(d) and which during the scheme year had no active members.”.

(3) After paragraph (6) there is inserted –

“(6A) Where the provisions of paragraph (6) apply in relation to any particular scheme, the notification requirements of section 18(1)(a)(iv) and (v) and section 18(1)(b)(i) of the Act (requirement to give notice of the resignation of, or any proposal to appoint or remove, a professional adviser) shall not apply to the trustee of that scheme in respect of the appointment, removal or resignation of a scheme auditor.”.

(4) In paragraph (7) at the end of the definition of “ear-marked scheme” there are added the words –

“Provided that, for the purpose of this definition, cash held on deposit by the trustee pending payment to the policies of insurance or investment contracts or otherwise to members of the scheme or to meet administrative expenses, may be disregarded;”.

**10.** In regulation 15 in paragraph (4)(b), the word “international” shall be omitted and, after the word “Act”, there are inserted the words “, provided that in relation to any retirement benefits scheme approved under section 1 or 2 of the Income Tax (Retirement Benefit Schemes) Act 1978 or approved under section 2 of the Income Tax Act 1989 approval to the transfer has been obtained from the Assessor of Income Tax”.

## EXPLANATORY NOTE

*(This note is not part of the regulations)*

These regulations, which come into operation on the 1st November 2004, are made principally under sections 6 and 51 of the Retirement Benefits Schemes Act 2000, to make provision for the registration of ‘domestic’ retirement benefits schemes. Separate regulations apply in respect on ‘international’ schemes.

Regulations 1 to 3 provide for the citation, commencement, definitions and application of the regulations.

Regulation 4 provides that the Authority may, on registering a scheme as an authorised scheme, issue a certificate of authorisation.

Regulation 5 establishes as a condition of authorisation the submission of annual returns to the Authority within 6 months of the end of a scheme year. The information to be included in the annual return is set out in the regulation and in Schedule 1. Paragraphs (2) to (4) requires the trustee to make available to scheme members and certain other officials copies of the annual returns. Definitions are provided in paragraph (5).

Regulation 6 specifies the information to be held in the Public Register of authorised domestic schemes.

Regulation 7 sets out the conditions that must be satisfied before a person may act as a professional adviser (auditor, actuary, investment manager) for an authorised domestic scheme. It also provides for the method of appointment and for the provision of information (supplemental to section 18 of the Act) on removal or resignation of a professional adviser.

Regulation 8 exempts money purchase schemes from the statutory requirement to appoint a scheme actuary.

Regulation 9 establishes the duty for persons (corporate or unincorporate) involved in the running of occupational schemes to disclose such information to the managers of the scheme as may be required for the performance of their duties.

Regulation 10 sets out the minimum books and records that must be kept by scheme trustee. Paragraphs (2) to (4) provide that these records must be kept in the Island, either at the trustee’s place of residence or that of the scheme administrator, for at least 6 years.

Regulation 11 caters for scheme contributions. Paragraph (1) excludes certain schemes from the requirement to prepare and maintain schedules of contribution payments, required by section 11 of the Act. Paragraphs (2) and (3) outline what must be included in these payment schedules, whilst paragraphs (4) and (5) set out what information must be disclosed should there be a failure to pay contributions in accordance with the agreed payment schedule; and also clarify to whom and when this information must be disclosed. Paragraph (6) requires an employer, on entering into an arrangement with an employee to pay contributions to the employee’s personal scheme, to notify the scheme trustee of the establishment of the arrangement. Paragraph (7) requires an employer, on deduction of a contribution from an employee, to pay the deducted contribution to the scheme trustee within the specified minimum time limit. Paragraph (8) deals with contribution refunds.



Regulation 12 (and Schedule 2) provides for the form and content of scheme accounts required by section 15 of the Act. Paragraph (2) provides limited exemptions. Paragraph (3) establishes content requirements. Paragraphs (4) and (5) establish the requirements for the auditing of the accounts. (Regulation 7(1) establishes who may be appointed as scheme auditor.) Paragraphs (6) and (7) provide for contribution statements to be prepared and outlines the content of these statements. Paragraphs (8) and (9) remove the requirement for the appointment of a scheme auditor for certain schemes. Definitions are provided in paragraph (10).

Regulation 13 deals with the trustee's powers of investment. Paragraphs (1) and (2) deal with the trustee's powers of investment and ability to delegate decisions about investment to the appointed investment manager. Paragraph (3) clarifies that scheme funds must not be used to provide (either directly or through insurance cover) for reimbursement of any penalties or fines imposed on scheme trustees.

Regulation 14 provides that any money received by the scheme trustee must be held in a licensed bank account held in the name of the trustee. It also establishes a limited number of exemptions from this requirement.

Regulation 15 outlines trustees investment requirements and restrictions. Paragraphs (1) to (4) establish which schemes this regulation applies to and removes the requirement for the appointment of an investment manager to all other schemes. (Regulation 7(3) details who may be appointed as an investment manager.) Paragraphs (5) to (7) require trustees to prepare a statement of investment principles, and outline the information this statement must contain and the consultation procedures required in its establishment. Paragraphs (8) and (9) specify the requirements trustees must follow before making investments. Paragraphs (10) and (11) are concerned with the trustees' relationship with the professional adviser. Specific definitions are provided for in paragraph (12).

Regulation 16 adopts into these regulations existing domestic limitations on employer related investments for occupational schemes. Paragraph (1) sets out exemptions from this restriction. Paragraph (2) sets out the limits whilst paragraph (3) caters for the continued operation of the transitional provisions of the existing provisions contained in statutory document SD 651/97 for occupational schemes established prior to the coming into operation of these regulations. The remainder of the regulation provides finer detail and specific definitions.

Regulation 17 provides for consequential amendment to the 2001 International Scheme regulations.

Regulation 18 provides for offences. Additional offences (civil and criminal) are provided for by the Act.