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Statutory Document No. 645/01

RETIREMENT BENEFITS SCHEMES ACT 2000

THE RETIREMENT BENEFITS SCHEMES (INTERNATIONAL SCHEMES) REGULATIONS 2001

Approved by Tynwald

11th December 2001

Coming into operation

1st January 2002

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In exercise of the powers conferred on the Treasury by section 2, 3, 6, 7, 11, 12, 16, 24, 36, 45, 51 and 53 of the Retirement Benefits Scheme 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:—

PART I GENERAL

Citation and commencement

1. These Regulations may be cited as the Retirement Benefits Schemes (International Schemes) Regulations 2001 and, subject to section 51(5) of the Act, shall come into operation on the 1st January 2002.

Definitions

2. In these Regulations –

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

“**the 2008 Act**” means the Insurance Act 2008;

“**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;

“**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;

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

“**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;

“**deferred member**”, in relation to an occupational scheme, means any person, other than an active member, with vested accrued rights under the scheme who is not in receipt of pension or other benefits from the scheme;

“**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;

¹ 2000 c.14

“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;

“international retirement benefits scheme” means a retirement benefits scheme which has or is capable of having effect so as to provide relevant benefits in respect of employees or individuals, treated as not residing in the Isle of Man for the purpose of the Income Tax Act 1970², engaged in a trade or undertaking carried on wholly outside the Isle of Man (apart from duties performed in the Isle of Man which are merely incidental to the performance of other duties outside the Isle of Man) and which is not a scheme which is approved under sections 1 or 2 of the Income Tax (Retirement Benefit Schemes) Act 1978 or under section 2 of the Income Tax Act 1989;

“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;

“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;

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

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

“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;

“professional adviser” has the same meaning as in section 6(2)(d) of the Act;

“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

² XXI p.260

- (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 an international retirement benefits scheme;

“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 January 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*]

“trustee” means the trustee or trustees of the scheme.

“vested accrued rights” means –

- (a) in relation to a personal scheme, the member’s accrued rights, and
- (b) in relation to an occupational scheme, the member’s accrued rights on –
 - (i) death, or
 - (ii) completion of seven-years continuous pensionable service,

and vested accrued rights shall include any rights of a member transferred into the scheme by virtue of a transfer payment received from another retirement benefits scheme.

Application of these regulations

3. (1) These regulations apply to retirement benefits schemes which are international retirement benefits schemes.

(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”.

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. 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 prepared in accordance with regulation 14 and section 15 of the Act or, where regulation 14(3) applies, a copy of the audited annual accounts and report by the scheme auditor, for the scheme year;
- (b) where regulation 14(5) 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;
- (c) where regulation 8 applies –
 - (i) a copy of the latest actuarial valuation report and actuarial statement, or
 - (ii) where one of the previous two annual reports contained a copy of the latest actuarial valuation report and actuarial statement, a statement of the date of the latest actuarial valuation report and the date of the annual report in which it was contained;
- (d) where regulation 13(4) applies, a copy of the written statement of the principles governing decisions about investments effective at the end of the scheme year;
- (e) 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;
- (f) where a statement or declaration has been made on the resignation or removal of a professional adviser in accordance with regulations 7(6), a copy of that statement or declaration;
- (g) where Part IX applies, the information specified in Schedule 1;
- (h) where a payment has been made by the trustee to an employer, other than a payment permitted by regulation 9(1)(a)(ii) or 13(12), details of that payment together with a copy of any actuarial statements prepared in accordance with regulation 9(1)(b); and
- (i) details of any changes in the information previously provided to the Authority which has not otherwise been provided to the Authority during the scheme year.

PART III
PUBLIC REGISTERS

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 international 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
MANAGEMENT AND ADMINISTRATION

Professional advisers

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

- (a) is a member of the scheme;
- (b) is a trustee of the scheme, a connected person (as defined in regulation 13(14), substituting ‘trustee’ for ‘employer’) 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 1982³;
- (e) where the scheme is an occupational scheme, is an employer in relation to the scheme, a connected person (as defined in regulation 13(14)) or a person employed under a contract of service by the employer.

³ 1982 c.2

(2) A person shall not be qualified to act as an actuary to an international scheme if that person –

- (a) is a member of the scheme;
- (b) is a trustee of the scheme, a connected person (as defined in regulation 13(14), substituting ‘trustee’ for ‘employer’) or a person employed under a contract of service by the trustee;
- (c) is 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;
- (d) where the scheme is an occupational scheme, is an employer in relation to the scheme.

(3) A person shall not be qualified to act as an investment manager to an international 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 of a professional adviser 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 is to take instructions;
- (c) outline the requirements of paragraph (5) and (6); and
- (d) specify to whom the professional adviser is to report.

(5) Any person appointed as a professional adviser shall –

- (a) acknowledge in writing the receipt of the notice of appointment within 1 month of its receipt; and
- (b) confirm in writing that he will notify the trustee immediately on becoming aware of the existence of –
 - (i) any conflict of interest to which he is subject, in relation to the scheme, or
 - (ii) the revocation of any authorisation required by paragraph 3(b) above.

(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 scheme 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 scheme 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.

Actuarial matters

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) For the purpose of section 7 of the Act (technical funding requirement), the prescribed class or description of schemes shall include international retirement benefits schemes.

(2A) 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.

(3) Subsequent to the appointment of a scheme actuary after the coming into force of these regulations the trustee shall obtain an initial actuarial valuation report, which shall include details of the actuary's recommended rate of scheme contributions.

(4) Subject to paragraph (6), the trustee shall obtain from time to time periodic actuarial valuation reports of the scheme's assets in relation to its liabilities as at a specified effective date.

(5) Each actuarial valuation report shall –

- (a) contain an outline of the actuarial methods and assumptions used in the valuation;
- (b) be accompanied by an actuarial statement prepared in the form set out in Schedule 2;
- (c) state whether it has been prepared in accordance with actuarial guidance notes published by the professional body of which the actuary is a Member, and include –
 - (i) an outline of any departure from these actuarial guidelines and the reasons for this departure, and
 - (ii) the name and address of the professional body.

(6) The specified effective date of each periodic actuarial valuation shall be not later than 3 years after the specified effective date of the last valuation report.

Forfeiture, liens and payments to employers

9. (1) Subject to the following provisions of this regulation, no funds or assets of a scheme, other than those permitted by regulation 13(12), may at any time be paid by the trustee to an employer or a connected person, as defined in regulation 13(14), who is currently or was formerly participating in the scheme, unless –

- (a) in the case of an occupational money purchase scheme –
 - (i) The law in the country of residence of the employer requires the employer to make provision for the award of relevant benefits and –
 - (a) the employer is complying with the requirements of this law by use of the scheme to which these regulations apply;
 - (b) any payment made in compliance with this law is of no greater value than the difference between the scheme funds held in respect of the member for whom the payment is being made and the value of any rights transferred into the scheme by virtue of a transfer payment received from another retirement benefits scheme for that member;
 - (c) the member was, on his becoming a member of the scheme, notified in writing of the requirement of this law and of any compliance provision under the rules of the scheme; or
 - (ii) the payment relates to contributions made to the scheme by an employer in respect of any accrued rights that are not vested accrued rights of a member who ceases to be an active member,
- (b) in the case of an occupational scheme which is not a money purchase scheme, the trustee has obtained a statement from the scheme actuary certifying that the proposed payment is unlikely to affect the security of the prospective rights of the scheme members or reduce the assets of the

scheme to a level that will be insufficient to fully cover the liabilities of the scheme.

(2) A member's employer may recover from the resources of an occupational scheme a sum in respect of any monetary obligation due to the employer arising out of a criminal or fraudulent act or omission by the member, provided –

- (a) the recovery is limited to the actuarial value of the member's actual or prospective benefits at that time, not including the value of any rights transferred into the scheme by virtue of a transfer payment received from another retirement benefits scheme, or, if less, to the amount of the obligation;
- (b) the member has been notified of the proposal to recover the obligation out of scheme funds held in respect of the member and has been provided with a certificate showing the amount to be recovered and its effect on his benefits or prospective benefits; and
- (c) the member has been notified of his right of dispute under the provisions of paragraph (5) and the date of the proposed recovery, which shall be not earlier than 1 month after the date the member is provided with the certificate in accordance with sub-paragraph (b).

(3) Scheme rules must not contain any provision that would enable –

- (a) a member's employer to exercise a charge or lien on the member's entitlement or vested accrued rights to any benefits under the scheme, except for the purpose of enabling the employer to obtain a discharge from a member in respect of any monetary obligation due to the employer arising out of a criminal or fraudulent act or omission by the member;
- (b) the scheme trustee to exercise a charge or lien on a member's entitlement or vested accrued rights to any benefits under the scheme, except for the purpose of enabling the trustee to obtain a discharge from the member in respect of any monetary obligation due to the scheme arising out of a breach of trust where the member is also a scheme trustee or otherwise a criminal or fraudulent act or omission by that member; or
- (c) the forfeiture of any person's entitlement or vested accrued rights to any benefits under the scheme, other than in the case of a –
 - (i) failure by that person to make a claim for any benefit within 6 years of the latest date on which the benefit becomes due;
 - (ii) monetary obligation to a participating employer of an occupational scheme, having been incurred by, and arising out of, a criminal or fraudulent act or omission by that person;
 - (iii) monetary loss to the scheme, having occurred by, and arising out of, a criminal or fraudulent act or omission or a breach of trust by that person; or
 - (iv) bankruptcy order being made against that person.

(4) Where a charge or lien is to be applied in respect of any member under paragraph (3) –

- (a) the charge or lien shall not apply against any rights transferred into the scheme by virtue of a transfer payment received from another retirement benefits scheme;
- (b) the member must be given a certificate showing the amount of the charge or lien and its effect on his benefits under the scheme.

(5) In the event of a dispute as to the amount of any charge, lien, forfeiture or recovery under paragraphs (2), (3)(a), (3)(b), (3)(c)(ii) or (3)(c)(iii), the trustee or employer shall not enforce the charge, lien, forfeiture or recovery until the obligation has become enforceable under an order of a competent court.

(6) 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).

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, 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 an administrator or a professional adviser, including copies of any statement or declaration made by the professional adviser in accordance with regulation 7(5) or (6);
 - (vi) 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;
 - (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;

- (viii) payments, where permitted by regulation 9, made to an employer or a connected person as defined in regulation 13(14); and
 - (ix) 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 held after the coming into force of these regulations (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) It shall be the duty of the trustee of a scheme to make available to the administrator and any appointed professional advisers such of the scheme's books, accounts, records or such other information as may reasonably be required for the performance of their duties.

(3) The trustee 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 13(4);
- (d) annual accounts prepared in accordance with regulation 14 and, where required by regulation 14(5), the statement about contributions prepared by the scheme auditor or, as the case may be, the administrator;
- (e) actuarial valuation reports prepared in accordance with regulation 8;
- (f) payment schedules prepared in accordance with regulation 11 and section 11 of the Act.

(4) The trustee 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).

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

PART V CONTRIBUTION SCHEDULES

Contribution deductions and payment schedules

11. (1) For the purposes of section 11(1) of the Act (schedules of payments), the prescribed class or description is any scheme which falls within the description referred to in regulation 14(4)(a) to (c).

(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 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; and
 - (ii) that fall to be paid on behalf of the relevant employee;
- (b) in respect of an occupational scheme, that the payment schedule contains separate entries for the rates and due dates of all contributions, other than voluntary contributions, 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 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 scheme to which section 11 of the Act applies –
- (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).

PART VI INVESTMENTS

Investment powers

12. (1) The trustee of 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 their appointed investment manager.

Investment matters

13. (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 and the rules of which provide that before any investment of the resources of the scheme is made each of the members shall agree in writing to the making of that investment;
- (c) a scheme which, subject to paragraph (2), has no investments other than policies of insurance constituting long-term business, as defined in the 2008 Act, or investment contracts in a collective investment scheme, which satisfy the following requirements –
 - (i) the policies of insurance are taken out with an accepted insurance company, 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 insurance company 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 insurance company 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 insurance company 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 insurance company or accepted investment scheme monies 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 insurance company or the accepted investment scheme; and

- (ii) monies held by the accepted insurance company 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 connected with or an associate of the employer in relation to 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 insurance company 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).

(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.

(4) 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 revised a written statement of the principles governing decisions about investments for the purposes of the scheme.

(5) The written statement under paragraph (4) must cover the trustees' policy for meeting the requirements of paragraph (9) 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.

(6) Before a statement under paragraph (4) 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 participating employers, 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.
- (7) The investment manager to whom any discretion has been delegated under regulation 12(2) must –
 - (a) exercise the delegated power of investment with a view to giving effect to the principles contained in the statement under paragraph (4), 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.
- (8) Except in relation to the exercise of any delegated powers of investment under paragraph (7), 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 (7)(b) and the principles contained in the statement under paragraph (4); 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.
- (9) The trustee shall not be treated as having complied with paragraph (8) 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).
- (10) 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 their investment manager where this function has been delegated under regulation 12(2), cannot by any instrument or agreement be excluded or restricted in any way.
- (11) Where the trustee has taken all such steps as are reasonable to satisfy themselves, that their appointed investment manager is carrying out his work competently and complying with paragraph (7), 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 12(2), or
 - (b) be prevented by the operation of paragraph (10) 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 12(2).
- (12) Subject to paragraph (13) the trustee of an occupational scheme to which this regulation applies 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, and
- (b) 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.

(13) Where on the date of coming into force of these regulations the resources of a scheme are invested in employer-related investments –

- (a) the restriction of paragraph (12) shall not apply in relation to those employer-related investments; and
- (b) the trustee must secure that no further employer-related investment is made where the existing employer-related investments exceed five per cent. of the current market value of the resources of the scheme.

(14) In this regulation –

“accepted insurance company” means an insurance company 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 company 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) a collective investment scheme authorised under paragraph 2 of Schedule 1 to the Collective Investment Schemes Act 2008 or
- (b) a collective investment scheme authorised (or having effect as if authorised) under section 243 of the Financial Services and Markets Act 2000 (of Parliament) or under regulation 14 of the Open-Ended Investment Companies Regulations 2001⁴ (made under that Act) or recognised under section 264, 270 or 272 of that Act, or
- (c) an arrangement authorised to carry on business as a collective investment scheme in –
 - (i) the Channel Islands;
 - (ii) any other Member State of the European Union, or
 - (iii) 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;

“appropriate investment advice” means advice given by –

⁴ SI 2001/1228 (as amended by SI 2011/1613)

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

“employer-related investments” means –

- (a) shares or other securities issued by the employer or a connected person;
- (b) land which is occupied or used by, or subject to a lease in favour of, the employer or a connected person;
- (c) property (other than land) which is used for the purposes of any business carried on by the employer or a connected person;
- (d) loans to the employer or a connected person, and to the extent (if any) that any sum due and payable by a person to the trustee of an occupational scheme remains unpaid that sum shall be regarded as a loan made to that person by the trustee and the resources of the scheme regarded as invested accordingly;
- (e) any guarantee of, or security given to secure, obligations of the employer or of a connected person, 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; but

for the purposes of this definition, an employer-related investment does not include 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 or an organisation which has satisfied the Authority that it is authorised to accept deposits under legislation equivalent to the Financial Services Act 2008 in the jurisdiction in which the employer operates;

“connected person” means –

- (a) where the employer 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
- (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 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, 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.

PART VII ACCOUNTS AND AUDIT REQUIREMENTS

Accounts

14. (1) The trustee of any 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 force 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) Annual accounts shall contain the information specified in Schedule 3 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.

(3) Subject to paragraph (4), 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 as to whether or not in his opinion the requirements of paragraph (2) are satisfied.

(4) Paragraph (3) shall not apply to any scheme of the following description –

- (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 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) a personal scheme which is an ear-marked scheme in which no employer payment arrangement is in operation;
- (d) an occupational scheme which is an ear-marked scheme;
- (e) a personal scheme which is an ear-marked scheme in which an employer payment arrangement is in operation;
- (f) 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 (3) shall not apply.

(5) 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 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, or
- (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; and
- (c) if the statement under paragraph (a) or (b), as the case may be, is negative or qualified, a statement of the reasons.

(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.

(6) 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 (4).

(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.

(7) 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 one or more policies of insurance or investment contracts to which regulation 13(1)(c) applies and under which the policies or contracts, or units in such policies or contracts, are specifically allocated to the provisions of benefits for individual members or any other person who has a right to benefits under the scheme:

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.

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

PART VIII
ACCRUED RIGHTS

Transfer payments and early leaver rights

15. (1) Subject to paragraph (2), scheme rules must provide that if a member has vested accrued rights under any arrangement under a scheme which have not come into payment, the member is entitled to transfer those rights in accordance with the provisions of this regulation.

(2) Paragraph (1) applies only in respect of an occupational scheme if the member has ceased to be an active member.

(3) The value of a member's transfer must be —

(a) in respect of money purchase benefits which do not fall to be valued in a manner which involves making estimates of the value of those benefits, calculated and verified by the trustee as the realisable value of the investments constituting the member's accrued rights; and

(b) in respect of any other benefits, calculated and verified in such manner as may be approved by a relevant actuary.

(4) Subject to paragraph (12), any member who is entitled to transfer that member's accrued rights may transfer those rights only by making an application in writing to the scheme trustee directing the trustee to use the transfer to —

(a) purchase a contract or contracts from one or more insurance companies, which satisfy the conditions specified in paragraph (5);

(b) acquire rights in another retirement benefits scheme which is authorised under section 3 of the Act, 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; or

(c) acquire rights in a retirement benefits scheme, not authorised under section 3 of the Act, provided that —

(i) the trustees of the transferring scheme have taken reasonable steps to satisfy themselves that, where the receiving scheme is an occupational pension scheme, the member is in employment to which the receiving scheme applies;

(ii) the member has acknowledged in writing that the member accepts that the scheme to which the transfer is to be made is not subject to the supervision of the 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 payment; and

(iii) the trustee has received confirmation from the member 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.

- (5) The conditions referred to in paragraph (4)(a) are that —
- (a) the insurance company is —
 - (i) authorised under section 8 of the 2008 Act to carry on long-term business as defined in that Act, or
 - (ii) carrying on insurance business in a country other than the Island in accordance with the laws of that country and in respect of which the member has acknowledged in writing that the member accepts that the insurance company is not subject to the supervision of the 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 insurance company to provide any particular value or benefit in return for any transfer payment received; and
 - (b) the contract —
 - (i) has been chosen by the member; and
 - (ii) assumes an obligation to the member, and where appropriate any dependants of the member, to pay the benefits secured under the contract by the receipt of the transfer payment to the member or, as the case may be, to the member's dependants.
- (6) On receipt of an application made in accordance with paragraph (4), the trustee must do what is necessary to carry out the member's written transfer request within 6 months of the date of receipt of that application.
- (7) Subject to paragraph (8), scheme rules must, in respect of any member who has the right to transfer that member's accrued rights but has not exercised that right, provide that any investment yield or bonuses arising from contributions made by or on behalf of the member toward the provision of money purchase benefits from the scheme must continue to be applied until such time as the member's accrued rights are extinguished by the payment of benefits or transfers.
- (8) Before applying any investment yield or bonuses in accordance with paragraph (7), the trustee may deduct an amount in respect of any appropriate administrative expenses incurred by the trustee in the administration of the member's accrued rights.
- (9) The trustee must not arrange for the transfer of any member's vested accrued rights without the consent of the member, except where the trustee has obtained the consent of the High Court or, in the case of an occupational scheme where either the conditions set out in paragraph (10) or paragraph (11) are satisfied.
- (10) The conditions are that —
- (a) the scheme is not in the process of being wound up;
 - (b) the transfer is to a relevant contract;
 - (c) the relevant contract is taken out not earlier than 15 months after the member becomes a deferred member;
 - (d) the trustee has furnished in writing to the member at least 3 months' notice of the intention to take out the relevant contract, together with the main

details of the contract and information as to the member's alternative entitlement to transfer that member's accrued rights under this regulation;

- (e) the value of the member's transfer is calculated in accordance with paragraph (3);
 - (f) the relevant contract provides the member with entitlement to transfer that member's rights under that contract in accordance with sub-paragraphs (4)(a) to (c); and
 - (g) the trustee does not hold an outstanding application under paragraph (4) for the transfer of the same rights or any part of them.
- (11) The conditions are that —
- (a) the member's accrued rights are to be transferred from the transferring scheme to a receiving scheme which is registered as an authorised scheme under section 3 of the Act;
 - (b) the trustee of the transferring scheme has obtained a certificate from a relevant actuary, certifying that the transfer credit to be acquired for the member under the receiving scheme is, broadly, no less favourable than the rights to be transferred;
 - (c) information about the proposed transfer and details of the value of the rights to be transferred (including rights in respect of death in service benefits and survivors' benefits) has been furnished to the member not less than one month before the proposed transfer is due to take place; and
 - (d) the transferring scheme and the receiving scheme apply to employment with —
 - (i) the same employer; or
 - (ii) different employers, if the member concerned is one of a group in respect of whom transfers are being made from the transferring scheme to the receiving scheme, and either —
 - (A) the transfer is a consequence of a financial transaction between the employers; or
 - (B) the employers are companies or partnerships bearing a relationship to each other such as is described in regulation 64(2) of the Occupational Pension Schemes (Contracting-out) Regulations 1996⁵, as they have effect in the Island.
- (12) If the scheme from which a transfer payment is to be made is one which is or was formerly approved by the Assessor of Income Tax, the scheme to which the transfer payment is to be made must satisfy requirements of the Assessor of Income Tax.
- (13) For the purpose of section 3(8)(d) of the Act (restrictions on the repayment of employee contributions), the constitutional documents of a scheme may provide for the repayment of any contributions made to the scheme by a member in respect of any accrued rights which are not vested accrued rights.

⁵ SD 651/97

(14) In this regulation —

“relevant actuary” means an actuary appointed by the trustee who satisfies the conditions of regulation 7(2).

“relevant contract” means a contract of insurance, within the meaning of the 2008 Act, which —

- (a) is taken out with an insurance company which is authorised under section 8 of the 2008 Act to carry on long-term business as defined in that Act;
- (b) assumes an obligation to the member, and where appropriate any of the member’s dependants, to pay the benefits secured under the contract by the receipt of the transfer payment to the member or, as the case may be, to the member’s dependants.

PART IX AVAILABILITY OF INFORMATION

Application

16. (1) This Part applies in relation to any scheme other than a scheme of the following description –

- (a) a scheme in which the only benefits provided are death benefits, and under the provisions of which no member has accrued rights, or
- (b) a scheme in which all members are trustees of the scheme.

(2) Regulations under this Part do not impose on the trustee of an occupational scheme any duty in relation to any member or prospective member if his employer has not informed the trustee that he is a member or prospective member.

(3) For the purposes of this Part –

“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, and
- (b) in respect of a personal scheme –
 - (i) members of the scheme;
 - (ii) beneficiaries under the scheme.

“Excluded person” means –

- (a) in respect of an occupational scheme –
 - (i) a person who has accrued rights under the scheme but who is either in receipt of the payment of a pension from the scheme, or is

- no longer in employment which qualifies him for pension or other benefits under the scheme, and
 - (ii) whose present address is not known to the trustee and in respect of whom correspondence sent by the trustee to that person's last address known to the trustee has been returned.
- (b) in respect of a personal scheme –
- (i) a person who has accrued rights under the scheme and whose present address is not known to the trustee and in respect of whom correspondence sent by the trustee to that person's last known address has been returned; and
 - (ii) for whom no contributions have been received by the scheme during the 2 calendar years preceding the date on which the information in question would otherwise fall to be disclosed.

Disclosure of basic information

17. (1) Subject to paragraph (2), the trustee of a scheme shall furnish in writing the information specified in Schedule 4 or 5, as the case may be, to an eligible person within 2 months of –

- (a) that person becoming a member of the scheme, or
- (b) receipt of a written request being made by that eligible person (except where the same information was furnished to that person in the 12 months prior to the request being made).

(2) Where different information is applicable to different persons nothing in this regulation shall be construed as requiring the trustee to disclose information in relation to any eligible person that is not relevant to that persons rights or prospective rights under the scheme.

(3) Any person, other than an excluded person, who has been furnished with information in accordance with paragraph (1), shall be notified in writing by the trustee of any material alteration in the information referred to in Schedule 4 or 5, as the case may be, within 3 months of the occurrence of the alteration.

Disclosure of scheme documentation

18. (1) Subject to paragraph (2), the trustee of a scheme shall, within 1 month of receipt of a written request by an eligible person, furnish that person with a copy of –

- (a) the trust deed constituting the scheme;
- (b) the scheme rules, unless these are set out in the trust deed;
- (c) any document which amends or supplements or wholly or partly supersedes the trust deed or scheme rules; and
- (d) in the case of an occupational scheme, the name and address of every person who employs any member of the scheme in any employment to which the scheme relates.

(2) In the provision of information under paragraph (1) the trustee –

- (a) shall not be required to disclose any matter in relation to an eligible person that is not relevant to that person's rights or prospective rights under the scheme;
- (b) may make a reasonable charge, but not exceeding the expense incurred in copying, posting and packing such information.

Information to be given to deferred members

19. (1) The trustee of an occupational scheme must in respect of any member, who becomes a deferred member furnish in writing to that member the following information –

- (a) his rights, including the right to transfer accrued rights to an alternative arrangement;
- (b) the current value of his accrued rights;
- (c) his options; and
- (d) in respect of any benefits which are not money purchase benefits, details of any increases to be made to those benefits and whether such increases are discretionary or not.

(2) The information required by paragraph (1) shall be issued to the member within 2 months of the trustee being notified that the member's pensionable service has terminated.

Information available to persons in respect of occupational schemes

20. (1) The trustee of an occupational scheme shall furnish in writing the information specified in Schedule 6 to the persons, and in the circumstances, specified in paragraphs (2) to (11)

(2) Where benefit under the scheme has become, or is about to become, payable to a person, the information mentioned in paragraphs 1 to 3 and 8 of Schedule 6 shall be furnished to that person within 1 month after the date on which benefit becomes payable, or within 2 months after such date where that person is retiring before his established retirement age.

(3) Where the amount of benefit payable to a person is or is about to be altered otherwise than in accordance with a provision such as is mentioned in paragraph 3 of Schedule 6, the information (as changed) that is mentioned in paragraphs 1 and 8 of Schedule 6 shall be furnished to that person within 1 month after the date on which the decision to alter the amount is made, or if the alteration has effect from a later date within 1 month after that date.

(4) Except in relation to money purchase benefits, the information mentioned in paragraph 4 of Schedule 6, so far as it relates to any active or deferred member, shall be furnished to such member, within 2 months of a request (not being a request made within 12 months of the last occasion on which any such information as is mentioned in that paragraph was furnished to the member making the request) being made.

(5) In the case of a scheme which provides money purchase benefits, the information mentioned in paragraphs 5 and 6 of Schedule 6 shall be furnished in relation to those money purchase benefits, to each member of the scheme, other than excluded persons, eligible for money purchase benefits so far as it relates to such member, within 12

months of the end of each scheme year.

(6) Where a scheme makes provision for the payment of money purchase benefits in relation to one or more members, the options available to each member within the scheme rules relating to the award of benefits shall be sent to each such member as soon as is reasonably practicable before that member's benefits are brought into payment.

(7) Where a member of, or a beneficiary under, a scheme has died and rights or options may be exercisable by a person in consequence, the information mentioned in paragraphs 7 and 8 of Schedule 6 shall –

- (a) where the trustee is aware of his existence and he is at least 18 years old and his address is known to the trustee, be furnished to that person within 2 months after the trustee receives notification of the death; and
- (b) on request (not being a request made within 12 months of the last occasion on which information was furnished under this paragraph to the same person in the same capacity), be furnished to any person who is a personal representative of the deceased person or who is authorised to act on behalf of the person to whom rights or options under the scheme may be available in consequence of the death, within 2 months after the request is made.

(8) The information mentioned in paragraphs 9 of Schedule 6 shall be furnished on request (not being a request made less than 12 months after the last occasion on which such information was furnished to the same person) to any member or prospective member within 2 months of his request.

(9) Subject to paragraph (10), when the trustee has commenced winding up the scheme, the trustee shall within 1 month –

- (a) inform all members and beneficiaries, other than excluded persons, that they have done so, giving the reasons why and stating the name and address of a person to whom any further enquiries about the scheme should be sent;
- (b) inform all active members whether death in service benefits will continue to be payable; and
- (c) furnish all members and beneficiaries, other than excluded persons, with the information mentioned in paragraph 10 of Schedule 6 at that time and at least once in every successive 12 month period preceding the completion of the winding up.

(10) When the trustee is engaged in winding up the scheme, the trustee shall, where the information is available to them, within 3 months after they have done what they are able to do to discharge their liabilities in relation to a member or beneficiary in accordance with the applicable winding up rules –

- (a) furnish the information mentioned in paragraphs 1 to 3 of Schedule 6, to that beneficiary or to that member where that member is entitled to payment of benefits, and (except in relation to money purchase benefits) where that member is not entitled to payment of benefits, furnish the information mentioned in paragraph 11 of Schedule 6 to that member, otherwise than where that member is an excluded person; and
- (b) inform each person who is entitled to information under sub-paragraph (a)

- (i) whether, and if so by how much, the benefits in question are reduced because the schemes resources are not sufficient to meet its liabilities; and
- (ii) who has or will become liable for the payment of those benefits.

(11) When any information specified in Schedule 6 is provided, it shall be accompanied by a written statement that further information about the scheme is available, giving the address to which enquiries about it should be sent.

Information available to persons in respect of personal schemes

21. (1) The trustee of a personal scheme shall furnish in writing the information specified in Schedule 7, to the persons in the categories and in the circumstances specified in paragraphs (2) to (6).

(2) The information mentioned in paragraphs 1 and 2 of Schedule 7 shall be furnished to each member of the scheme, other than excluded persons, at least once in every period of 12 months after the date of his becoming a member of it.

(3) The information mentioned in paragraph 3 of Schedule 7 shall be sent to each member, not less than 4 months before the last date on which he may make contributions to the scheme, so however that where –

- (a) his expected date of retirement is earlier or later than the last date on which he may make contributions to the scheme, and
- (b) he has given the trustee not more than 12 nor less than 5 months' prior notice in writing of that expected date,

that information shall be sent within one month of the date on which the trustee receives that notice.

(4) Where a member of, or a beneficiary under, a scheme has died and rights or options are available to a person in consequence, the information mentioned in paragraphs 4 and 5 of Schedule 7 shall be furnished –

- (a) to that person, if he is at least 18 years old and his address is known to the trustee, within 2 months of the trustee receiving notification of the death; and
- (b) on request (not being a request made within 3 years of the last occasion on which information was furnished under this paragraph to the same person in the same capacity) to any person who is a personal representative of the deceased person or who is authorised to act on behalf of the person to whom rights or options under the scheme are available in consequence of the death, within 2 months of the trustee receiving the request.

(5) Where it has been decided to wind up the scheme or otherwise to cause it to cease accepting contributions or to cause it to cease to manage the contributions already paid to it, the trustee of the scheme shall –

- (a) inform each member, other than an excluded person, of that decision within 1 month of it being made;
- (b) furnish each member, other than an excluded person, within 4 months of the decision being made, with the information mentioned in paragraphs 1, 2 and 6 of Schedule 7; and

- (c) where the scheme is unable to meet in full its liabilities to its members, furnish each member, other than an excluded person, within 4 months of the decision being made, with the information mentioned in paragraph 7 of Schedule 7.

(6) When any information is provided in accordance with the foregoing provisions of this regulation it shall be accompanied by a written statement that further information about the scheme is available, giving the address to which enquiries about it should be sent.

Annual report

22. (1) The trustee of any scheme, to which this Part applies, shall within 2 months of receipt of a request being made by an eligible person, in relation to any scheme year which ended within 6 years of the date of request, furnish that person with a copy of the annual report prepared in accordance with regulation 5 or a copy of any particular part of that report referred to in sub-paragraphs (a) to (g) of that regulation as may be requested.

(2) In the provision of information under paragraph (1) the trustee may make a reasonable charge, but not exceeding the expense incurred in copying, posting and packing such information.

PART X OFFENCES

Offences

23. (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 trustee who acts in contravention of regulation 9(1), regulation 15(4), regulation 15(7) or regulation 15(8) shall be guilty of an offence.

(3) Any person who receives monies in contravention of regulation 9(6) shall be guilty of an offence.

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

(5) Where the resources of a scheme are invested in contravention of regulation 13(12), any trustee who agreed in the determination to make the investment shall be guilty of an offence.

Made 7th November 2001

Hon R K Corkill MHK
Minister for the Treasury

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, 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 (except where this regulation is complied with for the first time) 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 individuals entitlement to benefit should be sent.
5. Where the scheme is one to which regulation 14(3) applies, a statement as to whether the annual accounts attached to the annual report have been audited in accordance with regulation 14.
6. Where the scheme is one to which regulation 14(5) applies and the statement about contributions prepared by the scheme 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 13(4) of these regulations applies, an investment report containing –
 - (a) a review of the investment performance 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.
 - (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 13(4) 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, closed or frozen scheme.

SCHEDULE 2

Regulation 8.

ACTUARIAL STATEMENT
ACCOMPANYING AN ACTUARIAL VALUATION REPORT

Name of Scheme.

Effective Date of valuation and statement.

PART 1 - SECURITY OF ACCRUED RIGHTS

In my opinion –

A. The scheme’s assets existing on the Effective Date fully cover its liabilities on that date to provide benefits in accordance with the rules of the scheme for its members (and their dependants) payable from their retirement age (or death) on the assumption that their service terminated on the Effective Date.

B. In giving the above opinion the following exceptions apply (If none state ‘None’, otherwise give an outline of the liabilities outstanding and the recommended measures to be taken to fully cover the liabilities and the date by which it is expected that this will be achieved.) –

.....
.....
.....
.....

PART 2 - SECURITY OF PROSPECTIVE RIGHTS

In my opinion, the resources of the scheme are in the normal course of events –

A. Likely / Unlikely (delete as appropriate) to meet in full the liabilities of the scheme as they fall due.

B. In giving this opinion, I have assumed the following amounts of contributions will be paid to the scheme –

.....
.....
.....

C. The reason for my indicating the resources of the scheme will be unlikely to meet its liabilities as they fall due, and my recommendations to ensure future liabilities are fully covered, are –

.....
.....
.....

Signature. Date.
(of actuary who signed the accompanying actuarial valuation report)

Name. Qualification.

Address.
.....

SCHEDULE 3

Regulation 14.

INFORMATION TO BE INCLUDED IN SCHEME 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 at market value, or trustees estimate thereof where market value is not readily ascertainable, and liabilities of the scheme, other than liabilities to pay 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) fixed interest investments, separately showing quoted securities and unquoted securities;
 - (iii) index-linked securities, separately showing quoted securities and unquoted securities;
 - (iv) equities (including convertible shares), separately showing quoted equities and unquoted equities;
 - (v) property (which in this paragraph means any right or interest in freehold or leasehold land or buildings);
 - (vi) collective investments, including unit trusts and open ended investment companies;
 - (vii) managed funds, other than collective investments;
 - (viii) loans (whether or not secured by mortgages);
 - (ix) cash deposits and cash in hand;
 - (x) investments and other assets not included in sub-paragraphs (i) to (ix);
and
- (2) Where the assets include insurance policies 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, those policies must be included in the statement and there must be a note of the existence of such policies but that entry need not include their market value.
3. 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.
4. Particulars of any employer-related investments.

5. In respect of every amount shown in the accounts other than the amounts referred to in paragraph 6, a statement of the corresponding amount for the preceding scheme year, except where these regulations are complied with by the trustee of a scheme for the first time.
6. The total amount of the purchases and the total amount of the sales of investments during the scheme year to which the accounts relate.
7. A statement as to whether the accounts have been prepared in accordance with regulation 14 of the Retirement Benefits Schemes (International Schemes) regulations 2001 and section 15 of the Retirement Benefits Schemes Act 2000.

SCHEDULE 4

Regulation 17.

OCCUPATIONAL SCHEMES BASIC INFORMATION ABOUT THE SCHEME

1. The categories of persons who are eligible to be members of the scheme.
2. Whether persons who are eligible to be members of the scheme are admitted to it –
 - (a) only on their own application; or
 - (b) automatically; or
 - (c) subject to the consent of their employer.
3. The conditions of eligibility for membership.
4. The name and correspondence address of the scheme trustees.
5. The name and address of the administrator.
6. Whether members may terminate their pensionable service before the retirement age contained in the scheme rules and if so, the period of notice (if any) that must be given and the conditions (if any) upon which members may re-enter pensionable service.
7. How employers contributions are determined.
8. How members contributions (if any) are calculated and what arrangements (if any) are available for members to pay additional contributions.
9. Whether the scheme is approved by the Assessor of Income Tax for the purposes of the Income Tax Act 1970⁶, or under any enactment or extra statutory concession relating to international occupational schemes.
10. The member's retirement age under the scheme.
11. What benefits are payable, the conditions of their award and how they are calculated
12. Whether there is a power under the scheme to increase benefits after they have become payable, and if so what it is.
13. Which benefits (if any) are discretionary.
14. The arrangements for the preservation and transfer of accrued rights in relation to members whose employment, to which the scheme relates, or whose pensionable service terminates before they reach their retirement age under the scheme rules.
15. Whether, and the circumstances in which, the trustees will accept transfer values and whether such acceptance is subject to the discretion of the trustees.
16. A statement summarising the way in which transfer values are calculated.
17. Which of the benefits (if any) are such that fulfilment of the obligation to pay them, to or in respect of particular members, is guaranteed by means of one or more insurance policies which are specifically allocated to the provision of benefits payable to, or in respect of, those members.

⁶ XXI p.260

18. A statement that a scheme annual report is available on request.
19. A statement that the scheme has been registered with the Isle of Man Financial Services Authority as an Authorised Scheme under the Retirement Benefits Schemes Act 2000, and where such authorisation is subject to any conditions, a summary of those conditions.
20. A statement that the Isle of Man Financial Services Authority is able to intervene in the running of schemes where trustees, employers or professional advisers have failed in their duties, giving the address at which it may be contacted.
21. What procedures the scheme has for the resolution of disputes and the contact name and address of the person who administers these procedures.
22. How copies of any documents constituting the scheme and its rules may be obtained.
23. A statement that further information about the scheme is available, giving the address to which enquiries about the scheme generally or about individual entitlement to benefits should be sent.

SCHEDULE 5

Regulation 17.

PERSONAL SCHEMES BASIC INFORMATION ABOUT THE SCHEME

1. The conditions of membership.
2. The name and correspondence address of the scheme trustees.
3. How copies of any documents constituting the scheme and its rules may be obtained.
4. Whether the scheme is approved by the Assessor of Income Tax under any enactment or extra statutory concession relating to international personal schemes.
5. How contributions by members and (where applicable) their employers are paid to the scheme.
6. What benefits are payable under the scheme, the conditions of their award and how they are calculated.
7. A statement summarising the way in which transfer values are calculated.
8. A statement that a scheme annual report is available on request.
9. A statement that the scheme has been registered with the Isle of Man Financial Services Authority as an Authorised Scheme under the Retirement Benefits Schemes Act 2000, and where such authorisation is subject to any conditions, a summary of those conditions.
10. A statement that the Isle of Man Financial Services Authority is able to intervene in the running of schemes where trustees, employers or professional advisers have failed in their duties, giving the address at which it may be contacted.
11. What procedures the scheme has for the resolution of disputes and the contact name and address of the person who administers these procedures.
12. Which of the benefits (if any) are such that fulfilment of the obligation to pay them, to or in respect of particular members, is guaranteed by means of one or more insurance policies which are specifically allocated to the provision of benefits payable to, or in respect of, those members.
13. A statement that further information about the scheme is available, giving the address to which enquiries about the scheme generally or about individual entitlement to benefits should be sent.

SCHEDULE 6

Regulation 20.

OCCUPATIONAL SCHEMES INFORMATION TO BE MADE AVAILABLE TO INDIVIDUALS

1. The amount of benefit which is payable to the person.
2. If a benefit is payable periodically, the conditions (if any) subject to which payment will be continued.
3. If a benefit is payable periodically, the provisions (if any) under which the amount payable will be altered.
4. In the case of –
 - (a) an active member:
 - (i) the amounts of his own benefits and of his survivors benefits which would be payable from retirement age or death if his pensionable service were to terminate either on his attaining retirement age or within 1 month of the date on which the information is furnished to him, calculated in either case without regard to possible increases in his salary; and
 - (ii) the amount of any death in service benefits that would be payable if the member were to die on a specified date which is within 1 month of the date on which the information is furnished to him, with details of how those benefits are calculated;
 - (b) a deferred member, the date pensionable service ceased and the amounts of his own benefits and of his survivors benefits payable from retirement age or death

And in either case, the information must include: the date on which the members pensionable service commenced; the accrual rate or formula for calculating the members own benefits and any survivors benefits; the amount of the members pensionable remuneration on a specified date being, in the case of an active member, the date on which the information is furnished to him or a date within 1 month thereof, and in the case of a deferred member, the date pensionable service ceased; and details of how any deduction from benefits is calculated.

5. The amount of contributions (before the making of any deductions) credited to the member under the scheme during the immediately preceding scheme year.
6. The value of the members accrued rights under the scheme as at a specified date, and the transfer value of those rights.
7. The rights and options (if any) available on the death of a member or beneficiary, and the procedures for exercising them.
8. The provisions (or, as the case may be, a statement that there are no provisions) under which any benefit payable to a survivor of a member or beneficiary may or will be increased, and the extent to which such increases are dependent on the exercise of a discretion.
9. Whether the member or prospective member is entitled to acquire rights under the rules of a scheme by reference to a transfer to the scheme of the member's rights from another retirement benefits scheme, and if so, a statement of those rights.

10. What action is being taken to establish the schemes liabilities and to recover any assets; when it is anticipated final details will be known; and (where the trustee has sufficient information) an indication of the extent to which, if at all, the actuarial value of accrued rights or benefits to which such person is entitled are likely to be reduced.
11. An estimate of the amount of the members own benefits and of his survivors benefits which are expected to be payable from the date benefits are due to be brought into payment or death.

SCHEDULE 7

Regulation 21.

PERSONAL SCHEMES INFORMATION TO BE MADE AVAILABLE TO INDIVIDUALS

1. The amount of contributions including a nil amount (before the making of any deductions) credited to the member under the scheme during the 12 months preceding a specified date.
2. The value of the member's accrued rights under the scheme as at a specified date, and transfer value of those rights.
3. The options (if any) available to the member.
4. The rights and options (if any) available on the death of a member or beneficiary, and the procedures for exercising them.
5. The provisions (or, as the case may be, a statement that there are no provisions) under which any benefit payable to a survivor of a member or beneficiary may or will be increased, and the extent to which such increases are dependent on the exercise of a discretion.
6. The options available to a member for preserving, transferring or otherwise disposing of his accrued rights under the scheme.
7. An account of the amount by which the member's accrued rights have been reduced, and of the arrangements which have been made by the scheme, or are open to the member, to restore the value of his accrued rights under the scheme.

EXPLANATORY NOTE
(This note is not part of the regulations)

These regulations are made principally under sections 6 and 51 of the Retirement Benefits Schemes Act 2000, to make provision for the registration of ‘international’ retirement benefits schemes. Separate regulations apply in respect of ‘domestic’ 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 continued 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.

Regulation 6 specifies the information to be held in the Public register of authorised international schemes.

Regulation 7 sets out the conditions that must be satisfied before a person may act as a professional adviser (auditor, actuary, investment manager) to a scheme trustee. 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. It also exempts international schemes from the need to comply with the statutory technical funding (and contribution schedule) requirements introduced by section 7 of the Act. Paragraphs (3) and (4) require the trustee of a non-money purchase schemes to arrange for initial and subsequent valuation reports and statements to be prepared by their appointed scheme actuary. The form of the actuarial valuation and statement are set out in paragraph (5) and in Schedule 2. Paragraph (6) requires successive actuarial reports to be prepared at intervals of not later than 3 years after the date of a last valuation.

Regulation 9 provides that funds may not, except as otherwise specified (e.g. non-vested contributions), be paid to a scheme employer. Paragraphs (2) enables the employer to recover from scheme funds any monetary obligation due to it by reason of a member’s criminal or fraudulent act or omission. Paragraphs (3) and (4) similarly restrict forfeiture or lien rules, whilst catering for delayed claims and bankruptcy. Paragraph (6) 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 10 sets out the minimum books and records that must be kept by scheme trustees. Paragraphs (3) to (5) 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(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.

Regulation 12 deals with the trustees powers of investment and their ability to delegate decisions about investment to their appointed investment manager.

Regulation 13 outlines trustees investment requirements and restrictions. Paragraphs (1) to (3) 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 (4) 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. Paragraphs (12) and (13) introduce limitations on employer related investments for occupational schemes. Specific definitions are provided for in paragraph (14).

Regulation 14 (and Schedule 3) provides for the form and content of scheme accounts required by section 15 of the Act. Paragraphs (3) and (4) establish the requirements for auditing of these accounts. (Regulation 8(1) establishes who may be appointed as scheme auditor.) Paragraph (5) provides that the scheme auditor must prepare a statement to accompany scheme accounts and outlines the content of the statement. Paragraph (6) removes the requirement for the appointment of a scheme auditor where an auditors statement is not required. Specific definitions are provided for in paragraph (7).

Regulation 15 provides that a member who has vested accrued rights under an authorised scheme shall have the right to transfer those rights to an alternative arrangement, subject to the provisions of this regulation.

Regulations 16 to 21 provide for the need to disclosure information to scheme members and their dependants. Regulation 16 outlines specific definitions and exemptions.

Regulation 17 requires basic scheme information to be provided to individuals within 2 months of their submitting a request or becoming scheme members.

Regulation 18 provides that scheme documentation must be made available to scheme members, subject to a reasonable charge being made.

Regulation 19 requires benefit information to be issued to occupational scheme members on their ceasing to be active scheme members.

Regulation 20 and 21 provide for the annual release of benefit information to scheme members and for the provision of information prior to benefits becoming payable, as well as the release of information in certain other general matters.

Regulation 22 requires the scheme trustee, subject to a reasonable charge, to make available to scheme members, copies of the annual return prepared under regulation 5.

Regulation 23 provides for offences. Additional offences (civil and criminal) are provided for by the Act.