

S.I. No. 293 of 2006

OCCUPATIONAL PENSION SCHEMES (TRUSTEE) REGULATIONS 2006

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**OCCUPATIONAL PENSION SCHEMES
(TRUSTEE) REGULATIONS, 2006**

The Minister for Social and Family Affairs, in exercise of the powers conferred on him by section 5 (as amended by section 44 of the Social Welfare Law Reform and Pensions Act 2006) (No.5 of 2006)) and 59A (inserted by section 34 of the Social Welfare and Pensions Act, 2005 (No.4 of 2005)) of the Pensions Act 1990 (No. 25 of 1990) hereby makes the following Regulations:

Citation. 1. These Regulations may be cited as the Occupational Pension Schemes (Trustee) Regulations, 2006.

Definitions. 2. In these Regulations -

“the Act” means the Pensions Act, 1990 (No.25 of 1990);

“investment manager” means –

- (a) an investment firm authorised in accordance with Council Directive 93/22/EEC of 10 May 1993¹ by a competent authority where the firm’s authorisation permits it to engage in the proposed activities as an investment manager; and
- (b) an insurance undertaking authorised to transact insurance business in the State, whether by establishment, branch or provision of services, that falls within any of the Classes of Insurance I, III or VII as set out in the Annex to the Council Directive 79/267/EEC of 5 March 1979²; and
- (c) a credit institution within the meaning of Article 1 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000, relating to the take up and pursuit of the business of credit institutions.

Revocation. 3. The Occupational Pension Schemes (Trustee) Regulations 2005 (S.I. No. 594 of 2005) are revoked.

¹ OJ L 141, 11.6.1993, p.27

² OJ L 63, 13.3.1979, p.1

Qualifications and experience of trustees. 4. (1) Trustees of a scheme shall possess, or employ or enter into arrangements with advisers who possess, qualifications and experience appropriate and relevant to investment of the resources of the scheme.

(2) Subject to sub-article (3), trustees of a scheme must satisfy the Board, in the manner for the time being approved by the Board, that they possess or have employed or entered into arrangements with advisers who possess the qualifications and experience specified in sub-article (1).

(3) The trustees of a scheme will be regarded as possessing such qualifications and experience if they enter into a contractual arrangement with one or more investment manager to provide an investment service in respect of the investment of the resources of the scheme.

5. Where the requirements of article 4 of these Regulations are met by at least one trustee of the scheme, then all trustees of that scheme shall be regarded as satisfying such requirements.

GIVEN under the Official Seal of the Minister for Social and Family Affairs, this 24th day of May 2006.

L.S.

SÉAMUS BRENNAN

Minister for Social and Family Affairs

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations revoke and replace Regulation 594 of 2005.

Recent case law in Ireland has suggested that a provision of domestic legislation cannot be used for the purposes of implementing EC law unless it is clear that such delegated legislation is clearly authorised by the primary legislation.

To this end, section 5 of the Pensions Act 1990 was amended by section 44 of the Social Welfare Law Reform and Pensions Act, 2006 to expressly state that regulations made under the Pensions Act may be used to implement law.

Regulation 594 of 2005 was made under section 3 of the European Communities Act 1972 due to uncertainty with regard to using the powers under the Pensions Act. However, now that those powers have been clarified these regulations are now being re made under the Pensions Act powers.

There are some minor changes to the Regulations as promulgated in 2005 and these are -

- textual amendment of sub-article 4(1) in relation to the qualifications and experience of trustees, for clarity by removing the reference to section 59A(2) of the Act.
- Original sub-article 4(2) now divided into sub-articles 4(2) and 4(3) . Sub-article 4(2) now specifies that the trustees must satisfy the Board “in the manner for the time being approved by the Board” that they possess or have entered into arrangements with people who possess the necessary qualifications and experience.