

Employment & Employee Benefit

# Trustee Training - An On-going Obligation

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Trustees of occupational pension schemes have the overall responsibility for the management of their schemes in accordance with their scheme's governing trust documentation. The only proper considerations for such trustees in carrying out their duties as trustees is to act in accordance with the law and the terms of the trust and to act in the best interests of the beneficiaries of their scheme.

The primary responsibility of trustees is always to the members of their pension scheme and the trustees need to be aware, at all times, of their duties and responsibilities as trustees when making decisions concerning their pension scheme.

It is self-evident then that pension scheme trustees have an important role to play in ensuring that pension schemes are properly administered and that members' entitlements are protected and it is against this background Section 59AA of the Pensions Act 1990 was introduced and became operative with effect from 1 February 2010 by virtue of the Social Welfare and Pensions Act 2008 (Section 28)(Commencement Order) 2009.

For trustees appointed prior to 1 February 2010, the employer is obliged to arrange for the trustee training to take place by 1 February 2012 and every two year after that. Therefore, if you are a trustee of a pension scheme appointed prior on 1 January 2010, you had until 1 February 2012 to undergo trustee training and both you and your employer are in breach of the Pensions Acts and potentially liable to significant fines and sanctions.

For trustees appointed after 1 February 2010, the employer must arrange for the trustee training to take place within six months of their date of appointment and every two years after that. For example, if you were appointed as an individual trustee of a pension scheme with effect from 1 October 2011, your employer must arrange trustee training for you before 1 April 2012.

The Pensions Board provides a free online trustee training facility and has also drawn up a register of approved trustee training courses and self-certified trainings which is available from their website <http://www.pensionsboard.ie/>.

### Pensions Acts Requirements

Section 59AA requires all employers to arrange for the trustees of their occupational pension schemes (except death benefit only schemes) to receive appropriate training in relation to:-

- (a) the Pensions Act, the Pensions Act Regulations and any other law of general application governing the operation of the pension scheme including, but not limited to
  - (i) the Protection of Employees and other employment legislation,

- (ii) family law legislation and the impact a divorce, judicial separation or dissolution of a civil partnership can have on a member's benefits,
  - (iii) tax legislation, and
  - (iv) the EU IORPs Directive,
- (b) the duties and responsibilities of trustees generally, and
- (c) such other matters relevant to the effect management of the scheme as may be prescribed.

Section 59(1)(ca) of the Pensions Act 1990 obliges such trustees to undergo trustee training in accordance with Section 59AA and such training must be undertaken by individual trustees, member trustees, all directors of a company which is acting as a corporate trustee, pensioner trustees and professional trustees. An employer is not however obliged to arrange appropriate training for professional trustees or pensioner trustees but should ensure that such training has been undertaken by them.

### **Pensions Acts Disclosure requirements**

A sponsoring employer or a trustee of a pension scheme cannot simply ignore the trustee training requirements prescribed by the Pensions Act.

Trustees of pension schemes are responsible for ensuring that up to date records are kept in relation to the training undertaken by them particularly as they are required under Schedule B of the Occupational Pension Schemes (Disclosure of Information) Regulations, 2006 to include the following in the pension scheme's annual report:

- (a) a statement as to whether the trustees have received training as required by Section 59AA of the Pensions Act, and
- (b) a statement confirming that the trustees have access to the Trustee Handbook produced by the Pensions Board and the Guidance Notes issued by the Pensions Board from time to time.

In addition, all pension schemes are subject to Pensions Board compliance and regulatory audits and it is therefore strongly recommended that both sponsoring employers and trustees of pension schemes keep records of all trustee training arranged by or undertaken by them.

You should also note that the Pensions Board has recently published its 4th Edition of the Trustee Handbook which is available on the Pensions Board website.

### **Penalties for non compliance**

As outlined above, a sponsoring employer and/or trustee who is in breach of the Pensions Acts could potentially be liable to significant fines and sanctions.

An employer who has not arranged for the trustees of their pension scheme to undergo trustee training may, pursuant to Section 3 of the Pensions Act 1990, be prosecuted and be liable on summary conviction to a fine of up to €5,000 or on conviction on indictment to a fine of up to €25,000 and imprisonment for up to two years for both the employer and its officers (where the sponsoring employer is a corporate entity).

Where a trustee is offered training by the pension scheme's sponsoring employer and fails to attend, he may, pursuant to Section 3A of the Pensions Act 1990, incur an "on the spot" fine from the Pensions Board of up to €5,000 per offence which, if not complied with, can result in a prosecution under Section 3 of the Pensions Act.

## Conclusion

Trustee training has already become an important tool for ensuring that trustees are properly educated as to what it means to a trustee of a pension scheme. Both sponsoring employers and trustees of pension schemes should be made fully aware of the trustee training requirements set out in the Pensions Act 1990 because their failure to address such requirements could result in them being liable to significant fines and sanctions.

This note is intended to provide a general overview. It is given wholly without any liability or responsibility on the part of Eugene F. Collins, Solicitors, and does not replace the necessity to obtain legal advice.

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