



STATUTORY INSTRUMENTS.

S.I. No. 717 of 2021



TRUST RACS (DISCLOSURE OF INFORMATION) (AMENDMENT)
REGULATIONS 2021

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I, HEATHER HUMPHREYS, Minister for Social Protection, in exercise of the powers conferred on me by section 5 (as amended by section 44 of the Social Welfare Law Reform and Pensions Act 2006 (No. 5 of 2006)), section 54 (as amended by section 36 of the Social Welfare and Pensions Act 2011 (No. 9 of 2011)), section 55 (as amended by section 37 of the Social Welfare and Pensions Act 2007 (No. 8 of 2007)) and section 56 (as amended by section 37 of the Social Welfare and Pensions Act 2007 (No. 8 of 2007)) of the Pensions Act 1990 (No. 25 of 1990) (as adapted by the Employment Affairs and Social Protection (Alteration of Name of Department and Title of Minister) Order 2020 (S.I. No. 447 of 2020)) and for the purposes of giving further effect to Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016¹, hereby make the following Regulations:

Citation

1. These Regulations may be cited as the Trust RACs (Disclosure of Information) (Amendment) Regulations 2021.

Amendment to regulations

2. The Trust RACs (Disclosure of Information) Regulations 2007 (S.I. No. 182 of 2007) are amended –

- (a) in Regulation 2 by -
- (i) by the insertion of the following definition after the definition for “designated benefit”:
“ “Directive of 2016” has the meaning assigned to it in section 2 of the Act;”;
 - (ii) by the insertion of the following definition after the definition for “reckonable service”:
“ “Regulations of 2021” means the European Union (Occupational Pension Schemes) Regulations 2021 (S.I. No. 128 of 2021);”;
 - (iii) by the insertion of the following definition after the definition for “relevant person”:
“ “representative” means a person authorised by a member or beneficiary of the trust RAC to represent the member or beneficiary, as the case may be, in so far as the information to be provided to the member or beneficiary in accordance

¹ OJ No. L 354, 23.12.2016, p. 37

with these Regulations is relevant to the rights of such a member or beneficiary of the trust RAC;”;

- (b) in Regulation 3, in sub-article (5)(a), by the substitution of “in the case of a sole trustee which is a body corporate, by two directors of that body corporate” for “if there is only one trustee, by that trustee”;
 - (c) in Regulation 5 –
 - (i) in sub-article (5)(a)(iii), by the substitution of “sub-article (3)” for “sub-article (4)”;
 - (ii) in sub-article (5)(b)(iii), by the substitution of “section 53G” for “section 53F”;
 - (iii) in sub-article (5)(b)(v), by the substitution of “section 53L” for “section 53H”, and
 - (iv) in sub-article (5)(b)(vi), by the substitution of “section 53L” for “section 53H”;
 - (d) in Regulation 6 –
 - (i) in sub-article (1)(a), by the insertion of “and shall be publicly disclosed” after “to the relevant persons”;
 - (ii) in sub-article (1)(b), by the substitution of “specified by sub-article (2A)” for “specified by sub-article (3)”;
 - (iii) in sub-article (2), by the insertion of “, or a representative,” after “to any of the relevant persons”, and
 - (iv) in sub-article (3) –
 - (I) in paragraph (a), by the insertion of “, or, except in the case of valuation reports, a representative,” after “any of the relevant persons”, and
 - (II) by the substitution of the following paragraph for paragraph (b):
 - “(b) furnished on request, and -
 - (i) in the case of valuation reports, on payment of a reasonable charge (unless the trustees decide otherwise), and
 - (ii) in the case of audited accounts or annual reports, free of charge,
- to any of the relevant persons, or in the case of the matters referred to in subparagraph (ii), a representative, not later than 4 weeks after the request is made.”;
- (e) in Regulation 7 –
 - (i) in sub-article (1), by substituting “specified in sub-articles (1B), (2), (3) and (3A) below” for “specified in sub-articles (2) and (3) below”;

- (ii) by the insertion of the following sub-articles after sub-article (1):

“(1A) The trustees of a trust RAC shall notify members and beneficiaries, or a representative, of any relevant information in respect of changes to the trust RAC rules, not later than 4 weeks from the date of any such changes and shall, with that notification, provide -

- (a) the contents of any document which amends or supplements or wholly or partly supersedes the documents referred to in sub-article (1)(a) to (c), and
- (b) the notification referred to in Article 8(4)(a), if applicable.

(1B) A copy of the documents specified in paragraphs (a) to (d) of sub-article (1) shall be furnished, free of charge, to every member or beneficiary, within 2 months, as the case may be, of the person becoming a member of the trust RAC or benefits becoming payable to the beneficiary under the trust RAC.”;

- (iii) in sub-article (3), by the deletion of “on payment of a reasonable charge”, and

- (iv) by the insertion of the following sub-article for sub-article (3):

“(3A) A copy of the documents specified in sub-article (1) shall be furnished, free of charge, to any prospective members who are not automatically enrolled in the trust RAC, before they become a member of the trust RAC.”;

- (f) by the insertion of the following Regulation after Regulation 7:

“Disclosure of Information in relation to trust RACs – General requirements

7A. (1) Where the trustees of a trust RAC are required to provide information under these Regulations to members, beneficiaries, a representative or prospective members, the trustees of the trust RAC shall ensure that the information is maintained, presented and provided in the manner set out in sub-article (2).

- (2) The information referred to in sub-article (1) shall be:

- (i) updated;
- (ii) written in a clear manner, using clear, succinct and comprehensible language, avoiding the use of jargon and avoiding technical terms where everyday words can be used instead;
- (iii) not misleading, and consistency shall be ensured in the vocabulary and content;
- (iv) presented in a way that is easy to read;

- (v) available in the English language, and
 - (vi) made available to members, beneficiaries and prospective members free of charge through electronic means, including on a durable medium or by means of a website, or on paper.”;
- (g) in Regulation 8 -
- (i) in sub-article (1), by the substitution of “(2), (3) and (3A)” for “(2) and (3)”;
 - (ii) by the substitution of the following sub-article for sub-article (2):

“(2) Subject to sub-article (3A)(b), the information specified in paragraphs 1 to 11 and 13 of Schedule C, where applicable, shall be furnished to every person who becomes a member of a trust RAC within 2 months of becoming a member.”;
 - (iii) by the insertion of the following sub-article after sub-article (3):

“(3A) The information specified in paragraphs 1 to 12 of Schedule C, where applicable, and, in the case of the persons referred to in paragraph (b) of this sub-article, paragraph 13, shall be furnished to any prospective members -

 - (a) who are not automatically enrolled in a trust RAC, before they become a member of the trust RAC,
 - (b) who are automatically enrolled in a trust RAC, promptly after becoming a member of the trust RAC.”;
 - (iv) in sub-article (4), by the substitution of the following paragraph for paragraph (a):

“(a) The trustees of a trust RAC shall notify the members and beneficiaries of the trust RAC, or a representative, of any material alteration in the information specified in paragraphs 1 to 11 and 13 of Schedule C within four weeks of the date of making any such alteration.”, and
 - (v) by the insertion of the following sub-article after sub-article (5):

“(6) The trustees of a trust RAC shall make available to members and beneficiaries of the trust RAC, or representatives, an explanation of the impact on members and beneficiaries of significant changes to technical provisions, where applicable.”;

(h) in Regulation 10 -

- (i) in sub-article (1)(a), by the substitution of “Subject to sub-article (3), such information as is” for “Such information as is”;
- (ii) in sub-article (1)(b), by the substitution of “Subject to sub-article (3), such information as is” for “Such information as is”;
- (iii) in sub-article (2) –
 - (I) by the substitution of “Subject to sub-article (3), in addition to” for “In addition to”, and
 - (II) in paragraph (b), by the deletion of “on payment of a reasonable charge (unless the trustees decide otherwise)”, and
- (iv) by the insertion of the following sub-article after sub-article (2) –

“(3) Sub-articles (1) and (2) shall no longer apply to a trust RAC from the date on which the trustees of the trust RAC make available, to the members of the trust RAC, the first Pension Benefit Statement in accordance with Chapter 1 of Part 6 of the Regulations of 2021.”;

(i) in Regulation 11 -

- (i) in sub-article (2), by the substitution of “Subject to sub-article (3), the information” for “The information”, and
- (ii) by the insertion of the following sub-article after sub-article (2):

“(3) Sub-article (2) shall no longer apply to a trust RAC from the date on which the trustees of the trust RAC make available, to the members of the trust RAC, the first Pension Benefit Statement in accordance with Chapter 1 of Part 6 of the Regulations of 2021.”;

(j) in Regulation 12 –

- (i) in sub-article (1), by the insertion of “ except in the case of a member of a trust RAC referred to in sub-article (1A),” after “persons specified in sub-article (3)”, and
- (ii) by the insertion of the following sub-articles after sub-article (1):

“(1A) In the case of a member referred to in sub-article (3)(a), the trustees of the trust RAC shall furnish to such a member, in due time prior to benefits becoming payable to the member from the trust RAC, or on request by the member, the information specified in paragraphs 1 to 5 of Schedule F.

(1B) The trustees of a trust RAC shall -

- (a) where a benefit under the trust RAC has become payable or is to become payable, periodically provide the information specified in paragraphs 1 to 5 of Schedule F to persons specified in sub-article (3), and
- (b) when a significant level of investment risk is borne by persons specified in sub-article (3) in respect of whom a benefit under the trust RAC has become payable or is about to become payable, provide such persons with appropriate information regularly.”;
- (k) in Regulation 15, by the insertion of “or beneficiary, as the case may be,” after “furnished on request to a member”;
- (l) by the insertion of the following Regulation after Regulation 15:

“Information to be made available – where members bear investment risk

15A. (1) In the case of a trust RAC in which members bear an investment risk and which provides for more than one option with different investment profiles, the trustees of the trust RAC shall furnish, in the manner specified in sub-articles (2), (3) and (4), the members of the trust RAC with information in relation to –

 - (a) the conditions regarding the range of investment options available;
 - (b) the default investment option, where applicable, and
 - (c) the rules of the trust RAC to allocate a particular member to an investment option.

(2) The trustees of a trust RAC referred to in sub-article (1) shall furnish the information referred to in sub-article (1) to a member of the trust RAC within 2 months of becoming a member.

(3) The trustees of a trust RAC referred to in sub-article (1) shall furnish the information referred to in sub-article (1), on request, to a member of the trust RAC not later than 4 weeks after the request is made.

(4) The trustees of a trust RAC referred to in sub-article (1) shall notify the members of the trust RAC of any material alteration in the information specified in sub-article (1) within 4 weeks of the date of making of any such alteration.”;
- (m) in Regulation 16, by the insertion of “or by means of any electronic method” after “by ordinary post at the last address known to the trustees”;
- (n) in Regulation 17, in paragraph (a), by the deletion of “, other than a small trust RAC,”;
- (o) in Schedule A, by the substitution of the following paragraph for 1:

“1. Accounts of the trust RAC shall –

- (a) show a true and fair view of –
 - (i) the financial transactions of the trust RAC during the trust RAC year,
 - and
 - (ii) the assets and liabilities at the end of the trust RAC year,
 - and
- (b) include disclosure of significant investment holdings.”

(p) in Schedule C -

(i) by the insertion of following paragraphs after paragraph 11:

“12. In the case of prospective members referred to in Article 8(3A) -

- (a) information on any relevant options available including investment options,
- (b) information on whether and how environmental, climate, social and corporate governance factors are considered in the investment approach, and
- (c) where members bear investment risk or can take investment decisions, information on the past performance of investments related to the trust RAC for a minimum of five years, or for all the years that the trust RAC has been operating where this is less than five years and information on the costs borne by members and beneficiaries.

13. A statement outlining -

- (a) the mechanisms protecting accrued entitlements or the benefit reduction mechanisms, if any;
- (b) where members bear investment risk or can take investment decisions, information on the past performance of investments related to the trust RAC for a minimum of five years, or for all the years that the trust RAC has been operating where this is less than five years, and
- (c) the structure of costs borne by members and beneficiaries, for trust RACs which do not provide for a given level of benefits.”;

(q) in Schedule H, by the insertion of the following paragraph after paragraph (9):

“10. Where members bear investment risk or can take investment decisions, information on the past performance of investments related to the trust RAC for a minimum of five years,

or for all the years that the trust RAC has been operating where this is less than five years.”.



GIVEN under my Official Seal,
15 December, 2021.

HEATHER HUMPHREYS,
Minister for Social Protection.

EXPLANATORY NOTE

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

These Regulations amend S.I. No. 182 of 2007 in order to, amongst other things, give further effect to Directive (EU) 2016/2341 by –

- in Regulation 2, by inserting a number of definitions;
- by amending Regulation 3 relating to Audited Accounts;
- by amending Regulation 5 relating to Annual Reports;
- in Regulation 6, by providing that a copy of the latest audited accounts and annual report shall be publicly disclosed and made available free of charge on request within 4 weeks of a request being made and making a number of technical amendments;
- in Regulation 7, to oblige the trustees of a trust RAC to –
 - o notify members and beneficiaries, or a representative, of any relevant information in respect of changes to the trust RAC rules, within a specified time period, and to provide, with that notification, copies of the relevant documentation;
 - o furnish copies of the documents relating to the constitution of a trust RAC, free of charge, to every member or beneficiary within 2 months of the person becoming a member or benefits becoming payable from the trust RAC to the person concerned, and
 - o provide copies of the documents relating to the constitution of a trust RAC to prospective members before they become members of the trust RAC;
- inserting a new Regulation 7A to specify the manner in which information shall be provided under these Regulations by the trustees to members of a trust RAC;
- in Regulation 8, by amending the disclosure of information requirements in relation to basic information about the trust RAC and specifying when the relevant information shall be provided to members, beneficiaries, representatives or prospective members of a trust RAC;
- in Regulation 10, by providing that sub-articles (1) & (2) shall no longer apply to a trust RAC from the date on which the trustees of the trust RAC make available, to the members of the trust RAC, the first Pension Benefit Statement;
- in Regulation 11 in respect of the information to be made available to a member on termination of contributions;
- in Regulation 12, by amending the information to be made available on retirement or death of a member or beneficiary;
- in Regulation 15, by specifying that the information to be made available in relation to the investment strategy shall also be made available on request to a beneficiary;

- the insertion of a new Regulation 15A to specify the information to be made available where members bear an investment risk and when such information shall be furnished;
- in Regulation 16, by providing that information and documents may be served by electronic means as well as by ordinary post, and
- by making a number of amendments in respect of the information to be provided under Schedules A, C and H.

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