

<b>Scheme: The Monymusk Estate Retirement Benefit Scheme</b>	
<b>To:</b>	Dalriada Trustees Limited
<b>Of:</b>	128a Great Victoria Street Belfast BT2 7BG
<b>To:</b>	Sir Archibald Grant Bt, Trustee
<b>Of:</b>	Monymusk Estate The Estate Office Monymusk Aberdeenshire AB51 7HS
<b>To:</b>	Mr Martin Patrick Hotham
<b>Of:</b>	c/o Kerseys, Solicitors 32 Lloyds Avenue Ipswich Suffolk IP1 3HD
<b>To:</b>	Mr Alexander Duff Forbes
<b>Of:</b>	New Taplow Papermill c/o St Regis Paper Company Ltd Mill Lane Taplow Maidenhead SL6 OAF
<b>To:</b>	Monymusk Land Company
<b>Of:</b>	Investment House 6 Union Row Aberdeen AB10 1DQ
<b>Date:</b>	18 December 2006

**TAKE NOTICE** that the Pensions Regulator of Napier House, Trafalgar Place, Brighton BN1 4DW (“The Regulator”) has made a determination on **13 December 2006**

<b>1.</b>	<b>Determination</b>
	<p>1.1 An application by the Regulator to vest scheme property by an Order under Section 9 of the Pensions Act 1995 (as amended) in the new trustee of this scheme, Dalriada Trustees Limited.</p> <p>1.2 The Trust is subject to Scots Law and under Scots Law, ownership of trust property vests solely with trustees and, when a new trustee is assumed or</p>

	appointed, the trust property is formally conveyed to the new trustee to complete title as the new trustee is not automatically invested with legal title to the trust property as it would be in England and Wales.
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<b>2.</b>	<b>Procedure Followed: Standard</b>
<b>2.1</b>	By its Warning Notice dated 15 November 2006 (“the Warning Notice”) the Pensions Regulator gave notice that it proposed to take the above action pursuant to the application of the Regulator.
<b>2.2</b>	<p>The Regulator determined that the following parties are directly affected by this determination:</p> <ol style="list-style-type: none"> <li>1. Dalriada Trustees Limited in its role as trustee (appointed by the Regulator on 16 August 2006</li> <li>2. Sir Archibald Grant Bt in his role as trustee</li> <li>3. Mr Martin Patrick Hotham in his role as trustee</li> <li>4. Mr Alexander Duff Forbes in his role as trustee</li> <li>5. Monymusk Land Company in its role as employer</li> </ol> <p>(collectively referred to as “the directly affected parties”)</p> <p>These directly affected parties were entitled to make representations to the Pensions Regulator about the determination.</p>
<b>2.3</b>	Following the issue of the Warning Notice there were no representations to the Pensions Regulator.
<b>2.4</b>	The Pensions Regulator has determined to take the action as detailed in 6 below for the reasons set out below.

<b>3</b>	<b>Relevant Statutory Provisions/Legislation</b>
	See Appendix A on page 6

<b>4.</b>	<b>Relevant Guidance</b>
<b>4.1</b>	Clarification was sought by the Panel that the relevant power available to the Court of Session in Scotland that was requested to be exercised by the Determinations Panel was covered by the opening few words of Section 22 of the Trusts (Scotland) Act 1921 – “ <i>When trustees cannot be assumed under any trust deed</i> ”.... The legal adviser confirmed he had liaised with McGrigors who had stated that this was the case and this clause was used when there was an issue of imperfection and when trustees do not provide for certain circumstances.

	<p>Clarification was sought in relation to Section 22 of the Trusts (Scotland) Act 1921 which states “grant a warrant to complete a title to any heritable property forming part of the trust estate in favour of the trustee or trustees so appointed, which warrant shall specify and describe the heritable property to which it is applicable”. The Determinations Panel asked whether it might be necessary to provide a detailed specification of the property concerned if a vesting order was granted. The legal adviser stated that he had been informed by McGrigors that the Court of Sessions wording for vesting orders did not provide a detailed specification of the property concerned and this was standard practice under Scottish Law and therefore specifics were not required.</p>
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<p><b>5.</b></p>	<p><b>Background to the Application / Case</b></p>
	<p>The Pensions Regulator appointed Dalriada Trustees Ltd by order dated 16 August 2006 to be trustees of the Monymusk Pension Scheme with exclusive powers. Following this Dalriada Trustees Ltd appointed McGrigors of Pacific House, 70 Wellington Street, Glasgow G2 6SB, Scottish Solicitors, to advise them in connection with securing the property of the pension scheme.</p> <p>McGrigors sent the Pensions Regulator an explanation of the reasons why under Scots law a separate order by the Court of Session is required in order to vest the property of a trust in a new trustee and the implications of this with regard to an order made under section 7 of the Pensions Act 1995 to appoint a trustee to a pension scheme.</p> <p>XX  XX  XX  XX  XX  XX  XX  XX.</p>

<p><b>6.</b></p>	<p><b>Facts and Matters Relied Upon</b></p>
	<ol style="list-style-type: none"> <li>1. Dalriada Trustees, who were appointed by the Determinations Panel as an independent trustee to this scheme in August 2006, and the Pensions Regulator, had both been advised by McGrigors, (the legal advisers to Dalriada), that under Scots law Dalriada currently had no control over the scheme’s property, but that this could be remedied if the Pensions Regulator made an order under Section 9 of the Pensions Act 1995 (as amended).</li> <li>2. Dalriada had been appointed by the Determinations Panel as an independent trustee with exclusive powers in relation to the scheme. Therefore in order to enable them to exercise all the functions of a trustee they needed to be vested in full title to all the property of the scheme.</li> <li>3. The appointment in August 2006 was made under section 7(3)(c) of the</li> </ol>

	<p>Pensions Act 1995 as well as section 7(3)(a). Section 7(3)(c) states “ to secure the proper use or application of the assets of the scheme.” To carry out this function the trustee needs to control the assets and therefore has to have full title to all the property.</p> <p>4. It is necessary for the Regulator to make an order under section 9 of the Pensions Act 1995 (as amended) vesting the property of the trust in Dalriada Trustees Limited as they may need to take legal action in the future against one of the other trustees and/or other persons.</p>
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<b>7.</b>	<b>Conclusion: Details of Determination</b>
	<p>1. The Pensions Regulator hereby orders the vesting in, and the assignation and transfer to, Dalriada Trustees Limited of 128a Great Victoria Street, Belfast, BT2 7BG, as trustee of the Monymusk Estate Retirement Benefits Scheme, of all property and assets of the scheme, heritable and moveable, real and personal, of every description and wherever situated, with effect from 13 December 2006.</p> <p>2. This Order is made pursuant to s9 of the Pensions Act 1995 (as amended).</p>

<b>8.</b>	<b>Decision Maker</b>
	The determination which gave rise to the obligation to give this Determination Notice was made by the Determinations Panel.

<b>9.</b>	<b>Scheme details</b>	
	<b>Type of scheme</b>	Wholly insured defined benefit
	<b>Status of scheme</b>	Stated by the previous trustee to be in wind up – exact status now under investigation by Dalriada Trustees Ltd.
	<b>Membership</b>	16 – 4 active (subject to the status of the scheme being established) 8 deferred and 4 pensioners
	<b>Size of fund</b>	£202,000 as at 6.4.99
	<b>Contracted in/out</b>	Not contracted out

<b>10.</b>	<b>Scheme trustees</b>		
	<b>Name</b>	<b>Period of office</b>	<b>Status of trustee</b>
1.	Dalriada Trustees Ltd	From 16 August 2006 to present	Corporate Trustee appointed by the Pensions Regulator with exclusive powers
2.	Sir Archibald Grant Bt	From October 1982 to present	Individual – current
3.	Martin Patrick Hotham	From October 1982 to present	Individual – current

<b>10. Scheme trustees</b>			
<b>4.</b>	Alexander Duff Forbes	From October 1982 to present	Individual – current
<b>5.</b>	PS Independent Trustees Ltd	From 12 January 2005 to 11 January 2006	Corporate, Opra appointed – term expired.

<b>11. Scheme advisers</b>				
	Type	Name	Period of office	Company
<b>1.</b>	Scheme actuary	Alan Stevens	From 11 March 2005	JLT Benefit Solutions
<b>2.</b>	Legal Advisers	McGrigors	16 August 2006	Scottish Solicitors

<b>12. Employer details</b>	
<b>Name</b>	Monymusk Land Company
<b>Address</b>	Investment House 6 Union Row Aberdeen AB10 1DQ
<b>Nature of business</b>	A property holding and management company
<b>Number of employees</b>	Unknown

<b>13. Important Notices</b>	
	This Determination Notice is given to you under sections 96(2)(d) of the Act. The following statutory rights are important.

<b>14. Referral to the Pensions Regulator Tribunal</b>	
<b>14.1</b>	You have the right to refer the matter to which this Determination Notice relates to the Pensions Regulator Tribunal (“the Tribunal”). Under section 103(1)(b) of the Act you have 28 days from the date this Determination Notice is sent to you to refer the matter to the Tribunal or such other period as specified in the Tribunal rules or as the Tribunal may allow. A reference to the Tribunal is made by way of a written notice signed by you and filed with a copy of this Determination Notice. The Tribunal’s address is: 15-19 Bedford Avenue, London WC1B 3AS (tel: 020 7612 9700). The detailed procedures for making a reference to the Tribunal are contained in section 103 of the Act and the Tribunal Rules.
<b>14.2</b>	You should note that the Tribunal rules provide that at the same time as filing a reference notice with the Tribunal, you must send a copy of the reference notice to The Pensions Regulator. Any copy reference notice should be sent to Determinations Support at The Pensions Regulator, Napier House, Trafalgar Place, Brighton BN1 4DW.

Signed: *Geoffrey Fitchew* .....

Chairman: Geoffrey Fitchew

Date: 15<sup>th</sup> December 2006 .....

**Relevant Statutory Provisions**

**Appendix A**

The relevant statutory provisions in this matter are:

Section 7(3) of the Pensions Act 1995 (as amended).

The Authority may also by order appoint a trustee of a trust scheme where they are satisfied that it is necessary to do so in order-

- (a) to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme,
- (b) to secure that the number of trustees is sufficient for the proper administration of the scheme, or
- (c) to secure the proper use or application of the assets of the scheme.

Section 9 of the Pensions Act 1995 - Removal and appointment of trustees: property

Where the Authority have power under this Part to appoint or remove a trustee, they may exercise by order the same jurisdiction and powers as are exercisable by the High Court or, in relation to a trust scheme subject to the law of Scotland, the Court of Session for vesting any property in, or transferring any property to, trustees in consequence of the appointment or of the removal.

Section 22 of the Trusts (Scotland) Act 1921 - Appointment of new trustees by the court

When trustees cannot be assumed under any trust deed, or when any person who is the sole trustee appointed in or acting under any trust deed is or has become insane or is or has become incapable of acting by reason of physical or mental disability, or by being absent continuously from the United Kingdom for a period of at least six months, or by having disappeared for a like period, the [Court of Session or an appropriate sheriff court] may, upon the application of any party having interest in the trust estate, after such intimation and inquiry as may be thought necessary, appoint a trustee or trustees under such trust deed with all the powers incident to that office, and, on such appointment being made in the case of any person becoming insane or incapable of acting as aforesaid, such person shall cease to be a trustee under such trust deed, and the court [to which application is made] may, on such application, grant a warrant to complete a title to any heritable property forming part of the trust estate in favour of the trustee or trustees so appointed, which warrant shall specify and describe the heritable property to which it is applicable, or refer in terms of law to a recorded deed containing a description thereof, and shall also specify the moveable or personal property, or bear reference to an inventory appended to the petition to the court in which such moveable or personal property is specified, and such warrant shall be effectual as a conveyance of such heritable property in favour of the trustee or trustees so appointed in like manner and to the same effect as a warrant in favour of a judicial factor granted under the authority of section twenty-four of the Titles to Lands Consolidation (Scotland) Act, 1868, or section forty-four of the Conveyancing (Scotland) Act, 1874,

and shall also be effectual as an assignation of such moveable or personal property in favour of the trustee or trustees so appointed.

#### NOTES

##### Initial Commencement

##### Royal Assent

Royal Assent: 19 August 1921: (no specific commencement provision).

##### Amendment

First words in square brackets substituted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, s 13(a)(i).

Final words in square brackets inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980, s 13(a)(ii).

##### Section 5(1) – Regulator's objectives

The main objectives of the Regulator in exercising its functions are –

- (a) to protect the benefits under occupational pension schemes of, or in respect of, members of such scheme .....,
- (c) to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (see Part 2), and
- (d) to promote, and to improve understanding of, the good administration of work-based pension schemes.

##### Section 10 of the Pensions Act 2004 - Functions exercisable by the Determinations Panel

(1)The Determinations Panel is to exercise on behalf of the Regulator-

(a)the power to determine, in the circumstances described in subsection (2), whether to exercise a reserved regulatory function, and

(b)where it so determines to exercise a reserved regulatory function, the power to exercise the function in question.

(2)Those circumstances are-

(a)where the Regulator considers that the exercise of the reserved regulatory function may be appropriate, or

(b)where an application is made under, or by virtue of, any of the provisions listed in subsection (6) for the Regulator to exercise the reserved regulatory function.

##### Schedule 2

##### The Reserved Regulatory Functions

##### Section 10

10 The power under section 9 to exercise by order the same jurisdiction and powers as the High Court or the Court of Session for vesting property in, or transferring property to, trustees in consequence of the appointment or removal of a trustee.

Section 100 of the Pensions Act 2004 – Duty to have regard to the interests of members etc

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| <p>(1) The Regulator must have regard to the matters mentioned in subsection (2) –</p> <ul style="list-style-type: none"><li>(a) when determining whether to exercise a regulatory function –<ul style="list-style-type: none"><li>(i) in a case where the requirements of the standard or special procedure apply, or</li><li>(ii) on a review under section 99, and</li></ul></li><li>(b) when exercising the regulatory function in question.</li></ul> <p>(2) Those matters are –</p> <ul style="list-style-type: none"><li>(a) the interests of the generality of the members of the scheme to which the exercise of the function relates, and</li><li>(b) the interests of such persons as appear to the Regulator to be directly affected by the exercise.</li></ul> |
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