

36 Choosing investments.

(1) The trustees of a trust scheme must exercise their powers of investment in accordance with regulations and in accordance with subsections (3) and (4), and any fund manager to whom any discretion has been delegated under section 34 must exercise the discretion in accordance with regulations.

(1A) Regulations under subsection (1) may, in particular—

- (a) specify criteria to be applied in choosing investments, and
- (b) require diversification of investments.

(3) Before investing in any manner (other than in a manner mentioned in Part I of Schedule 1 to the M1Trustee Investments Act 1961) the trustees must obtain and consider proper advice on the question whether the investment is satisfactory having regard to the requirements of regulations under subsection (1), so far as relating to the suitability of investments, and to the principles contained in the statement under section 35.

(4) Trustees retaining any investment must—

- (a) determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice as is mentioned in subsection (3), and
- (b) obtain and consider such advice accordingly.

(5) The trustees, or the fund manager to whom any discretion has been delegated under section 34, must exercise their powers of investment with a view to giving effect to the principles contained in the statement under section 35, so far as reasonably practicable.

(6) For the purposes of this section “proper advice” means—

- (a) if the giving of the advice constitutes the carrying on, in the United Kingdom, of a regulated activity (within the meaning of the Financial Services and Markets Act 2000), advice given by a person who may give it without contravening the prohibition imposed by section 19 of that Act (prohibition on carrying on regulated activities unless authorised or exempt);
- (b) in any other case, the advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of trust schemes.

(7) Trustees shall not be treated as having complied with subsection (3) or (4) unless the advice was given or has subsequently been confirmed in writing.

(8) If the trustees of a trust scheme—

- (a) fail to comply with regulations under subsection (1), or

(b) do not obtain and consider advice in accordance with this section,

section 10 applies to any trustee who has failed to take all reasonable steps to secure compliance.

(9) Regulations may exclude the application of any of the preceding provisions of this section to any scheme which is of a prescribed description.

(10) Regulations under subsection (1) coming into force no more than one year after the date on which Royal Assent is received must provide:

(a) that when interpreting the best interest or sole interests of members and beneficiaries for the purposes of this section and the regulations, the trustees of a trust scheme may (amongst other matters) take the following into account:

(i) system-level considerations;

(ii) the reasonably foreseeable impacts over the appropriate time horizon of the assets or organisations in which the trust scheme invests upon prescribed matters, including upon members' and beneficiaries' standards of living; and

(iii) the views of members and beneficiaries

(b) that investment powers or discretions must be exercised in a manner that considers and manages the matters specified in subsection (10)(a)(i) and (ii) where they are financially material; and

(c) a prescribed definition of the term "appropriate time horizon" for these purposes.

(11) For the purposes of this section, "system-level considerations" means, over the appropriate time horizon, risks and opportunities relevant to the scheme that:

(a) cannot be fully managed through diversification alone; and

(b) arise from circumstances at the level of one or more economic sectors, financial markets or economies, including but not limited to those relating to environmental or social matters.

(12) In complying with requirements imposed by this section and regulations, a trustee or manager must have regard to guidance prepared from time to time by the Secretary of State.