

Occupational Pension Schemes (Investment) Regulations 2005/3378

1.— Citation, commencement and interpretation

(1) These Regulations may be cited as the Occupational Pension Schemes (Investment) Regulations 2005 and shall come into force on 30th December 2005.

(2) In these Regulations—

“*the 1995 Act*” means the Pensions Act 1995;

“*the 2004 Act*” means the Pensions Act 2004;

“*the FSM Act*” means the Financial Services and Markets Act 2000;

“*appropriate time horizon*” means what the trustees of a trust scheme consider to be the expected remainder of the lifetimes of members and beneficiaries while benefits that are or were attributable to the trust scheme will be payable;

“*collective investment scheme*” has the same meaning as in Part 17 of the FSM Act, but includes arrangements of the type described in paragraphs 4 and 9 of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001¹ (arrangements not amounting to a collective investment scheme);

“*default arrangement*”, means an arrangement, within the meaning of regulation 3 of the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (default arrangement) which would be a default arrangement within the meaning of that regulation if that regulation were modified as follows—

(a) in paragraph (1)(a) omit “qualifying”, and for “relevant jobholders” substitute “workers”;

(b) in paragraph (2)(b) omit “subject to paragraph (3),”;

(c) omit paragraphs (3), (4), (6)(a), (7) and (8); and

(d) in paragraph (9)—

(i) in the definition of “relevant date” omit the words after “regulation 1(2)”; and

(ii) omit the definitions of “relevant jobholder” and “staging date”;

“*employer-related loan*” has for the purposes of regulations 12, 14 and 15 the meaning given in regulation 12(4);

“*insurance policy*” means a contract of a kind referred to in Article 2(3) of the Solvency 2 Directive, but excluding a contract of a kind referred to in Article 2(3)(b)(iii) or (iv) of that Directive⁵;

“*qualifying insurance policy*” means an insurance policy issued by an insurer which is—

(a) a person who has permission under Part 4A of the FSM Act to effect or carry out contracts of long-term insurance;

“recognised stock exchange” has the same meaning as in section 841 of the Taxes Act;

“relevant scheme” has the same meaning as in the Occupational Pension Schemes (Administration) Regulations 1996;

“scheme” (except in the expression “collective investment scheme”) means an occupational pension scheme;

“small scheme” means a scheme with fewer than 12 members, where—

(a) all the members are trustees of the scheme and either—

(i) the provisions of the scheme provide that all decisions which fall to be made by the trustees are made by the unanimous agreement of the trustees who are members of the scheme, or

(ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act (power to appoint independent trustees), and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section; or

(b) all the members are directors of a company which is the sole trustee of the scheme, and either—

(i) the provisions of the scheme provide that any decisions made by the company in its capacity as trustee are made by the unanimous agreement of all the directors who are members of the scheme, or

(ii) one of the directors of the company is independent in relation to the scheme for the purposes of section 23 of the 1995 Act, and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section;

“the Solvency 2 Directive” means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);

“specified qualifying insurance policy” means a qualifying insurance policy which is a contract falling within paragraph I or paragraph III of Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“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;

“Taxes Act” means the Income and Corporation Taxes Act 1988.

(2A) When interpreting the best interest or sole interests of members and beneficiaries under section 36 of the 1995 Act and these regulations, the trustees of a trust scheme may take account of (amongst other matters) the following considerations:

(a) system-level considerations;

~~(a)~~(b) the reasonably foreseeable impacts over the appropriate time horizon of the assets or organisations in which the trust scheme invests upon financial systems, the economy, the community and the environment;

~~(b)~~(c) the reasonably foreseeable impacts over the appropriate time horizon of assets or organisations in which the trust scheme invests upon members' and beneficiaries':

(i) standards of living; and

(ii) health and social and economic well-being,

as determined by the trustees of the trust scheme; and

(d) the views of the members and beneficiaries (including but not limited to their views in relation to the social or environmental impacts of the assets or organisations in which the trust scheme invests).

(3) Regulations 12(4)(b), 13(3) and 15(1) must be read with—

(a) section 22 of the FSM Act (classes of activity and categories of investment);

(b) any relevant order under that section; and

(c) Schedule 2 to that Act (regulated activities).

(4) Subject to paragraph (5), in these Regulations, and for the purposes of section 35 (investment principles) and section 40 (restriction on employer-related investments) of the 1995 Act, “*employer*”, in relation to a scheme which has no active members, includes every person who was the employer of persons in the description of employment to which the scheme relates immediately before the time at which the scheme ceased to have any active members in relation to it.

(5) In these Regulations, save in relation to regulation 16A, “*employer*”, in relation to a multi-employer scheme, or a section of a multi-employer scheme, includes—

(a) in the case of a scheme which has no active members, every person who was the employer of persons in the description of employment to which the scheme, or section, relates immediately before the time at which the scheme, or section, ceased to have any active members in relation to it unless after that time—

(i) a debt under section 75 of the 1995 Act¹⁵ (deficiencies in the assets) becomes due from that person to the scheme, or section; and

(ii) either—

(aa) the full amount of the debt has been paid by that person to the trustees or managers of the scheme, or section; or

(bb) in circumstances where a legally enforceable agreement has been entered into between that person and the trustees or managers of the scheme, or section, the effect of which is to reduce the amount which is payable in respect of the debt, the reduced amount of the debt has been paid in full by that person to those trustees or managers; and

(b) in any other case, any person who has ceased to be the employer of persons in the description of employment

to which the scheme, or section, relates unless—

- (i) at the time when he so ceased, the scheme, or section, was not being wound up and continued to have active members in relation to it; and
- (ii) a debt under section 75 of the 1995 Act became due at that time from that person to the scheme, or section, and either—
 - (aa) the full amount of the debt has been paid by that person to the trustees or managers of the scheme, or section; or
 - (bb) in circumstances where a legally enforceable agreement has been entered into between that person and the trustees or managers of the scheme, or section, the effect of which is to reduce the amount which is payable in respect of the debt, the reduced amount of the debt has been paid in full by that person to those trustees or managers.

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2.— Statement of investment principles

(1) The trustees of a trust scheme must secure that the statement of investment principles prepared for the scheme under section 35 of the 1995 Act is reviewed—

- (a) at least every three years; and
- (b) without delay after any significant change in investment policy.

(2) Before preparing or revising a statement of investment principles, the trustees of a trust scheme must—

(a) obtain and consider the written 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 such schemes; and

(b) consult the employer.

(3) A statement of investment principles must be in writing and must cover at least the following matters—

(a) the trustees' policy for securing compliance with the requirements of section 36 of the 1995 Act (choosing investments);

(b) their policies in relation to—

(i) the kinds of investments to be held;

(ii) the balance between different kinds of investments;

(iii) risks, including the ways in which risks are to be measured and managed;

(iv) the expected return on investments;

(v) the realisation of investments;

(vi) financially material considerations over the appropriate time horizon of the investments, including matters within regulation 4(3A), and how those considerations are taken into account in the selection, retention and realisation of investments; and

(vii) the extent (if at all) to which non-financial matters are taken into account in the selection, retention and realisation of investments;

(c) their policy in relation to—

(i) the exercise of the rights (including voting rights) attaching to the investments; and

(ii) undertaking engagement activities in respect of the investments (including the methods by which, and the circumstances under which, trustees would monitor and engage with relevant persons about relevant matters); and

(d) their policy in relation to the trustees' arrangement with any asset manager, setting out the following matters or explaining the reasons why any of the following matters are not set out—

(i) how the arrangement with the asset manager incentivises the asset manager to align its investment strategy and decisions with the trustees' policies mentioned in sub-paragraph (b);

(ii) how that arrangement incentivises the asset manager to make decisions based on assessments about medium to long-term financial and non-financial performance of an issuer of debt or equity and to engage with issuers of debt or equity in order to improve their performance in the medium to long-term;

(iii) how the method (and time horizon) of the evaluation of the asset manager's performance and the remuneration for asset management services are in line with the trustees' policies mentioned in sub-paragraph (b);

(iv) how the trustees monitor portfolio turnover costs incurred by the asset manager, and how they define and monitor targeted portfolio turnover or turnover range; and

(v) the duration of the arrangement with the asset manager.

(4) For the purposes of this regulation—

~~"appropriate time horizon" means the length of time that the trustees of a trust scheme consider is needed for the funding of future benefits by the investments of the scheme;~~

"beneficiaries" means a person, other than a member of the trust scheme, who is entitled to the payment of benefits under the scheme;

"financially material considerations" includes (but is not limited to) environmental, social and governance considerations (including but not limited to climate change), which the trustees of the trust scheme consider financially material;

"non-financial matters" means the views of the members and beneficiaries including (but not limited to) their ethical views and their views in relation to social and environmental impact and present and future quality of life of the members and beneficiaries of the trust scheme;

"portfolio turnover costs" means the costs incurred as a result of the buying, selling, lending or borrowing of investments;

"relevant matters" includes (but is not limited to) matters concerning an issuer of debt or equity, including their performance, strategy, capital structure, management of actual or potential conflicts of interest, risks, social and environmental impact and corporate governance;

"relevant persons" includes (but is not limited to) an issuer of debt or equity, an investment manager, another stakeholder or another holder of debt or equity

"stakeholder" means a person or a group of persons who has an interest in the issuer of debt or equity;

"targeted portfolio turnover" means the frequency within which the assets of the scheme are expected to be bought or sold;

"time horizon" means the time period over which the trustees evaluate the performance of the asset manager; and

"turnover range" means the minimum and maximum frequency within which the assets of the scheme are expected to be bought or sold.

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4.— Investment by trustees

(1) The trustees of a trust scheme must exercise their powers of investment, and any fund manager to whom any discretion has been delegated under section 34 of the 1995 Act (power of investment and delegation) must exercise the discretion, in accordance with the following provisions of this regulation.

(2) The assets must be invested—

(a) in the best interests of members and beneficiaries; and

(b) in the case of a potential conflict of interest, in the sole interest of members and beneficiaries.

(3) The powers of investment, or the discretion, must be exercised in a manner calculated to ensure the security, quality, liquidity and profitability of the portfolio as a whole.

(3A) The powers of investment, or the discretion, must be exercised in a manner that considers and manages the matters specified in regulation 1(2A)(a)-(c) where they are financially material.

(4) Assets held to cover the scheme's technical provisions must also be invested in a manner appropriate to the nature and duration of the expected future retirement benefits payable under the scheme.

(5) The assets of the scheme must consist predominantly of investments admitted to trading on regulated markets.

(6) Investment in assets which are not admitted to trading on such markets must in any event be kept to a prudent level.

(7) The assets of the scheme must be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group must not expose the scheme to excessive risk concentration.

(8) Investment in derivative instruments may be made only in so far as they—

(a) contribute to a reduction of risks; or

(b) facilitate efficient portfolio management (including the reduction of cost or the generation of additional capital or income with an acceptable level of risk),

and any such investment must be made and managed so as to avoid excessive risk exposure to a single counterparty and to other derivative operations.

(8A) For the purposes of paragraph (3A) the exercise of the powers of investment, or the discretion, may include the carrying out of any or all of the activities referred to in regulation 2(3)(c).

(9) For the purposes of paragraph (5)—

(a) an investment in a collective investment scheme shall be treated as an investment on a regulated market to the extent that the investments held by that scheme are themselves so invested; and

(b) a qualifying insurance policy shall be treated as an investment on a regulated market.

(10) To the extent that the assets of a scheme consist of qualifying insurance policies, those policies shall be treated as satisfying the requirement for proper diversification when considering the diversification of assets as a whole in accordance with paragraph (7).

(11) In this regulation—

“beneficiary”, in relation to a scheme, means a person, other than a member of the scheme, who is entitled to the payment of benefits under the scheme:

“derivative instrument” includes any of the instruments listed in paragraphs (4) to (10) of Part 1 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;

“regulated market” means

(b) a UK regulated market or an EU regulated market within the meaning of Article 2.1.13A and 2.1.13B respectively of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments; or

(c) any other market for financial instruments—

(i) which operates regularly;

(ii) which is recognised by the relevant regulatory authorities;

(iii) in respect of which there are adequate arrangements for unimpeded transmission of income and capital to or to the order of investors; and

(iv) in respect of which adequate custody arrangements can be provided for investments when they are dealt in on that market;

“technical provisions” has the meaning given by section 222(2) of the 2004 Act (the statutory funding objective).