STATUTORY RULES OF NORTHERN IRELAND

2005 No. 569

PENSIONS

The Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005

Made - - - -	*16th December 2005*
Coming into operation	*30th December 2005*

The Department for Social Development, in exercise of the powers conferred by Articles 35(1), (3), (4) and (7), 36(1), (1A) and (9), 36A, 40(1) and (2), 115(1), 120(2), 122(3) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(**1**) and now vested in it(**2**), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

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

(2) In these Regulations—

"the 1995 Order" means the Pensions (Northern Ireland) Order 1995;

"the 2005 Order" means the Pensions (Northern Ireland) Order 2005(**3**);

"the FSM Act" means the Financial Services and Markets Act 2000(**4**);

"the Taxes Act 1988" means the Income and Corporation Taxes Act 1988(**5**);

"collective investment scheme" has the same meaning as in Part XVII 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 2001(**6**) (arrangements not amounting to a collective investment scheme);

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

(**1**) S.I. 1995/3213 (N.I. 22); Article 35 is substituted by Article 221 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)); Article 36 was amended by article 151 of S.I. 2001/3649 and is amended by Article 222 of the Pensions (Northern Ireland) Order 2005; Article 36A is inserted by Article 223 of that Order and Article 40 was amended by article 152 of S.I. 2001/3649 and article 26 of S.I. 2004/355

(**2**) See Article 8(b) of S.R. 1999 No. 481

(**3**) S.I. 2005/255 (N.I. 1)

(**4**) 2000 c. 8

(**5**) 1988 c. 1

(**6**) S.I. 2001/1062; paragraph 9(1)(a) was substituted by article 2(2) of S.I. 2001/3650

"insurance policy" means a contract of a kind referred to in Article 2 of the Life Directive, but excluding a contract of a kind referred to in Article 2(2)(c) and (d) of that Directive;

"the Life Directive" means Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance(**7**);

"qualifying insurance policy" means an insurance policy issued by an insurer which is—

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

(b) an undertaking established in an EEA State (as defined in paragraph 8 of Schedule 3 to the FSM Act) other than the United Kingdom, which is authorised by the competent authorities of that State to carry on the business of direct insurance for the class of assurance as listed in Annex I to the Life Directive in which the insurance policy falls;

"recognised stock exchange" has the same meaning as in section 841 of the Taxes Act 1988;

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

"scheme undertaking cross-border activities" means a scheme in relation to which the trustees or managers are—

(a) authorised under Article 264 of the 2005 Order (general authorisation to accept contributions from European employers), or

(b) approved under Article 265 of the 2005 Order in relation to a European employer;

"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 unanimous agreement by 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 Article 23(**8**) (power to appoint independent trustees), and is registered in the register maintained by the Authority in accordance with regulations made under paragraph (4) of that Article, 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 Article 23, and is registered in the register maintained by the Authority in accordance with regulations made under paragraph (4) of that Article;

"specified qualifying insurance policy" means a qualifying insurance policy which is a contract falling within paragraph III of Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**9**).

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

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

(b) any relevant order under that section, and

(**7**) O.J. No. L345, 19.12.2002, p.1
(**8**) Article 23 was substituted by Article 32(3) of the Pensions (Northern Ireland) Order 2005
(**9**) S.I. 2001/544

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

(4) Subject to paragraph (5) and for the purposes of Articles 35 (investment principles) and 40 (restriction on employer-related investments), "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, "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 Article 75(**10**) (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 Article 75 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.

(6) For the purposes of these Regulations, and not withstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954(**11**), where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

(7) In these Regulations any reference to a numbered Article is a reference to the Article of the 1995 Order bearing that number.

Statement of investment principles

2.—(1) The trustees of a trust scheme must secure that the statement of investment principles prepared for the scheme under Article 35 is reviewed—

(**10**) Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005
(**11**) 1954 c. 33 (N.I.)

(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 Article 36 (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, and

(vi) the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments, and

(c) their policy (if any) in relation to the exercise of the rights (including voting rights) attaching to the investments.

Application of regulation 2 in relation to multi-employer schemes

3.—(1) In the application of regulation 2 to a scheme in relation to which there is more than one employer, the requirement imposed by paragraph (2)(b) of that regulation—

(a) where a person has been nominated by all the employers to act as their representative for the purposes of that paragraph, is to consult that person;

(b) where no person has been so nominated but the employers have not all notified the trustees that they need to be consulted, is (subject to paragraph (2)) to consult all the employers, and

(c) where no person has been so nominated and the employers have all notified the trustees that they need not be consulted, does not apply.

(2) Where the trustees specify a reasonable period (not being less than 28 days) within which they must receive representations from the employers, sub-paragraph (1)(b) does not require them to consider any representations received after the end of that period.

Investment by trustees

4.—(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 Article 34(**12**) (power of investment and delegation) must exercise the discretion, in accordance with this regulation.

(2) The assets must be invested—

(**12**) Article 34 was amended by article 150 of S.I. 2001/3649 and is amended by paragraph 43 of Schedule 10 to the Pensions (Northern Ireland) Order 2005

(a) in the best interest 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.

(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.

(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 Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments(**13**);

"regulated market" means—

(a) a regulated market within the terms of Council Directive 93/22/EEC on investment services in the securities field(**14**);

(b) a regulated market within the terms of Directive 2004/39/EC, or

(c) any other market for financial instruments—

(i) which operates regularly;

(**13**) O.J. No. L145, 30.4.2004, p. 1
(**14**) O.J. No. L141, 11.6.1993, p.27