

2005 No. 3378

PENSIONS

The Occupational Pension Schemes (Investment) Regulations 2005

<i>Made</i> - - - -	<i>8th December 2005</i>
<i>Laid before Parliament</i>	<i>9th December 2005</i>
<i>Coming into force</i> -	<i>30th December 2005</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 35(1), (3), (4) and (7), 36(1), (1A) and (9), 36A, 40(1) and (2), 118(1), 123(3), 124(1), 125(3) and 174(2) and (3) of the Pensions Act 1995(a).

In accordance with section 120(1) of that Act the Secretary of State has consulted such persons as he considers appropriate.

Citation, commencement and interpretation

1.—(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(b);

“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 2001(c) (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);

“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(d);

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

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

¹Words substituted in defn. of “insurance policy” by reg. 9(2)(a) of S.I. 2006/778 as from 6.4.06.

(a) 1995 c. 26. Section 35 was substituted by section 244 of the Pensions Act 2004 (c. 35) (“the 2004 Act”); section 36 was amended by section 245 of that Act; section 36A was added by section 246 of that Act; section 124(1) is cited because of the meaning there given to “prescribed” and “regulations”.

(b) 2000 c. 8.

(c) S.I. 2001/1062; paragraph 9(1)(a) was substituted by S.I. 2001/3650.

(d) OJ No.L345, 19.12.2002 p1.

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- (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;

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

- (a) authorised under section 288 of the 2004 Act (general authorisation to accept contributions from European employers); or
- (b) approved under section 289 of the 2004 Act in relation to a European employer;

“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 made¹ 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^(a) (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;

“specified qualifying insurance policy” means a qualifying insurance policy which is a contract falling within² paragraph I or III of Part II of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001^(b);

“Taxes Act” means the Income and Corporation Taxes Act 1988^(c).

- (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, “employer”, in relation to a multi-employer scheme, or a section of a multi-employer scheme, includes—

^(a) This section was substituted by section 36(4) of the 2004 Act.

^(b) S.I. 2001/544.

^(c) 1988 c. 1.

¹Words substituted in defn. of “small scheme” by reg. 16(2) of S.I. 2007/814 as from 6.4.07.

²Words in defn. of “specified qualifying insurance policy” substituted by reg. 9(2)(b) of S.I. 2006/778 as from 6.4.06.

- (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 Act^(a) (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.

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 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;

^(a) Section 75 was amended by section 271 of the 2004 Act.

- (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

See reg. 4(a) of S.I. 2010/8 at page 5.7191 for details of modifications of this reg. in certain situations.

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 section 34 of the 1995 Act^(a) (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.
- (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.

^(a) Section 34 was amended by section 5 of the Trustee Delegation Act 1999 (c. 15), by paragraph 49 of Schedule 12 to the 2004 Act and by S.I. 2001/3649.

- (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 1 to Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments^(a);
- “regulated market” means—
- (a) a regulated market within the terms of Council Directive 93/22/EEC on investment services in the securities field^(b);
 - (b) a regulated market within the terms of Directive 2004/39/EC; 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).

Borrowing and guarantees by trustees

5.—(1) Except as provided in paragraph (2), the trustees of a trust scheme, and a fund manager to whom any discretion has been delegated under section 34 of the 1995 Act, must not borrow money or act as a guarantor in respect of the obligations of another person where the borrowing is liable to be repaid, or liability under a guarantee is liable to be satisfied, out of the assets of the scheme.

(2) Paragraph (1) does not preclude borrowing made only for the purpose of providing liquidity for the scheme and on a temporary basis.

See reg. 4 of S.I. 2011/673 for details of modifications to reg. 5(2) as from 6.4.11.

(a) OJ No. L145, 30.04.2004 pl.

(b) OJ No. L141, 11.06.1993 p27.

Disapplication of section 35 of the 1995 Act and of regulations 2 and 3 in respect of certain schemes

6.—(1) Section 35 of the 1995 Act and regulations 2 and 3 do not apply to any of the following schemes—

- (a) a scheme which has fewer than 100 members; or
- (b) a scheme which—
 - (i) is established by or under an enactment (including a local Act), and
 - (ii) is guaranteed by a public authority.

(2) In this regulation—

“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

“local authority” means—

- (a) in relation to England, a county council, a district council, a London borough council, the Greater London Authority, the Common Council of the City of London in its capacity as a local authority or the Council of the Isles of Scilly;
- (b) in relation to Wales, a county council or county borough council;
- (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(a) (constitution of councils);
- (d) an administering authority as defined in Schedule 1 to the Local Government Pension Scheme Regulations 1997(b) (interpretation);

“public authority” means—

- (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)(c);
- (b) a government department (including any body or authority exercising statutory functions on behalf of the Crown);
- (c) the Scottish Ministers;
- (d) the National Assembly for Wales, or
- (e) a local authority.

Disapplication of regulations 4 and 5 in respect of schemes with fewer than 100 members

7.—(1) Regulations 4 and 5 do not apply to a scheme which has fewer than 100 members.

(2) Where regulation 4 does not apply to a scheme by virtue only of paragraph (1), the trustees of the scheme in exercising their powers of investment, and any fund manager to whom any discretion has been delegated under section 34 of the 1995 Act in exercising the discretion, must have regard to the need for diversification of investments, in so far as appropriate to the circumstances of the scheme.

Modification of regulation 2 in respect of wholly-insured schemes

8.—(1) Where, on the preparation or revision of a statement of investment principles under regulation 2, a scheme is a wholly-insured scheme and the trustees do not consider that it should cease to be such a scheme—

- (a) sub-paragraphs (b) and (c) of regulation 2(3) shall not apply; and
- (b) the statement of investment principles must cover the reasons for the scheme being a wholly-insured scheme.

(a) 1994 c. 39.

(b) S.I. 1997/1612.

(c) 1997 c. 26.

(2) In this regulation, “wholly-insured scheme” means a trust scheme, other than a stakeholder pension scheme within the meaning of section 1 of the Welfare Reform and Pensions Act 1999^(a) (meaning of “stakeholder pension scheme”), which has no investments other than specified qualifying insurance policies.

(3) For the purposes of paragraph (2), “investments” shall not include—

- (a) cash held on deposit by the trustees or managers pending payment to the insurer or to members of the scheme;
- (b) cash held on deposit by the trustees or managers to meet accrued liabilities or administrative expenses; or
- (c) any investments arising from voluntary contributions.

Partial disapplication of regulation 4 in respect of schemes being wound up

9.—(1) The requirements of paragraphs (3) to (7) of regulation 4 shall apply in respect of a scheme which is being wound up except to the extent that—

- (a) they conflict with any obligations placed on the trustees arising in consequence of the winding up under or by virtue of the 1995 Act or the 2004 Act, or
- (b) it is not reasonably practicable to give effect to them having regard to circumstances in connection with the winding up.

(2) For the purposes of paragraph (1), a scheme shall be taken to be being wound up during the period which—

- (a) begins with the day on which the time immediately after the beginning of the winding up of the scheme falls, and
- (b) ends when the winding up of the scheme is completed.

Connected and associated persons

10.—(1) Section 249 of the Insolvency Act 1986^(b) (connected persons) shall be modified in its application for the purposes of section 40 of the 1995 Act (restriction on employer-related investments) and these Regulations so that a company shall not be connected with another company solely by reason of one or more of its directors being a director of that other company.

(2) Section 74 of the Bankruptcy (Scotland) Act 1985^(c) (associated persons) shall be modified in its application for the purposes of section 40 of the 1995 Act and these Regulations to apply as if it contained the same provisions as sections 249 (as modified by paragraph (1)) and 435 (associated persons) of the Insolvency Act 1986.

Prescription of investments as employer-related investments

11. For the purposes of section 40(2)(e) of the 1995 Act, the following are prescribed as employer-related investments—

- (a) the proportion attributable to the scheme’s resources (whether directly or through any intervening collective investment scheme) of any investments which—
 - (i) have been made by the operator of any collective investment scheme, and
 - (ii) would have been employer-related investments if they had been made by the scheme;
- (b) any guarantee of, or security given to secure, obligations of the employer or of any person who is connected with, or an associate of, the employer, and for the purposes of section 40 of the 1995 Act and these Regulations a guarantee

(a) 1999 c. 30.

(b) 1986 c. 45.

(c) 1985 c. 66.

- or security given by the trustees or managers shall be regarded as an investment of resources of the scheme equal to the amount of the obligations guaranteed or secured;
- (c) any loan arrangement entered into with any person whereby the trustees' or managers' right to or expectation of repayment depends on the employer's actions or situation, unless it was not the trustees' or managers' purpose in entering into the arrangement to provide financial assistance to the employer;
 - (d) where any of a scheme's resources are invested in an insurance policy the terms of which permit—
 - (i) the premiums or other consideration for the rights acquired under the policy, or
 - (ii) any monies otherwise credited to or for the benefit of the trustees or managers or the members,to be invested in a fund created only for the purposes of that policy, the proportion of the scheme's resources invested in that policy which is the same proportion as B is of A where—
 - A represents all the assets of the insurer held in the fund, and
 - B represents that part of A which would, if invested by the scheme, be employer-related investments; and
 - (e) where any of a scheme's resources are invested in an insurance policy (not being resources invested in a fund created only for the purposes of that policy) the terms of which permit the trustees or managers or the employer to direct that—
 - (i) some or all of the premiums or other consideration for the rights acquired under the policy, or
 - (ii) any monies otherwise credited to or for the benefit of the trustees or managers or the members,are invested in employer-related investments, any investments made by the insurer from those premiums or other consideration or monies, which would have been employer-related investments if they had been made by the scheme.

Restrictions on employer-related investments

¹Words substituted in reg. 12(1) by reg. 16(3) of S.I. 2007/814 as from 6.4.07.

- 12.—**(1) This regulation ¹applies to schemes◀ except small schemes.
- (2) Subject to regulations 13 to 16—
- (a) not more than five per cent. of the current market value of the resources of a scheme may at any time be invested in employer-related investments; and
 - (b) none of the resources of a scheme may at any time be invested in any employer-related loan.
- (3) None of the resources of a scheme may at any time be invested in any employer-related investment the making of which involves the entering by the trustees or managers into a transaction at an undervalue where the agreement to enter into that transaction was made on or after the 6th April 1997.
- (4) In this regulation and in regulations 14 and 15 “employer-related loan” means—
- (a) a loan mentioned in section 40(2)(d) of the 1995 Act (including, for the purposes of this regulation only, one which falls within section 40(2)(d) by virtue of section 40(3) of that Act);
 - (b) a security mentioned in section 40(2)(a) of the 1995 Act which is an instrument creating or acknowledging indebtedness, except any such security which is listed on a recognised stock exchange; and
 - (c) an employer-related investment prescribed as such by regulation 11(b) or (11)(c).

(5) In paragraph (3), “transaction at an undervalue” has the same meaning in relation to trustees and managers as it has in section 238(4) of the Insolvency Act 1986 (transactions at an undervalue (England and Wales)) in relation to a company to which that section applies.

Investments to which restrictions do not apply

13.—(1) Regulation 12(1) shall not restrict or prohibit investments to which this regulation applies.

(2) This regulation applies to investments prescribed as employer-related investments by regulation 11(e) (but not to investments prescribed as employer-related investments by regulation 11(d)) where the insurance policy—

- (a) is a specified qualifying insurance policy; and
- (b) is issued by an insurer which is the employer.

(3) This regulation applies to any employer-related investment of resources in an account (including a current, deposit or share account) with—

- (a) a person who has permission under Part 4 of the FSM Act (permission to carry on regulated activities) to accept deposits; or
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits¹; or
- (c) the Bank of England.◀

¹Words inserted in reg. 13(3)(b) & para. (3)(c) added by reg. 19(3)(b) of S.I. 2009/615 as from 6.4.09.

(4) This regulation applies to any employer-related investment of resources which derives from a member’s voluntary contributions and is invested in employer-related investments with the written agreement of the member who paid those contributions.

(5) This regulation applies to sums due from the employer to the trustees by virtue of a provision in an order under section 7 of the 1995 Act(**a**) (appointment of trustees) such as is permitted by section 8(1) of that Act(**b**) (orders appointing trustees may provide that certain sums are to be treated as a debt due from the employer to the trustees).

(6) This regulation applies to sums which fall or fell to be treated as debts due from the employer to the trustees or managers by virtue of—

- (a) section 75(2) and (4) of the 1995 Act(**c**) (deficiencies in the assets);
- (b) section 88(2) of the 1995 Act(**d**) (schedules of payments to money purchase schemes: supplementary – amounts not paid in accordance with the payment schedule);²◀
- (c) section 228(3) of the 2004 Act (failure to make payments)²;
- (d) section 59(2) of the 1995 Act(**e**) (determination of contributions: supplementary); or
- (e) section 60(5) of the 1995 Act (serious underprovision),◀

²Words omitted from para. (6)(b) and sub- paras. (d) & (e) inserted by reg. 9(3)(a) of S.I. 2006/778 as from 6.4.06.

and to sums which would fall to be so treated by virtue of any of those sections were they not already debts due from the employer to the trustees or managers.

(7)³◀

³Reg. 7 deleted by reg. 2(2) of S.I. 2010/2161 as from 23.9.10.

(8) All schemes in relation to which the respective employers are within the same group of companies shall be treated as—

- (a) a single participant, for the purposes of paragraph (7)(b); and
- (b) one scheme, for the purposes of paragraph (7)(c),

(a) Section 7 was amended by section 35(1) of the 2004 Act.

(b) Section 8 was substituted by section 35(2) of the 2004 Act.

(c) Section 75 was amended by section 271 of the 2004 Act.

(d) Section 88 was amended by paragraph 65 of Schedule 12 to the 2004 Act.

(e) Sections 59 and 60 of the Pensions Act 1995 were revoked by Part 1 of Schedule 13 to the Pensions Act 2004, with transitional savings in paragraph 9 of Schedule 4 to S.I. 2005/3377.

and for the purposes of paragraph (7)(d) all issues within a group of companies shall be treated as issued by a single issuer.

(9) For the purposes of paragraph (8), “group of companies” means a group of companies consisting of a holding company and one or more subsidiaries where “holding company” and “subsidiary” have the same meaning as in section 736 of the Companies Act 1985(a) (“subsidiary”, “holding company” and “wholly owned subsidiary”).

(10) Subject to paragraph (11), where the disposal of assets on the winding up of a scheme would otherwise result in a contravention of these Regulations, any employer-related investments held before the commencement of the winding up may be retained while the scheme is being wound up, but there shall be no new investment in employer-related investments while the resources retained under this paragraph exceed five per cent. of the current market value of the resources of the scheme.

(11) Paragraph (10) does not apply to permit the retention of—

- (a) employer-related investments which were, prior to the commencement of the winding up, held in contravention of these Regulations or of the Occupational Pension Schemes (Investment) Regulations 1996(b); or
- (b) employer-related loans to which regulation 14(2)(c) applies.

(12) This regulation applies to a loan to the employer or a company associated with the employer, if the scheme has fewer than 100 members, and—

- (a) the scheme provides benefits for directors of a company which is the employer, or such directors and others;
- (b) there is a qualifying insurance policy taken out under the scheme which is specifically allocated to the provision of benefits under the scheme and the directors’ interests under which are used as security for the loan;
- (c) Her Majesty’s Revenue and Customs’ requirements concerning the loan have been satisfied;
- (d) the directors agreeing to the interests under the policy concerned being used as security for the loan have so agreed in writing, and
- (e) the loan was made and the security given before 9th August 1999.

(13) This regulation applies to any security given over a qualifying insurance policy to secure obligations of the employer, or of any person who is connected with, or an associate of, the employer, where—

- (a) the scheme provides benefits for any director of a company which is the employer;
- (b) the policy is specifically allocated to the provision of benefits under the scheme for that director;
- (c) the obligations secured are to the insurer who issued the policy;
- (d) Her Majesty’s Revenue and Customs’ requirements concerning the loan and the giving of the security have been satisfied; and
- (e) the director mentioned in sub-paragraph (b) has agreed in writing to the security being given.

Transitional provisions

14.—(1) Where on the 6th April 1997 the resources of a scheme were invested in—

- (a) employer-related loans (including such loans as are mentioned in regulation 5(2)(a) of the Occupational Pension Schemes (Investment of Scheme’s

(a) 1985 c. 6. Section 736 was substituted, together with section 736A, by section 144(1) of the Companies Act 1989 (c. 40).

(b) S.I. 1996/3127; those Regulations were amended by the other instruments referred to in the Schedule to these Regulations.

Resources) Regulations 1992(a) (“the 1992 Regulations”) which were in being on 18th December 1996 and to which regulation 13 does not apply;

(b) ¹◀

¹Regs. 14(b) & 14(e)
deleted by reg. 2(3)(a)
& (b) of S.I. 2010/2161
as from 23.9.10.

those investments may be retained in accordance with paragraph (2).

(2) To the extent that the employer-related investments mentioned in paragraph (1) consist of—

- (a) employer-related loans to which regulation 5(2)(a) of the 1992 Regulations applied before 6th April 1997, they may, where by virtue of contractual or other legal obligations repayment cannot be required immediately, be retained until the earliest date on which repayment can be enforced;
- (b) securities of the type referred to in regulation 12(4)(b) which, immediately before 6th April 1997, were employer-related investments and—
 - (i) regulation 5(2)(d) of the 1992 Regulations applied to them; or
 - (ii) they were investments which did not contravene the 1992 Regulations,

they may be held until the earliest date on which having regard to contractual and other legal obligations, disinvestment may be effected;

- (c) an employer-related loan the terms of which have, before 1st January 1996, been specifically approved by a court having jurisdiction in relation to the scheme as being in the interests of the members of the scheme, then, provided that the terms of the loan as so approved are not changed, such part of the loan, repayment of which cannot be required other than on the commencement of the winding up of the scheme, may be retained until the winding up of the scheme commences;
- (d) any employer-related loans which do not contravene the 1992 Regulations and to which sub-paragraphs (a) to (c) do not apply, they may be retained until the earliest date on which having regard to the contractual and other legal obligations repayment can be enforced;
- (e) ¹◀

(3) If any investment referred to in paragraph (2) is listed on a recognised stock exchange, it may be retained for a period of no more than six months beginning with the date on which it was listed.

(4) There shall be no new investment in employer-related investments while the resources of a scheme retained in employer-related investments (other than investments authorised by regulation 13) exceed five per cent. of the current market value of the resources of the scheme.

(5) In this regulation—

“loans” does not include any sums regarded as loans under section 40(3) of the 1995 Act (restrictions on employer-related investments); and

“retained”, in relation to a loan, means left undischarged.

Loans that become employer-related

15.—(1) If either a loan or a security which is an investment creating or acknowledging a debt becomes an employer-related loan on or after 6th April 1997 as a result of a change in the ownership of the employer or the person to whom the loan was made, the loan or security may be retained until whichever is the latest of—

- (a) the date falling two years after the date on which it became an employer-related loan; or
- (b) where repayment cannot by virtue of contractual or other legal obligations be required or, in the case of securities, disinvestment effected before the date mentioned in sub-paragraph (a), the earliest date on which repayment can be enforced, or disinvestment effected.

(a) S.I. 1992/246; those Regulations were revoked by S.I. 1996/3127.

(2) In paragraph (1)–

- (a) “loan” does not include any sum regarded as a loan under section 40(3) of the 1995 Act; and
- (b) “retained” means left undischarged.

Multi-employer schemes

16.—(1) Where a scheme in relation to which there is more than one employer is divided into two or more sections and the provisions of the scheme are such that—

- (a) different sections of the scheme apply to different employers or groups of employers (whether or not more than one section applies to any particular employer or groups including any particular employer);
- (b) contributions payable to the scheme by an employer, or by a member in employment under that employer, are allocated to that employer’s section (or, if more than one section applies to the employer, to the section which is appropriate in respect of the employment in question); and
- (c) a specified part or proportion of the assets of the scheme is attributable to each section and cannot be used for the purposes of any other section,

then regulations 10 to 15 shall apply as if each section of the scheme were a separate scheme.

(2) Where–

- (a) a scheme which has been such a scheme as is mentioned in paragraph (1) is divided into two or more sections some or all of which apply only to members who are not in pensionable service under the section; and
- (b) the provisions of the scheme have not been amended so as to prevent the conditions mentioned in paragraph (1)(a) to (c) being satisfied in relation to two or more sections; but
- (c) those conditions have ceased to be satisfied in relation to one or more sections (whether before or after 6th April 1997) by reason only of there being no members in pensionable service under the section and no contributions which are to be allocated to it,

then regulations 10 to 15 shall apply as if the section in relation to which those conditions have ceased to be satisfied were a separate scheme.

(3) For the purposes of paragraphs (1) and (2), there shall be disregarded any provisions of the scheme by virtue of which contributions or transfers of assets may be made to make provision for death benefits; and where paragraph (1) or (2) applies and contributions or transfers are so made to a section (“the death benefits section”) the assets of which may only be applied for the provision of death benefits, the death benefits section shall also be treated as if it were a separate scheme for the purposes of regulations 10 to 15.

(4) For the purposes of paragraphs (1) to (3), there shall be disregarded any provisions of the scheme by virtue of which on the winding up of the scheme assets attributable to one section may be used for the purposes of another section.

See regs. 4(b) & 5 of S.I. 2010/8 at page 5.7191 for details of modifications of this reg. in certain situations.

(5) Where there is more than one employer in relation to a scheme (other than a scheme to which paragraph (1) or (2) applies), and at least two of those employers are persons who are neither a company nor a person connected with that company nor associates of each other–

- (a) regulation 12(2)(a) shall apply with the substitution for the words “employer-related investments” of the words “investments which are employer-related investments in relation to a particular employer, and employer-related investments overall must not exceed a prudent level and in any event must not exceed 20 per cent. of the current market value of the scheme”; and

- (b) for regulation 14(4) there shall be substituted—
“ (4) There shall be no new investment in employer-related investments while—
- (a) the resources of a scheme retained in investments which are employer-related investments in relation to a particular employer (other than investments authorised by regulation 13) exceed five per cent. of the current market value of the resources of the scheme; or
- (b) more than 20 per cent. overall of the current market value of the resources of the scheme is retained under this regulation in employer-related investments.”.

Scheme undertaking cross-border activities

17. The following shall not apply in the case of a scheme undertaking cross-border activities—

- (a) regulation 6;
(b) regulation 7;
(c) the words “except small schemes” in regulation 12(1);
(d) regulation 13(2), (3), (4), (7), (8), (9), (12) and (13);
(e) regulation 14; and
(f) regulation 15.

Revocations

18. The instruments listed in column 2 of the Schedule to these Regulations are revoked to the extent specified in column 3 of that Schedule.

Signed by authority of the Secretary of State for Work and Pensions.

8th December 2005

Stephen C. Timms
Minister of State,
Department for Work and Pensions

SCHEDULE

Regulation 18

REVOCATIONS

Column 1 <i>Statutory Instrument Number</i>	Column 2 <i>Statutory Instrument</i>	Column 3 <i>Provisions revoked</i>
S.I. 1996/3127	The Occupational Pension Schemes (Investment) Regulations 1996	The whole of the Regulations
S.I. 1997/786	The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1997	Schedule 1, paragraph 18
S.I. 1997/819	The Occupational Pension Schemes (Reference Scheme and Miscellaneous Amendments) Regulations 1997	Regulation 6
S.I. 1999/1849	The Occupational Pension Schemes (Investment, Assignment, Forfeiture, Bankruptcy etc.) (Amendment) Regulations 1999	Regulation 2
S.I. 2000/1403	The Stakeholder Pension Schemes Regulations 2000	Regulation 31
S.I. 2000/3198	The Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations 2000	Regulation 10
S.I. 2001/3649	The Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001	Articles 544 to 548
S.I. 2002/681	The Occupational and Personal Pension Schemes (Contracting-out) (Miscellaneous Amendments) Regulations 2002	Regulation 6
S.I. 2005/678	The Occupational Pension Schemes (Employer Debt) Regulations 2005	Schedule 2, paragraph 3

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace, with amendments, the Occupational Pension Schemes (Investment) Regulations 1996, which are now revoked. The Regulations supplement changes made to the Pensions Act 1995 (c. 26) (“the 1995 Act”) by the Pensions Act 2004 (c. 35). They include provisions to implement certain requirements of the Directive 2003/41/EC (OJ L235, 23.09.2003 p10) of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision, in particular of Articles 12 and 18.

The Regulations impose requirements on trustees of occupational pension schemes in relation to the statement of investment principles required under section 35 of the 1995 Act and in relation to the choosing of investments. They impose restrictions on borrowing and the giving of guarantees by trustees and in respect of employer-related investments.

Regulation 2 sets out requirements in respect of the statement of investment principles required under section 35 of the Pensions Act 1995.

Regulation 3 sets out modified requirements in respect of such statements for schemes in relation to which there is more than one employer.

Regulation 4 sets out requirements in respect of choosing investments.

Regulation 5 sets out restrictions in respect of borrowing and guarantees.

Regulations 6 to 9 disapply section 35 of the 1995 Act and disapply or modify certain requirements of regulations 2 to 5, in respect of certain schemes.

Regulation 10 defines the expressions “connected persons” and “associated persons” as they apply in these Regulations.

Regulations 11 to 16 prescribe certain investments as employer-related investments in addition to those specified in section 40(2) of the Pensions Act 1995 and set out the restrictions on employer-related investments. They also prescribe investments to which the restrictions do not apply. Special provision is made as regards the application of the restrictions to schemes in relation to which there is more than one employer.

Regulation 17 makes special provision in the case of a scheme undertaking cross-border activities.

Revocations are made by regulation 18 and the Schedule.

An assessment of the impact on business, charities or the voluntary sector of the provision in these regulations was included in the Regulatory Impact Assessment relating to the implementation of Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision. A copy of that assessment has been placed in libraries of both Houses of Parliament. Copies may be obtained from the Department for Work and Pensions, Regulatory Impact Unit, level 3, Adelphi, 1-11 John Adam Street, London WC2N 6HT.

