



# Pensions Act 1995

## 1995 CHAPTER 26

### PART I

#### OCCUPATIONAL PENSIONS

##### *Functions of trustees*

### **32 Decisions by majority**

- (1) Decisions of the trustees of a trust scheme may, unless the scheme provides otherwise, be taken by agreement of a majority of the trustees.
- (2) Where decisions of the trustees of a trust scheme may be taken by agreement of a majority of the trustees—
  - (a) the trustees may, unless the scheme provides otherwise, by a determination under this subsection require not less than the number of trustees specified in the determination to be present when any decision is so taken, and
  - (b) notice of any occasions at which decisions may be so taken must, unless the occasion falls within a prescribed class or description, be given to each trustee to whom it is reasonably practicable to give such notice.
- (3) Notice under subsection (2)(b) must be given in a prescribed manner and not later than the beginning of a prescribed period.
- (4) This section is subject to sections 8(4)(b), 16(3)(b) and 25(2).
- (5) If subsection (2)(b) is not complied with, sections 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

### **33 Investment powers: duty of care**

- (1) Liability for breach of an obligation under any rule of law to take care or exercise skill in the performance of any investment functions, where the function is exercisable—
  - (a) by a trustee of a trust scheme, or

---

*Status: This is the original version (as it was originally enacted).*

---

(b) by a person to whom the function has been delegated under section 34, cannot be excluded or restricted by any instrument or agreement.

- (2) In this section, references to excluding or restricting liability include—
- (a) making the liability or its enforcement subject to restrictive or onerous conditions,
  - (b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy, or
  - (c) excluding or restricting rules of evidence or procedure.
- (3) This section does not apply—
- (a) to a scheme falling within any prescribed class or description, or
  - (b) to any prescribed description of exclusion or restriction.

### **34 Power of investment and delegation**

- (1) The trustees of a trust scheme have, subject to any restriction imposed by the scheme, the same power to make an investment of any kind as if they were absolutely entitled to the assets of the scheme.
- (2) Any discretion of the trustees of a trust scheme to make any decision about investments—
- (a) may be delegated by or on behalf of the trustees to a fund manager to whom subsection (3) applies to be exercised in accordance with section 36, but
  - (b) may not otherwise be delegated except under section 25 of the Trustee Act 1925 (delegation of trusts during absence abroad) or subsection (5) below.
- (3) This subsection applies to a fund manager who, in relation to the decisions in question, falls, or is treated as falling, within any of paragraphs (a) to (c) of section 191(2) of the Financial Services Act 1986 (occupational pension schemes: exemptions where decisions taken by authorised and other persons).
- (4) The trustees are not responsible for the act or default of any fund manager in the exercise of any discretion delegated to him under subsection (2)(a) if they have taken all such steps as are reasonable to satisfy themselves or the person who made the delegation on their behalf has taken all such steps as are reasonable to satisfy himself—
- (a) that the fund manager has the appropriate knowledge and experience for managing the investments of the scheme, and
  - (b) that he is carrying out his work competently and complying with section 36.
- (5) Subject to any restriction imposed by a trust scheme—
- (a) the trustees may authorise two or more of their number to exercise on their behalf any discretion to make any decision about investments, and
  - (b) any such discretion may, where giving effect to the decision would not constitute carrying on investment business in the United Kingdom (within the meaning of the Financial Services Act 1986), be delegated by or on behalf of the trustees to a fund manager to whom subsection (3) does not apply to be exercised in accordance with section 36;

but in either case the trustees are liable for any acts or defaults in the exercise of the discretion if they would be so liable if they were the acts or defaults of the trustees as a whole.

- (6) Section 33 does not prevent the exclusion or restriction of any liability of the trustees of a trust scheme for the acts or defaults of a fund manager in the exercise of a discretion delegated to him under subsection (5)(b) where the trustees have taken all such steps as are reasonable to satisfy themselves, or the person who made the delegation on their behalf has taken all such steps as are reasonable to satisfy himself—
- (a) that the fund manager has the appropriate knowledge and experience for managing the investments of the scheme, and
  - (b) that he is carrying out his work competently and complying with section 36; and subsection (2) of section 33 applies for the purposes of this subsection as it applies for the purposes of that section.
- (7) The provisions of this section override any restriction inconsistent with the provisions imposed by any rule of law or by or under any enactment, other than an enactment contained in, or made under, this Part or the Pension Schemes Act 1993.

### **35 Investment principles**

- (1) The trustees of a trust scheme must secure that there is prepared, maintained and from time to time revised a written statement of the principles governing decisions about investments for the purposes of the scheme.
- (2) The statement must cover, among other things—
- (a) the trustees' policy for securing compliance with sections 36 and 56, and
  - (b) their policy about the following matters.
- (3) Those matters are—
- (a) the kinds of investments to be held,
  - (b) the balance between different kinds of investments,
  - (c) risk,
  - (d) the expected return on investments,
  - (e) the realisation of investments, and
  - (f) such other matters as may be prescribed.
- (4) Neither the trust scheme nor the statement may impose restrictions (however expressed) on any power to make investments by reference to the consent of the employer.
- (5) The trustees of a trust scheme must, before a statement under this section is prepared or revised—
- (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.
- (6) If in the case of any trust scheme—
- (a) a statement under this section has not been prepared or is not being maintained, or
  - (b) the trustees have not obtained and considered advice in accordance with subsection (5),

---

*Status: This is the original version (as it was originally enacted).*

---

sections 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

- (7) This section does not apply to any scheme which falls within a prescribed class or description.

### **36 Choosing investments**

- (1) The trustees of a trust scheme must exercise their powers of investment in accordance with subsections (2) to (4) and any fund manager to whom any discretion has been delegated under section 34 must exercise the discretion in accordance with subsection (2).
- (2) The trustees or fund manager must have regard—
- (a) to the need for diversification of investments, in so far as appropriate to the circumstances of the scheme, and
  - (b) to the suitability to the scheme of investments of the description of investment proposed and of the investment proposed as an investment of that description.
- (3) Before investing in any manner (other than in a manner mentioned in Part I of Schedule 1 to the Trustee Investments Act 1961) the trustees must obtain and consider proper advice on the question whether the investment is satisfactory having regard to the matters mentioned in subsection (2) and 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) where giving the advice constitutes carrying on investment business in the United Kingdom (within the meaning of the Financial Services Act 1986), advice—
    - (i) given by a person authorised under Chapter III of Part I of that Act,
    - (ii) given by a person exempted under Chapter IV of that Part who, in giving the advice, is acting in the course of the business in respect of which he is exempt,
    - (iii) given by a person where, by virtue of paragraph 27 of Schedule 1 to that Act, paragraph 15 of that Schedule does not apply to giving the advice, or
    - (iv) given by a person who, by virtue of regulation 5 of the Banking Coordination (Second Council Directive) Regulations 1992, may give the advice though not authorised as mentioned in sub-paragraph (i) above.
  - (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 do not obtain and consider advice in accordance with this section, sections 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.

### **37 Payment of surplus to employer**

- (1) This section applies to a trust scheme if—
  - (a) apart from this section, power is conferred on any person (including the employer) to make payments to the employer out of funds which are held for the purposes of the scheme,
  - (b) the scheme is one to which Schedule 22 to the Taxes Act 1988 (reduction of pension fund surpluses in certain exempt approved schemes) applies, and
  - (c) the scheme is not being wound up.
- (2) Where the power referred to in subsection (1)(a) is conferred by the scheme on a person other than the trustees, it cannot be exercised by that person but may be exercised instead by the trustees; and any restriction imposed by the scheme on the exercise of the power shall, so far as capable of doing so, apply to its exercise by the trustees.
- (3) The power referred to in subsection (1)(a) cannot be exercised unless the requirements of subsection (4) and (in prescribed circumstances) (5), and any prescribed requirements, are satisfied.
- (4) The requirements of this subsection are that—
  - (a) the power is exercised in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Taxes Act 1988,
  - (b) the trustees are satisfied that it is in the interests of the members that the power be exercised in the manner so proposed,
  - (c) where the power is conferred by the scheme on the employer, the employer has asked for the power to be exercised, or consented to it being exercised, in the manner so proposed,
  - (d) the annual rates of the pensions under the scheme which commence or have commenced are increased by the appropriate percentage, and
  - (e) notice has been given in accordance with prescribed requirements to the members of the scheme of the proposal to exercise the power.
- (5) The requirements of this subsection are that the Authority are of the opinion that—
  - (a) any requirements prescribed by virtue of subsection (3) are satisfied, and
  - (b) the requirements of subsection (4) are satisfied.
- (6) In subsection (4)—
  - (a) “annual rate” and “appropriate percentage” have the same meaning as in section 54, and
  - (b) “pension” does not include—
    - (i) any guaranteed minimum pension (as defined in section 8(2) of the Pension Schemes Act 1993) or any increase in such a pension under section 109 of that Act, or

---

*Status: This is the original version (as it was originally enacted).*

---

(ii) any money purchase benefit (as defined in section 181(1) of that Act).

- (7) This section does not apply to any payment to which, by virtue of section 601(3) of the Taxes Act 1988, section 601(2) of that Act does not apply.
- (8) If, where this section applies to any trust scheme, the trustees purport to exercise the power referred to in subsection (1)(a) by making a payment to which this section applies without complying with the requirements of this section, sections 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.
- (9) If, where this section applies to any trust scheme, any person, other than the trustees, purports to exercise the power referred to in subsection (1)(a) by making a payment to which this section applies, section 10 applies to him.
- (10) Regulations may provide that, in prescribed circumstances, this section does not apply to schemes falling within a prescribed class or description, or applies to them with prescribed modifications.

### **38 Power to defer winding up**

- (1) If, apart from this section, the rules of a trust scheme would require the scheme to be wound up, the trustees may determine that the scheme is not for the time being to be wound up but that no new members are to be admitted to the scheme.
- (2) Where the trustees make a determination under subsection (1), they may also determine—
- (a) that no further contributions are to be paid towards the scheme, or
  - (b) that no new benefits are to accrue to, or in respect of, members of the scheme;
- but this subsection does not authorise the trustees to determine, where there are accrued rights to any benefit, that the benefit is not to be increased.
- (3) This section does not apply to—
- (a) a money purchase scheme, or
  - (b) a scheme falling within a prescribed class or description.

### **39 Exercise of powers by member trustees**

No rule of law that a trustee may not exercise the powers vested in him so as to give rise to a conflict between his personal interest and his duties to the beneficiaries shall apply to a trustee of a trust scheme, who is also a member of the scheme, exercising the powers vested in him in any manner, merely because their exercise in that manner benefits, or may benefit, him as a member of the scheme.