



Pensions Act 1995

1995 CHAPTER 26

PART I

OCCUPATIONAL PENSIONS

Functions of trustees

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—

Status: This is the original version (as it was originally enacted).

- (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.