
STATUTORY INSTRUMENTS

2001 No. 1177

The Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001

Managing investments: occupational pension schemes

4.—(1) A person who carries on an activity of the kind specified by article 37 of the Regulated Activities Order (managing investments), where the assets in question are held for the purposes of an occupational pension scheme, is to be regarded as carrying on that activity by way of business, except where—

- (a) he is a person to whom paragraph (2) applies; or
 - (b) all routine or day to day decisions in the carrying on of that activity (other than decisions falling within paragraph (6)), so far as relating to relevant assets, are taken on his behalf by—
 - (i) an authorised person who has permission to carry on activities of the kind specified by article 37 of the Regulated Activities Order;
 - (ii) a person who is an exempt person in relation to activities of that kind; or
 - (iii) an overseas person.
- (2) This paragraph applies to—
- (a) any trustee of a relevant scheme who is a beneficiary or potential beneficiary under the scheme; and
 - (b) any other trustee of a relevant scheme who takes no routine or day to day decisions relating to the management of any relevant assets.

(3) In this article—

“occupational pension scheme” means any scheme or arrangement which is comprised in one or more instruments or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category;

“relevant assets” means assets of the scheme in question which are securities or contractually based investments;

“relevant scheme” means any occupational pension scheme of a kind falling within paragraph (4) or (5).

(4) A scheme falls within this paragraph if—

- (a) it is constituted under an irrevocable trust;
- (b) it has no more than twelve relevant members;
- (c) all relevant members, other than any relevant member who is unfit to act, or is incapable of acting, as trustee of the scheme, are trustees of it; and

- (d) all routine or day to day decisions relating to the management of the assets of the scheme which are relevant assets are required to be taken by all, or a majority of, relevant members who are trustees of the scheme or by a person of a kind falling within paragraph (1)(b)(i) or (ii) acting alone or jointly with all, or a majority of, such relevant members;

and for these purposes a person is a relevant member of a scheme if he is an employee or former employee by or in respect of whom contributions to the scheme are being or have been made and to or in respect of whom benefits are or may become payable under the scheme.

- (5) A scheme falls within this paragraph if—
 - (a) it has no more than fifty members;
 - (b) the contributions made by or in respect of each member of the scheme are used in the acquisition of a contract of insurance on the life of that member or in the acquisition of a contract to pay an annuity on that life;
 - (c) the only decision of a kind described in paragraph (1)(b) which may be taken in relation to the scheme is the selection of such contracts; and
 - (d) each member is given the opportunity to select the contract which the contributions made by or in respect of him will be used to acquire.
- (6) A decision falls within this paragraph if—
 - (a) it is a decision by the trustees of an occupational pension scheme to buy, sell or subscribe for units in a collective investment scheme or shares or debentures of a body corporate (or warrants relating to such shares or debentures);

or debentures);

- (b) the decision is in accordance with advice given by—
 - (i) an authorised person who has permission to carry on activities of the kind specified by article 53 of the Regulated Activities Order;
 - (ii) a person who is an exempt person in relation to activities of that kind; or
 - (iii) an overseas person;
- (c) the collective investment scheme or body corporate has as its primary purpose—
 - (i) the acquisition and holding of relevant investments; or
 - (ii) the acquisition and holding of units in a collective investment scheme or shares or debentures of a body corporate (or warrants relating to such shares or debentures), which (in either case) has as its primary purpose the acquisition and holding of relevant investments; and
- (d) the property of the collective investment scheme or body corporate mentioned in sub-paragraph (a) (and, where applicable, the property of the collective investment scheme or body corporate mentioned in sub-paragraph (c)(ii)) is managed by—
 - (i) an authorised person who has permission to carry on an activity of the kind specified by article 37 of the Regulated Activities Order;
 - (ii) a person who is an exempt person in relation to activities of that kind; or
 - (iii) an overseas person.

(7) In paragraph (6), “relevant investments” means shares or debentures which are not traded on any investment exchange, or on any public market, in the United Kingdom or in any country or territory outside the United Kingdom, or warrants relating to such shares or debentures.