
STATUTORY INSTRUMENTS

2005 No. 3378

**The Occupational Pension Schemes
(Investment) Regulations 2005**

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⁽¹⁾ (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.

(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.

(1) 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.

(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⁽²⁾;

“regulated market” means—

- (a) a regulated market within the terms of Council Directive 93/22/EEC on investment services in the securities field⁽³⁾;
- (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).

(2) OJNo. L145, 30.04.2004 pl.
(3) OJ No.L141, 11.06.1993 p27.