
STATUTORY INSTRUMENTS

1996 No. 3127

**The Occupational Pension Schemes
(Investment) Regulations 1996**

PART II

RESTRICTIONS ON EMPLOYER-RELATED INVESTMENTS

Schemes to which regulation 5 applies

- 2.—(1) Subject to paragraph (2), regulation 5 applies to schemes—
- (a) which are either—
 - (i) approved for the purposes of Chapter I of Part XIV of the Taxes Act (retirement benefit schemes) or are the subject of an application for such approval which has not been determined, or
 - (ii) exempt from income tax by virtue of section 608 of that Act (exemption for superannuation funds approved before 6th April 1980); and
 - (b) which have at least one member in the United Kingdom and either—
 - (i) are established in the United Kingdom, or
 - (ii) have one or more trustees resident in the United Kingdom.
- (2) Regulation 5 does not apply to schemes—
- (a) which have fewer than twelve members each of whom is a trustee of the scheme; and
 - (b) the rules of which provide that, before any investment of the resources of the scheme is made in employer-related investments, each member shall agree in writing to the making of that investment.

Connected and associated persons

3.—(1) Section 249 of the Insolvency Act 1986 (connected persons) shall be modified in its application for the purposes of section 40 of the 1995 Act 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⁽¹⁾ (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 of the Insolvency Act 1986.

Prescription of investments as employer-related investments

4. 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 which
 - (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 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 a policy of insurance the terms of which permit the premiums or other consideration for the rights acquired under the policy, or 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 a policy of insurance (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 some or all of the premiums or other consideration for the rights acquired under the policy, or 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

5.—(1) Subject to regulations 6 (investments to which restrictions do not apply), 7 (transitional provisions), 8 (loans that become employer-related) and 9 (multi-employer schemes)—

- (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.

(2) 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 is made on or after the commencement date.

(3) In this regulation and in regulations 7 and 8 “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 falls within paragraph 2 of Schedule 1 to the Financial Services Act 1986 (investments and investment business), except any such security which is listed on a recognised stock exchange; and
- (c) an employer-related investment prescribed as such by regulation 4(b) (guarantees and security) or 4(c) (third party lending arrangements).

Investments to which restrictions do not apply

- 6.—(1) Regulation 5(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 4(e) (but not to investments prescribed as employer-related investments by regulation 4(d)) where—
- (a) the effecting of the policy of insurance constitutes the carrying on of long term business falling within Class I or Class III of Schedule 1 to the Insurance Companies Act 1982 (classes of long term business); and
 - (b) the policy of insurance is issued by an insurance company which is the employer and is—
 - (i) an insurance company which is authorised under section 3 or 4 of the Insurance Companies Act 1982 (authorisation to carry on insurance business in the United Kingdom) to carry on ordinary long term insurance business as defined in that Act, or
 - (ii) an EC company as defined in section 2(6) of that Act⁽²⁾ (restriction on carrying on insurance business) falling within paragraph (3), or
 - (iii) a friendly society which is authorised under section 32 of the Friendly Societies Act 1992⁽³⁾ (grant of authorisation by Commission: general) to carry on long term business under any of the Classes specified in Head A of Schedule 2 to that Act (activities of a friendly society: long term business).
- (3) An EC company falls within this paragraph if it—
- (a) carries on ordinary long term insurance business (as defined in the Insurance Companies Act 1982) in the United Kingdom through a branch in respect of which such of the requirements of Part I of Schedule 2F to that Act⁽⁴⁾ (recognition in the United Kingdom of EC and EFTA companies: EC companies carrying on business etc. in the United Kingdom) as are applicable have been complied with; or
 - (b) provides ordinary long term insurance (within the meaning of that Act) in the United Kingdom and such of the requirements of Part I of Schedule 2F to the Insurance Companies Act 1982 as are applicable have been complied with in respect of the insurance.
- (4) This regulation applies to any employer-related investment of resources in an account (including a current, deposit or share account) with a building society as defined in the Building Societies Act 1986⁽⁵⁾ or an institution authorised under Part I of the Banking Act 1987⁽⁶⁾.

(2) Section 2(6) was inserted by regulation 4(2) of the Insurance Companies (Third Insurance Directives) Regulations 1994, S.I. 1994/1696.

(3) 1992 c. 40.

(4) Schedule 2F was inserted by regulation 45(2) of and Schedule 6 to the Insurance Companies (Third Insurance Directives) Regulations 1994, S.I. 1994/1696.

(5) 1986 c. 53.

(6) 1987 c. 22.

(5) 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.

(6) 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 such as is permitted by section 8(1) of that Act (orders appointing trustees may provide that certain sums to be treated as a debt due from the employer to the trustees).

(7) 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 59(2) of the 1995 Act (determination of contributions: supplementary—contributions remaining unpaid after the due date);
- (b) section 60(5) of the 1995 Act (serious underprovision—amount of shortfall not met by an increase in the value of the scheme assets);
- (c) section 75(1) of the 1995 Act (deficiencies in the assets);
- (d) section 88(2) of the 1995 Act (schedules of payments to money purchase schemes: supplementary—amounts not paid in accordance with the payment schedule); or
- (e) section 144(1) of the Pension Schemes Act 1993 (deficiencies in the assets of a scheme on winding up)(7),

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.

(8) This regulation applies to any employer-related investment of resources in a policy of insurance so as to provide benefits in respect of the pensionable service of a member (whether or not that policy also relates to any other member) where—

- (a) the policy is specifically allocated to the provision of those benefits for that member or any other person mentioned or described in—
 - (i) that policy, or
 - (ii) the scheme rules or a nomination under the rules; and
- (b) the member has agreed in writing his interest in the policy or contract being used as security for a loan to the employer or to a company associated with the employer and the Inland Revenue requirements concerning the loan have been satisfied; and
- (c) the policy is effected with an insurance company such as is mentioned in paragraph (2) (b)(i), (ii) or (iii).

(9) For the purposes of regulation 4(a) the investments made by the operator of any collective investment scheme shall not be taken into account if—

- (a) the collective investment scheme in question is operated by a person who may lawfully carry on investment business in the United Kingdom (within the meaning of section 1(3) of the Financial Services Act 1986 (investments and investment business)) consisting of or including the operation of collective investment schemes; and
- (b) there are at least ten participants in the collective investment scheme in question; and
- (c) not more than ten per cent. of the assets of the collective investment scheme in question are attributable, whether directly or through any intervening collective investment scheme, to the scheme's resources; and
- (d) not more than ten per cent. of the investments of the collective investment scheme in question are invested in securities falling within paragraph 1 of Schedule 1 to the Financial Services Act 1986 and issued by any one issuer.

(10) 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 (9)(b); and
- (b) one scheme, for the purposes of paragraph (9)(c),

and for the purposes of paragraph (9)(d) all issues within a group of companies shall be treated as issued by a single issuer.

(11) Subject to paragraph (12), 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.

(12) Paragraph (11) 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
- (b) employer-related loans to which regulation 7(2)(c) applies.

Transitional provisions

7.—(1) Where on the commencement date the resources of a scheme are 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 Resources) Regulations 1992⁽⁸⁾ ("the 1992 Regulations")) which were in being on 18th December 1996 and to which regulation 6 does not apply; or
- (b) other employer-related investments, to the extent that they exceed five per cent. of the current market value of the resources of the scheme, to which regulation 5(2)(d) of the 1992 Regulations applied immediately before the commencement date,

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 the commencement date, 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 5(3)(b) which, immediately before the commencement date, 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—
 - (I) the 6th April 2002, or
 - (II) if by virtue of contractual or other legal obligations, disinvestment cannot be effected by 6th April 2002, the earliest date on which 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

⁽⁸⁾ S.I. 1992/246.

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 to which sub-paragraphs (a) to (c) do not apply, they may be retained until the 6th April 2002 or, if by virtue of contractual or other legal obligations repayment cannot be required by that date, be retained until the earliest date on which repayment can be enforced;
 - (e) other investments mentioned in paragraph (1)(b) (excluding, for the avoidance of doubt, investments in a collective investment scheme), they may be retained without limit of time.
- (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 calendar months beginning with—
- (a) the date on which it was listed, if that date is on or after the commencement date; or
 - (b) the commencement date, if the date on which it was listed is before the commencement date.
- (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 6) 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; and
 - “retained”, in relation to a loan, means left undischarged.

Loans that become employer-related

8.—(1) If either a loan or a security falling within paragraph 2 of Schedule 1 to the Financial Services Act 1986 becomes an employer-related loan on or after the commencement date 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;
 - (b) the 6th April 2002; or
 - (c) where repayment cannot by virtue of contractual or other legal obligations be required or, in the case of securities, disinvestment effected before the latest of the dates mentioned in sub-paragraphs (a) and (b), the earliest date on which repayment can be enforced, or disinvestment effected.
- (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

9.—(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); and
- (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 this Part of these Regulations (excepting this regulation) 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 the commencement date) 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 this Part of these Regulations (excepting this regulation) shall apply as if the section in relation to which those conditions have ceased to be satisfied were a separate scheme.

(3) 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 and a person connected with that company nor associates of each other—

- (a) regulation 5(1)(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 not more than twenty per cent. overall of that value may be invested in employer-related investments”; and
- (b) for regulation 7(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 6) exceed five per cent. of the current market value of the resources of the scheme; or
- (b) more than twenty per cent. overall of the current market value of the resources of the scheme is retained under this regulation in employer-related investments.”.