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STATUTORY INSTRUMENTS

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**2009 No. 3093**

**The Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009**

*Preliminary*

**Citation, commencement and application**

1.—(1) — These Regulations may be cited as the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009 and shall come into force on 1st January 2010.

(2) These Regulations apply in relation to England and Wales<sup>(1)</sup>.

**General definitions**

2.—(1) In these Regulations—

“the 2000 Act” means the Financial Services and Markets Act 2000<sup>(2)</sup>;

“administering authority” means a body required to maintain a pension fund under the Administration Regulations;

“the Administration Regulations” means the Local Government Pension Scheme (Administration) Regulations 2008<sup>(3)</sup>;

“fund money” means money in the pension fund maintained by an administering authority;

“proper advice”, in relation to an administering authority, means the advice of a person whom the authority reasonably believes to be qualified by their ability in and practical experience of financial matters (including any such person who is an officer of the administering authority);

“recognised stock exchange” has the same meaning as in section 1005(1) of the Income Tax Act 2007<sup>(4)</sup>;

“securities” includes shares, stock and debentures;

“statement of investment principles” means the statement referred to in regulation 12(1) or any revision of it, as appropriate;

“stock lending arrangement” means an arrangement such as is mentioned in section 263B of the Taxation of Chargeable Gains Act 1992<sup>(5)</sup>; and

“sub-underwriting contract” means a contract with a person who is underwriting a share issue to acquire the shares from that person if that person requires it.

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(1) The Secretary of State’s functions under section 7 of the Superannuation Act 1972 in so far as they were exercisable in relation to Scotland were devolved to Scottish Ministers by section 63 of the Scotland Act 1998 (c.46) and article 2 of, and Schedule 1 to, the Scotland Act 1998 (Transfer of Functions to Scottish Ministers etc) Order 1999 (S.I. 1999/1750).

(2) 2000 c.8.

(3) S.I. 2008/239, amended by S.I. 2008/1083, 2008/2425, and S.I. 2008/3245.

(4) 2007 c.3; section 1005(1) was amended by paragraph 1 of Schedule 26 to the Finance Act 2007 (c.11).

(5) 1992 c.12; section 263B was inserted by paragraph 5(1) of Schedule 10 to the Finance Act 1997 (c.16).

(2) Paragraphs (5) to (7) of regulation 3, paragraphs (2)(a) and (2)(b) of regulation 6, regulation 7 and item 4 of the table and the definition of “relevant institution” in Schedule 1, must be read with—

- (a) section 22 of the 2000 Act (classes of activity and categories of investment);
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act(6) (regulated activities).

### **Definition of “investment”**

3.—(1) In these Regulations “investment” and related expressions have their normal meaning.

(2) But the following provisions of this regulation specify things which count as investments for these Regulations, although they might not otherwise do so, and exclude things which might otherwise count.

(3) A contract entered into in the course of dealing in financial futures or traded options is an investment.

(4) Prior to 1st April 2010, if the administering authority uses fund money for any purpose for which it may borrow money, that use is an investment.

(5) A contract of insurance is an investment if it is a contract of a relevant class, and is entered into with a person within paragraph (6) for whom entering into the contract constitutes the carrying on of a regulated activity within the meaning of the 2000 Act.

(6) The persons within this paragraph are—

- (a) a person who has permission under Part 4 of the 2000 Act (permission to carry on regulated activities) to effect or carry out contracts of insurance of a relevant class;
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the 2000 Act(7) (EEA passport rights), which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule(8)) to effect or carry out contracts of insurance of a relevant class; and
- (c) a person who does not fall within sub-paragraph (a) or (b) and who, because that person’s head office is in an EEA State within the meaning of the 2000 Act other than the United Kingdom, is permitted by the law of that State to effect or carry out contracts of insurance of a relevant class.

(7) A contract of insurance is of a relevant class for the purposes of paragraphs (5) and (6) if it is—

- (a) a contract of insurance on human life or a contract to pay an annuity on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contract) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified); or
- (b) a contract to manage the investments of pension funds, whether or not combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.

(8) A stock lending arrangement is an investment if, and only if, in respect of it, the conditions in rules 5.4.4R and 5.4.6R, modified as specified in paragraph (9) of this regulation(9), in the Collective

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(6) Amended by section 1 of the Regulation of Financial Services (Land Transactions) Act 2005 (c.24), and paragraph 1 of Schedule 2 to the Dormant Bank and Building Society Accounts Act 2008 (c.31).

(7) Amended by S.I. 2004/3379.

(8) Amended by S.I. 2007/126, S.I. 2007/3253.

(9) The Department for Communities and Local Government has produced a document setting out rules 5.4.4R and 5.4.6R of the Collective Investment Schemes Sourcebook, modified as specified in regulation 3(9). A copy of this document may be obtained by contacting the Department’s Workforce Pay and Pensions Division (tel. 0303 444 2184 or email robert.holloway@communities.gsi.gov.uk).

Investment Schemes Sourcebook made by the Financial Services Authority<sup>(10)</sup> are fulfilled in relation to that arrangement.

- (9) The modifications mentioned in paragraph (8) are that—
- (a) in rules 5.4.4R and 5.4.6R references to the depositary must be read as if they were references to the administering authority;
  - (b) in paragraph 1 of rule 5.4.4R for the words “An ICVC, or the depositary at the request of the ICVC, or the trustee at the request of the manager, may enter into a repo contract, or” there shall be substituted the words “The administering authority may enter into”;
  - (c) in paragraph 1(a) of rule 5.4.4R, the words “for the account of the ICVC or by the trustee,” and the words “or to the trustee” shall be omitted;
  - (d) sub-paragraphs 1(b) (iii) and 1(b) (iv) of rule 5.4.4R shall not apply;
  - (e) paragraph 1A of rule 5.4.6R shall not apply;
  - (f) in paragraph 5 of rule 5.4.6R the words “under COLL 6.3 (Valuation and pricing) or this chapter,” shall be omitted, and the reference to the authorised fund must be read as if it were a reference to the pension fund; and
  - (g) in paragraph 6 of rule 5.4.6R references to scheme property must be read as if they were references to fund money, and the words in sub-paragraph (a) “for the purposes of COLL 6.3 or this chapter” and in sub-paragraph (b) “of this chapter” shall be omitted.

(10) It is an investment to contribute to a limited partnership in an unquoted securities investment partnership.

(11) A sub-underwriting contract is an investment.

(12) For the purposes of this regulation—

“limited partnership ” means a partnership where the partners are not liable for the debts or obligations of the partnership beyond the amount which they contributed at the time of becoming a partner;

“traded option” means an option quoted on a recognised stock exchange or on the London International Financial Futures Exchange; and

“unquoted securities investment partnership” means a partnership for investing in securities which are normally not quoted on a recognised stock exchange when the partnership buys them.

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<sup>(10)</sup> The Collective Investment Schemes Sourcebook (known as COLL) is made by the Financial Services Authority by virtue of Part X and sections 247 and 248 of the 2000 Act and [S.I. 2001/1228](http://fsahandbook.info/FSA/html/handbook/COLL), see <http://fsahandbook.info/FSA/html/handbook/COLL>.