
STATUTORY INSTRUMENTS

1995 No. 3213

The Pensions (Northern Ireland) Order 1995

PART II

OCCUPATIONAL PENSIONS

Functions of trustees

Decisions by majority

32.—(1) Decisions of the trustees of a trust scheme may, unless the scheme provides otherwise, be taken by agreement of a majority of the trustees.

(2) Where decisions of the trustees of a trust scheme may be taken by agreement of a majority of the trustees—

- (a) the trustees may, unless the scheme provides otherwise, by a determination under this paragraph require not less than the number of trustees specified in the determination to be present when any decision is so taken, and
- (b) notice of any occasions at which decisions may be so taken must, unless the occasion falls within a prescribed class or description, be given to each trustee to whom it is reasonably practicable to give such notice.

(3) Notice under paragraph (2)(b) must be given in a prescribed manner and not later than the beginning of a prescribed period.

(4) This Article is subject to Articles 8(4)(b)^[F1] and 25(2) and Article 218(6) of the Pensions (Northern Ireland) Order 2005].

(5) If paragraph (2)(b) is not complied with,^[F2] Article 10 applies] to any trustee who has failed to take all such steps as are reasonable to secure compliance.

F1 Words in art. 32(4) substituted (6.4.2006) by [Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), arts. 1(2), 290(1), Sch. 10 para. 42(a); S.R. 2006/95, [art. 2\(c\)](#), Sch. Pt. 3

F2 Words in art. 32(5) substituted (6.4.2006) by [Pensions \(Northern Ireland\) Order 2005 \(S.I. 2005/255 \(N.I. 1\)\)](#), arts. 1(2), 290(1), Sch. 10 para. 42(b); S.R. 2006/95, [art. 2\(c\)](#), Sch. Pt. 3

Investment powers: duty of care

33.—(1) Liability for breach of an obligation under any rule of law to take care or exercise skill in the performance of any investment functions, where the function is exercisable—

- (a) by a trustee of a trust scheme, or
- (b) by a person to whom the function has been delegated under Article 34,

cannot be excluded or restricted by an instrument or agreement.

(2) In this Article, references to excluding or restricting liability include—

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- (a) making the liability or its enforcement subject to restrictive or onerous conditions,
 - (b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy, or
 - (c) excluding or restricting rules of evidence or procedure.
- (3) This Article does not apply—
- (a) to a scheme falling within any prescribed class or description, or
 - (b) to any prescribed description of exclusion or restriction.

Power of investment and delegation

34.—(1) The trustees of a trust scheme have, subject to^[F3] Article 36(1) and 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 paragraph (3) applies to be exercised in accordance with Article 36, but
 - (b) may not otherwise be delegated except under section 26 of the Trustee Act (Northern Ireland) 1958^{F4} (delegation of trusts for period not exceeding 12 months) or paragraph (5).

^[F5](3) This paragraph applies to a fund manager who, in relation to the investments, may take the decisions in question without contravening the prohibition imposed by section 19 of the Financial Services and Markets Act 2000 (prohibition on carrying on regulated activities unless authorised or exempt).]

(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 paragraph (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 Article 36.

(5) Subject to any restriction imposed by a trust scheme—

- (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^[F5] "the carrying on, in the United Kingdom, of a regulated activity (within the meaning of the Financial Services and Markets Act 2000)], be delegated by or on behalf of the trustees to a fund manager to whom paragraph (3) does not apply to be exercised in accordance with Article 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) Article 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 paragraph (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

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(b) that he is carrying out his work competently and complying with Article 36; and paragraph (2) of Article 33 applies for the purposes of this paragraph as it applies for the purposes of that Article.

(7) The provisions of this Article 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.

F3 2005 NI 1
F4 1958 c. 23 (NI)
F5 SI 2001/3649

[^{F6}Investment principles

35.—(1) The trustees of a trust scheme must secure—

- (a) that a statement of investment principles is prepared and maintained for the scheme, and
- (b) that the statement is reviewed at such intervals, and on such occasions, as may be prescribed and, if necessary, revised.

(2) In this Article “statement of investment principles”, in relation to a trust scheme, means a written statement of the investment principles governing decisions about investments for the purposes of the scheme.

(3) Before preparing or revising a statement of investment principles, the trustees of a trust scheme must comply with any prescribed requirements.

(4) A statement of investment principles must be in the prescribed form and cover, amongst other things, the prescribed matters.

(5) Neither a trust scheme nor a statement of investment principles may impose restrictions (however expressed) on any power to make investments by reference to the consent of the employer.

(6) If in the case of a trust scheme—

- (a) a statement of investment principles has not been prepared, is not being maintained or has not been reviewed or revised, as required by this Article, or
- (b) the trustees have not complied with the obligation imposed on them by paragraph (3),

Article 10 applies to any trustee who has failed to take all reasonable steps to secure compliance.

(7) Regulations may provide that this Article is not to apply to any scheme which is of a prescribed description.]

F6 2005 NI 1

Choosing investments

36.—[^{F7}(1) The trustees of a trust scheme must exercise their powers of investment in accordance with regulations and in accordance with paragraphs (3) and (4), and any fund manager to whom any discretion has been delegated under Article 34 must exercise the discretion in accordance with regulations.

(1A) Regulations under paragraph (1) may, in particular—

- (a) specify criteria to be applied in choosing investments, and
- (b) require diversification of investments.]

Para. (2) rep. by 2005 NI 1

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(3) Before investing in any manner (other than in a manner mentioned in Part I of Schedule 1 to the Trustee Investments Act 1961^{F8}) the trustees must obtain and consider proper advice on the question whether the investment is satisfactory having regard to^{F7} the requirements of regulations under paragraph (1), so far as relating to the suitability of investments, and to] the principles contained in the statement under Article 35.

(4) Trustees relating any investment must—

- (a) determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice as is mentioned in paragraph (3), and
- (b) obtain and consider such advice accordingly.

(5) The trustees, or the fund manager to whom any discretion has been delegated under Article 34, must exercise their powers of investment with a view to giving effect to the principles contained in the statement under Article 35, so far as reasonably practicable.

(6) For the purposes of this Article, “proper advice” means—

- ^{F9}(a) if the giving of the advice constitutes the carrying on, in the United Kingdom, of a regulated activity (within the meaning of the Financial Services and Markets Act 2000), advice given by a person who may give it without contravening the prohibition imposed by section 19 of that Act (prohibition on carrying on regulated activities unless authorised or exempt);]
- (b) in any other case, the advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of trust schemes.

(7) Trustees shall not be treated as having complied with paragraph (3) or (4) unless the advice was given or has subsequently been confirmed in writing.

^{F7}(8) If the trustees of a trust scheme—

- (a) fail to comply with regulations under paragraph (1), or
- (b) do not obtain and consider advice in accordance with this Article,

Article 10 applies to any trustee who has failed to take all reasonable steps to secure compliance.]

^{F7}(9) Regulations may exclude the application of any of the preceding provisions of this Article to any scheme which is of a prescribed description.]

F7 2005 NI 1
F8 1961 c. 62
F9 SI 2001/3649

^{F10}**Restriction on borrowing by trustees**

36A. Regulations may prohibit the trustees of a trust scheme, or the fund manager to whom any discretion has been delegated under Article 34, from borrowing money or acting as a guarantor, except in prescribed cases.]

F10 2005 NI 1

Payment of surplus to employer

^{F11}**37.**—(1) This Article applies to a trust scheme if—

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- (a) apart from this Article power is conferred on the employer or any other person to make payments to the employer out of funds held for the purposes of the scheme, and
- (b) the scheme is not being wound up.

[^{F12}(1A) But this Article does not apply in the case of any of the payments listed in paragraphs (c) to (f) of section 175 of the Finance Act 2004 (authorised employer payments other than public service scheme payments or authorised surplus payments).]

(2) Where the power referred to in paragraph (1)(a) is conferred by the scheme on a person other than the trustees—

- (a) it cannot be exercised by that person but may instead be exercised by the trustees, and
- (b) any restriction imposed by the scheme on the exercise of the power shall, so far as capable of doing so, apply to its exercise by the trustees.

(3) The power referred to in paragraph (1)(a) may only be exercised if—

- (a) the trustees have obtained a written valuation of the scheme's assets and liabilities prepared and signed by a prescribed person,
- (b) there is a certificate in force—
 - (i) stating that in the opinion of that person the prescribed requirements are met as at the date by reference to which the assets are valued and the liabilities are calculated, and
 - (ii) specifying what in the opinion of that person is the maximum amount of payment that may be made to the employer,
- (c) the payment does not exceed the maximum amount specified in the certificate,
- (d) the trustees are satisfied that it is in the interests of the members that the power is exercised in the manner proposed,
- (e) where the power is conferred by the scheme on the employer, the employer has asked for the power to be exercised, or consented to its being exercised, in the manner proposed,
- (f) there is no freezing order in force in relation to the scheme under Article 19 of the Pensions (Northern Ireland) Order 2005, and
- (g) notice of the proposal to exercise the power has been given, in accordance with prescribed requirements, to the members of the scheme.

(4) Provision may be made by regulations as to—

- (a) the requirements (which may be alternative requirements) that must be met, in relation to any proposed payment to the employer out of funds held for the purposes of a scheme, with respect to the value of the scheme's assets and the amount of its liabilities,
- (b) the assets and liabilities to be taken into account for that purpose and the manner in which their value or amount is to be determined, calculated and verified,
- (c) the maximum amount of the payment that may be made to the employer, having regard to the value of the scheme's assets and the amount of its liabilities,
- (d) the giving of a certificate as to the matters mentioned in sub-paragraphs (a) and (c), and
- (e) the period for which such a certificate is to be in force.

(5) The trustees must also comply with any other prescribed requirements in connection with the making of a payment under this Article.

(6) If the trustees—

- (a) purport to exercise the power referred to in paragraph (1)(a) without complying with the requirements of this Article, or
- (b) fail to comply with any requirement of regulations under paragraph (5),

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Article 10 applies to any of them who has failed to take all reasonable steps to secure compliance.

(7) If a person other than the trustees purports to exercise the power referred to in paragraph (1) (a), Article 10 applies to him.

(8) Regulations may provide that in prescribed circumstances this Article does not apply, or applies with prescribed modifications, to schemes of a prescribed description.]

F11 Art. 37 substituted (9.3.2006 for certain purposes, otherwise 6.4.2006) by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 227; S.R. 2006/95, **art. 2(a)**, Sch. Pt. 1

F12 Art. 37(1A) inserted (6.4.2009) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), **ss. 105, 118(1)**; S.R. 2009/22, **art. 2(2)(b)**

Modifications etc. (not altering text)

C1 Art. 37 excluded (24.7.2014) by The Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014 (S.R. 2014/204), **regs. 1(1), 36(1)(a)**

C2 Art. 37 applied (with modifications) (6.4.2006) by S.R. 2006/161, **regs. 12(2), 18**

C3 Art. 37 excluded (6.4.2006) by S.R. 2006/161, **reg. 12(1)**

C4 Art. 37 modified (6.4.2006) by S.R. 2006/161, **reg. 14**

Power to defer winding up

38.—(1) If, apart from this Article, the rules of a trust scheme would require the scheme to be wound up, the trustees may determine

- [^{F13}(a) that the scheme is not for the time being to be wound up but that no new members are to be admitted to it, or
- (b) that the scheme is not for the time being to be wound up but that no new members, except pension credit members, are to be admitted to it.]

(2) Where the trustees make a determination under paragraph (1), this may also determine—

- (a) that no further contributions are to be paid towards the scheme [^{F14} (other than those due to be paid before the determination is made)], or
- (b) that no ^{F14} . . . benefits are to accrue to, or in respect of, members of the scheme;

^{F13}

[^{F13}(2A) Paragraph (2) does not authorise the trustees to determine—

- (a) where there are accrued rights or pension credit rights to any benefit, that the benefit is not to be increased, or
- (b) where the power conferred by that paragraph is exercisable by virtue of a determination under paragraph (1)(b), that members of the scheme may not acquire pension credit rights under it.]

(3) This Article does not apply to—

- (a) a money purchase scheme, or
- (b) a scheme falling within a prescribed class or description.

[^{F14}(4) This Article also does not apply in relation to a trust scheme where the trustees are required to wind up, or continue the winding up of, the scheme under Article 138(1) of the Pensions (Northern Ireland) Order 2005 (requirement to wind up certain schemes with sufficient assets to meet protected liabilities).]

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F13 1999 NI 11

F14 2005 NI 1

Exercise of powers by member trustees

39. No rule of law that a trustee may not exercise the powers vested in him so as to give rise to a conflict between his personal interest and his duties to the beneficiaries shall apply to a trustee of a trust scheme, who is also a member of the scheme, exercising the powers vested in him in any manner, merely because their exercise in that manner benefits, or may benefit, him as a member of the scheme.

Status:

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Changes to legislation:

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