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## STATUTORY INSTRUMENTS

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# 2005 No. 255

## The Pensions (Northern Ireland) Order 2005

### PART VI

#### OCCUPATIONAL AND PERSONAL PENSION SCHEMES: MISCELLANEOUS PROVISIONS

##### *Obligations of trustees of occupational pension schemes*

#### **Investment principles**

**221.** For Article 35 of the 1995 Order (investment principles) substitute—

##### **“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.” .

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## **Power to make regulations governing investment by trustees**

**222.**—(1) Article 36 of the 1995 Order (choosing investments) is amended as follows.

(2) For paragraph (1) substitute—

“(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.” .

(3) Omit paragraph (2).

(4) In paragraph (3) for “the matters mentioned in paragraph (2) and” substitute “the requirements of regulations under paragraph (1), so far as relating to the suitability of investments, and to ”.

(5) For paragraph (8) substitute—

“(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.” .

(6) After paragraph (8) add—

“(9) Regulations may exclude the application of any of the preceding provisions of this Article to any scheme which is of a prescribed description.” .

## **Borrowing by trustees**

**223.** After Article 36 of the 1995 Order insert—

### **“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.” .

## **Requirement for knowledge and understanding: individual trustees**

**224.**—(1) This Article applies to every individual who is a trustee of an occupational pension scheme.

(2) In this Article, “relevant scheme”, in relation to an individual, means any occupational pension scheme of which he is a trustee.

(3) An individual to whom this Article applies must, in relation to each relevant scheme, be conversant with—

- (a) the trust deed and rules of the scheme,
- (b) any statement of investment principles for the time being maintained under Article 35 of the 1995 Order,
- (c) in the case of a relevant scheme to which Part IV (scheme funding) applies, the statement of funding principles most recently prepared or revised under Article 202, and

- (d) any other document recording policy for the time being adopted by the trustees relating to the administration of the scheme generally.
- (4) An individual to whom this Article applies must have knowledge and understanding of—
  - (a) the law relating to pensions and trusts,
  - (b) the principles relating to—
    - (i) the funding of occupational pension schemes, and
    - (ii) investment of the assets of such schemes, and
  - (c) such other matters as may be prescribed.
- (5) The degree of knowledge and understanding required by paragraph (4) is that appropriate for the purposes of enabling the individual properly to exercise his functions as trustee of any relevant scheme.

**Requirement for knowledge and understanding: corporate trustees**

**225.**—(1) This Article applies to any company which is a trustee of an occupational pension scheme.

(2) In this Article, “relevant scheme”, in relation to a company, means any occupational pension scheme of which it is a trustee.

(3) A company to which this Article applies must, in relation to each relevant scheme, secure that each individual who exercises any function which the company has as trustee of the scheme is conversant with each of the documents mentioned in paragraph (4) so far as it is relevant to the exercise of the function.

- (4) Those documents are—
  - (a) the trust deed and rules of the scheme,
  - (b) any statement of investment principles for the time being maintained under Article 35 of the 1995 Order,
  - (c) in the case of a relevant scheme to which Part IV (scheme funding) applies, the statement of funding principles most recently prepared or revised under Article 202, and
  - (d) any other document recording policy for the time being adopted by the trustees relating to the administration of the scheme generally.

(5) A company to which this Article applies must secure that any individual who exercises any function which the company has as trustee of any relevant scheme has knowledge and understanding of—

- (a) the law relating to pensions and trusts,
  - (b) the principles relating to—
    - (i) the funding of occupational pension schemes, and
    - (ii) investment of the assets of such schemes, and
  - (c) such other matters as may be prescribed.
- (6) The degree of knowledge and understanding required by paragraph (5) is that appropriate for the purposes of enabling the individual properly to exercise the function in question.
- (7) References in this Article to the exercise by an individual of any function of a company are to anything done by the individual on behalf of the company which constitutes the exercise of the function by the company.

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(8) In this Article “company” means a company [<sup>F1</sup>as defined in section 1(1) of the Companies Act 2006] or a company which may be wound up under Part VI of the Insolvency Order (unregistered companies).

**F1** Words in art. 225(8) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), **Sch. 1 para. 252(9)** (with art. 10)

### [<sup>F2</sup>Requirement for knowledge and understanding: pension boards of public service pension schemes

**225A.**—(1) This Article applies to every individual who is a member of the pension board of a public service pension scheme.

(2) An individual to whom this Article applies must be conversant with—

- (a) the rules of the scheme, and
- (b) any document recording policy about the administration of the scheme which is for the time being adopted in relation to the scheme.

(3) An individual to whom this Article applies must have knowledge and understanding of—

- (a) the law relating to pensions, and
- (b) such other matters as may be prescribed.

(4) The degree of knowledge and understanding required by paragraph (3) is that appropriate for the purposes of enabling the individual properly to exercise the functions of a member of the pension board.]

**F2** Art. 225A inserted (1.4.2015) by [Public Service Pensions Act \(Northern Ireland\) 2014 \(c. 2\)](#), s. 37(2), **Sch. 4 para. 19**; S.R. 2015/3, art. 4(1)(b) (with art. 4(2))

### Requirement for knowledge and understanding: supplementary

**226.**—(1) For the purposes of Articles 224 and 225, a person's functions as trustee of a relevant scheme are any functions which he has by virtue of being such a trustee and include, in particular—

- (a) any functions which he has as one of the trustees authorised under Article 34(5)(a) of the 1995 Order (delegation of investment discretions) in the case of the scheme, and
- (b) any functions which he otherwise has as a member of a committee of the trustees of the scheme.

(2) Regulations may provide for any provision in Article 224 or 225—

- (a) not to apply, or
- (b) to apply with modifications,

to a trustee in prescribed circumstances.

(3) Nothing in either of those Articles affects any rule of law requiring a trustee to have knowledge of, or expertise in, any matter.

### Commencement Information

**II** Art. 226 wholly in operation at 6.4.2006; art. 226 not in operation at date of making see art. 1(2); art. 226(2) in operation for certain purposes at 9.3.2006 and wholly in operation at 6.4.2006 by [S.R.](#)

2006/95, art. 2(a), Sch. Pt. 1; art. 226 in operation at 6.4.2006 in so far as not already in operation by S.R. 2006/95, art. 2(c), Sch. Pt. 3

**[<sup>F3</sup>Requirement for [<sup>F4</sup>an effective system of governance]**

**226A.**—[<sup>F5</sup>(1) The trustees or managers of an occupational pension scheme must establish and operate an effective system of governance including internal controls.

(1A) The system of governance must be proportionate to the size, nature, scale and complexity of the activities of the occupational pension scheme.]

(2) Nothing in this Article affects any other obligation of the trustees or managers of an occupational pension scheme to establish or operate [<sup>F6</sup>an effective system of governance including internal controls], whether imposed by or by virtue of any statutory provision, the scheme rules or otherwise.

(3) This Article does not apply in relation to—

[ a public service pension scheme;]

<sup>F7</sup>(za)

(a) [<sup>F8</sup>any other scheme] which is—

- (i) established by, or under, a statutory provision, and
- (ii) guaranteed by a public authority,

(b) a pay#as#you#go scheme,

(c) a scheme which is established under section 48 of the Northern Ireland Act 1998 (pensions of members), or which was established under Part II of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965 or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976.

[  
<sup>F9</sup>(d) an authorised Master Trust scheme within the meaning of Part 1 of the Pension Schemes Act 2017(6) (master trusts) or any corresponding Northern Ireland legislation.]

[ an authorised collective money purchase scheme within the meaning of Part 2 of the <sup>F10</sup>(e) Pension Schemes Act 2021.]

<sup>F11</sup>(4) .....

(5) In this Article—

“internal controls” means—

- (a) arrangements and procedures to be followed in the administration and management of the scheme,
- (b) systems and arrangements for monitoring the administration and management of the scheme, and
- (c) arrangements and procedures to be followed for the safe custody and security of the assets of the scheme;

“local authority” has the meaning given by Article 2(2) of the Superannuation (Northern Ireland) Order 1972;

“pay#as#you#go scheme” means an occupational pension scheme under which there is no requirement for assets to be set aside in advance for the purpose of providing benefits under the scheme (disregarding any requirements relating to additional voluntary contributions);

“public authority” means—

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- (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975),
- (b) a government department (including any body or authority exercising statutory functions on behalf of the Crown), or
- (c) a local authority.]

- F3** SR 2005/567
- F4** Words in art. 226A heading substituted (13.1.2019) by The Occupational Pension Schemes (Governance) (Amendment) Regulations (Northern Ireland) 2018 (S.R. 2018/214), regs. 1(1), **2(2)**
- F5** Art. 226A(1)(1A) substituted for art. 226A(1) (13.1.2019) by The Occupational Pension Schemes (Governance) (Amendment) Regulations (Northern Ireland) 2018 (S.R. 2018/214), regs. 1(1), **2(3)**
- F6** Words in art. 226A(2) substituted (13.1.2019) by The Occupational Pension Schemes (Governance) (Amendment) Regulations (Northern Ireland) 2018 (S.R. 2018/214), regs. 1(1), **2(4)**
- F7** Art. 226A(3)(za) inserted (1.4.2015) by Public Service Pensions Act (Northern Ireland) 2014 (c. 2), s. 37(2), **Sch. 4 para. 20(a)**; S.R. 2015/3, art. 4(1)(b) (with art. 4(2))
- F8** Words in art. 226A(3)(a) substituted (1.4.2015) by Public Service Pensions Act (Northern Ireland) 2014 (c. 2), s. 37(2), **Sch. 4 para. 20(b)**; S.R. 2015/3, art. 4(1)(b) (with art. 4(2))
- F9** Art. 226A(3)(d) added (13.1.2019) by The Occupational Pension Schemes (Governance) (Amendment) Regulations (Northern Ireland) 2018 (S.R. 2018/214), regs. 1(1), **2(5)**
- F10** Art. 226A(3)(e) inserted (11.2.2021 for specified purposes, 1.8.2022 in so far as not already in operation) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(a), **Sch. 6 para. 18**; S.R. 2022/197, art. 3(a)
- F11** Art. 226A(4) omitted (31.12.2020) by virtue of The Occupational and Personal Pension Schemes (Amendment etc.) (Northern Ireland) (EU Exit) Regulations 2019 (S.I. 2019/193), regs. 1, **5(5)**; 2020 c. 1, Sch. 5 para. 1(1)

#### [<sup>F12</sup>Requirement for internal controls: public service pension schemes

**226B.**—(1) The scheme manager of a public service pension scheme must establish and operate internal controls which are adequate for the purpose of securing that the scheme is administered and managed—

- (a) in accordance with the scheme rules, and
- (b) in accordance with the requirements of the law.

(2) Nothing in this Article affects any other obligations of the scheme manager to establish or operate internal controls, whether imposed by or by virtue of any statutory provision, the scheme rules or otherwise.

(3) In this Article “internal controls” has the same meaning as in Article 226A.]

- F12** Art. 226B inserted (1.4.2015) by Public Service Pensions Act (Northern Ireland) 2014 (c. 2), s. 37(2), **Sch. 4 para. 21**; S.R. 2015/3, art. 4(1)(b) (with art. 4(2))

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