

TRUSTEE ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART VI: Miscellaneous and Supplementary

Section 36: Pension schemes

125. [Section 36](#) governs the application of the Act to occupational pension schemes established as trusts under the law of England and Wales (section 36(1)). An occupational pension scheme for these purposes is a scheme which has, or is capable of having, effect in relation to a description or category of employment so as to provide benefits payable on termination of service, death or retirement or in respect of earners with qualifying service in an employment of any such description or category (Pension Schemes Act 1993 section 1).
126. Trustees of occupational pension schemes are in a special position. The investment powers of the trustees of such schemes and related powers of delegation are conferred by section 34 of the Pensions Act 1995. Section 34(2) confers on pension trustees a power to delegate their discretion to make any decision about investments to a fund manager who satisfies certain requirements and prohibits the delegation of such matters in any other way except under section 25 of the Trustee Act 1925 (delegation by individual trustees). By virtue of section 47 of the Pensions Act 1995, occupational pension trustees are required, where the assets of the scheme include investments, to appoint a fund manager and can appoint nominees and custodians ([Occupational Pension Scheme \(Scheme Administration\) Regulations 1996 \(SI 1996/1715 r 2\(c\)\)](#)). Consequently, Parts I, II and III of the Act do not apply to such occupational pension trustees when carrying out their investment functions; nor does Part IV in so far as it confers power to appoint nominees and custodians or, in relation to investment functions, an agent (section 36(3)(5) and (8)). Conversely, the new general duty of care may apply to the trustees of occupational pension trusts in relation to matters other than investment, agency for investment purposes and the appointment of a nominee or custodian (section 36(2)) and such trustees may delegate non-investment functions under Part IV (section 36(5)). However, for the protection of pension scheme beneficiaries, pension trustees are expressly prohibited from delegating any function to the scheme employer or to a person who is connected with, or an associate of, the scheme employer (section 36(6)). “Employer” is defined by virtue of section 36(7)(a) as the employer of persons in the description or category of employment to which the scheme in question relates and, if regulations so provide, persons who have been the employer in relation to the scheme (Pensions Act 1995 sections 124(1) and 125(3)). Persons are connected with a company if they are a director or shadow director or an associate of such a person or the company (Insolvency Act 1986 section 249). Whether or not a person is an associate is determined by the application of section 435 of the Insolvency Act 1986. This section is lengthy but spouses and close relatives are associates, as are business partners and their respective spouses and employers and employees.