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Pensions Act 2004

2004 CHAPTER 35

PART 5

OCCUPATIONAL AND PERSONAL PENSION SCHEMES: MISCELLANEOUS PROVISIONS

Obligations of trustees of occupational pension schemes

244 Investment principles

For section 35 of the Pensions Act 1995 (investment principles) substitute—

“35 Investment principles

- (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 section “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—

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- (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 section, or
- (b) the trustees have not complied with the obligation imposed on them by subsection (3),

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

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

Commencement Information

- II** S. 244 in force at 4.12.2005 for specified purposes and 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

245 Power to make regulations governing investment by trustees

(1) Section 36 of the Pensions Act 1995 (c. 26) (choosing investments) is amended as follows.

(2) For subsection (1) substitute—

“(1) The trustees of a trust scheme must exercise their powers of investment in accordance with regulations and in accordance with subsections (3) and (4), and any fund manager to whom any discretion has been delegated under section 34 must exercise the discretion in accordance with regulations.

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

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

(3) Omit subsection (2).

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

(5) For subsection (8) substitute—

“(8) If the trustees of a trust scheme—

- (a) fail to comply with regulations under subsection (1), or
 - (b) do not obtain and consider advice in accordance with this section,
- section 10 applies to any trustee who has failed to take all reasonable steps to secure compliance.”

(6) After subsection (8) insert—

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

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Commencement Information

- I2** S. 245 in force at 4.12.2005 for specified purposes and 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

246 Borrowing by trustees

After section 36 of the Pensions Act 1995 insert—

“36A Restriction on borrowing by trustees

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

Commencement Information

- I3** S. 246 in force at 4.12.2005 for specified purposes and 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

VALID FROM 06/04/2006

247 Requirement for knowledge and understanding: individual trustees

- (1) This section applies to every individual who is a trustee of an occupational pension scheme.
- (2) In this section, “relevant scheme”, in relation to an individual, means any occupational pension scheme of which he is a trustee.
- (3) An individual to whom this section 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 section 35 of the Pensions Act 1995 (c. 26),
 - (c) in the case of a relevant scheme to which Part 3 (scheme funding) applies, the statement of funding principles most recently prepared or revised under section 223, 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 section 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.

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- (5) The degree of knowledge and understanding required by subsection (4) is that appropriate for the purposes of enabling the individual properly to exercise his functions as trustee of any relevant scheme.

VALID FROM 06/04/2006

248 Requirement for knowledge and understanding: corporate trustees

- (1) This section applies to any company which is a trustee of an occupational pension scheme.
- (2) In this section, “relevant scheme”, in relation to a company, means any occupational pension scheme of which it is a trustee.
- (3) A company to which this section 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 subsection (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 section 35 of the Pensions Act 1995,
 - (c) in the case of a relevant scheme to which Part 3 (scheme funding) applies, the statement of funding principles most recently prepared or revised under section 223, 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 section 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 subsection (5) is that appropriate for the purposes of enabling the individual properly to exercise the function in question.
- (7) References in this section 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.
- (8) In this section “company” means a company within the meaning given by section 735(1) of the Companies Act 1985 (c. 6) or a company which may be wound up under Part 5 of the Insolvency Act 1986 (c. 45) (unregistered companies).

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VALID FROM 09/03/2006

249 Requirement for knowledge and understanding: supplementary

- (1) For the purposes of sections 247 and 248, 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 section 34(5)(a) of the Pensions Act 1995 (c. 26) (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 section 247 or 248—
 - (a) not to apply, or
 - (b) to apply with modifications,to a trustee in prescribed circumstances.
- (3) Nothing in either of those sections affects any rule of law requiring a trustee to have knowledge of, or expertise in, any matter.

[^{F1}249A. Requirement for internal controls

- (1) The trustees or managers of an occupational 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 section affects any other obligation of the trustees or managers of an occupational pension scheme to establish or operate internal controls, whether imposed by or by virtue of any enactment, the scheme rules or otherwise.
- (3) This section does not apply in relation to—
 - (a) a scheme which—
 - (i) is established by or under an enactment (including a local Act), and
 - (ii) is guaranteed by a public authority;
 - (b) a pay-as-you-go scheme;
 - (c) a scheme which is made under section 2 of the Parliamentary and other Pensions Act 1987 (c. 45) (power to provide for pensions for Members of the House of Commons etc.).
- (4) But subsection (3) does not disapply this section in relation to any scheme the trustees or managers of which are—
 - (a) authorised under section 288 (general authorisation to accept contributions from European employers), or
 - (b) approved under section 289 in relation to a European employer.
- (5) In this section—

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“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;

“internal controls” means—

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

“local authority” means—

- (a) in relation to England, a county council, a district council, a London borough council, the Greater London Authority, the Common Council of the City of London in its capacity as a local authority or the Council of the Isles of Scilly,
- (b) in relation to Wales, a county council or county borough council,
- (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39) (constitution of councils),
- (d) an administering authority as defined in Schedule 1 to the Local Government Pension Scheme Regulations 1997 (S.I.1997/1612) (interpretation);

“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—

- (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975 (c. 26)),
- (b) a government department (including any body or authority exercising statutory functions on behalf of the Crown),
- (c) the Scottish Ministers,
- (d) the National Assembly for Wales, or
- (e) a local authority.]

Textual Amendments

- F1** S. 249A inserted (30.12.2005) by [The Occupational Pension Schemes \(Internal Controls\) Regulations 2005 \(S.I. 2005/3379\)](#), regs. 1(1), 2

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