
STATUTORY INSTRUMENTS

2005 No. 3378

**The Occupational Pension Schemes
(Investment) Regulations 2005**

Investments to which restrictions do not apply

13.—(1) Regulation 12(1) shall not restrict or prohibit investments to which this regulation applies.

(2) This regulation applies to investments prescribed as employer-related investments by regulation 11(e) (but not to investments prescribed as employer-related investments by regulation 11(d)) where the insurance policy—

- (a) is a specified qualifying insurance policy; and
- (b) is issued by an insurer which is the employer.

(3) This regulation applies to any employer-related investment of resources in an account (including a current, deposit or share account) with—

- (a) a person who has permission under Part 4 of the FSM Act (permission to carry on regulated activities) to accept deposits; or
- (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits.

(4) This regulation applies to any employer-related investment of resources which derives from a member's voluntary contributions and is invested in employer-related investments with the written agreement of the member who paid those contributions.

(5) This regulation applies to sums due from the employer to the trustees by virtue of a provision in an order under section 7 of the 1995 Act⁽¹⁾ (appointment of trustees) such as is permitted by section 8(1) of that Act⁽²⁾ (orders appointing trustees may provide that certain sums are to be treated as a debt due from the employer to the trustees).

(6) This regulation applies to sums which fall or fell to be treated as debts due from the employer to the trustees or managers by virtue of—

- (a) section 75(2) and (4) of the 1995 Act⁽³⁾ (deficiencies in the assets);
- (b) section 88(2) of the 1995 Act⁽⁴⁾ (schedules of payments to money purchase schemes: supplementary – amounts not paid in accordance with the payment schedule); or
- (c) section 228(3) of the 2004 Act (failure to make payments),

and to sums which would fall to be so treated by virtue of any of those sections were they not already debts due from the employer to the trustees or managers.

(7) For the purposes of regulation 11(a), the investments made by the operator of any collective investment scheme shall not be taken into account if—

(1) Section 7 was amended by section 35(1) of the 2004 Act.
(2) Section 8 was substituted by section 35(2) of the 2004 Act.
(3) Section 75 was amended by section 271 of the 2004 Act.
(4) Section 88 was amended by paragraph 65 of Schedule 12 to the 2004 Act.

- (a) the collective investment scheme in question is operated by a person authorised (within the meaning of section 31 (authorised persons)) of the FSM Act to carry on investment business in the United Kingdom consisting of or including the operation of collective investment schemes;
 - (b) there are at least 10 participants in a collective investment scheme in question;
 - (c) not more than 10 per cent. of the assets of the collective investment scheme in question are attributable, whether directly or through any intervening collective investment scheme, to the scheme's resources; and
 - (d) not more than 10 per cent. of the investments of the collective investment scheme in question are invested in securities falling within paragraph 11 of Schedule 2 to the FSM Act and issued by any one issuer.
- (8) All schemes in relation to which the respective employers are within the same group of companies shall be treated as—
- (a) a single participant, for the purposes of paragraph (7)(b); and
 - (b) one scheme, for the purposes of paragraph (7)(c),
- and for the purposes of paragraph (7)(d) all issues within a group of companies shall be treated as issued by a single issuer.
- (9) For the purposes of paragraph (8), “group of companies” means a group of companies consisting of a holding company and one or more subsidiaries where “holding company” and “subsidiary” have the same meaning as in section 736 of the Companies Act 1985⁽⁵⁾ (“subsidiary”, “holding company” and “wholly owned subsidiary”).
- (10) Subject to paragraph (11), where the disposal of assets on the winding up of a scheme would otherwise result in a contravention of these Regulations, any employer-related investments held before the commencement of the winding up may be retained while the scheme is being wound up, but there shall be no new investment in employer-related investments while the resources retained under this paragraph exceed five per cent. of the current market value of the resources of the scheme.
- (11) Paragraph (10) does not apply to permit the retention of—
- (a) employer-related investments which were, prior to the commencement of the winding up, held in contravention of these Regulations or of the Occupational Pension Schemes (Investment) Regulations 1996⁽⁶⁾; or
 - (b) employer-related loans to which regulation 14(2)(c) applies.
- (12) This regulation applies to a loan to the employer or a company associated with the employer, if the scheme has fewer than 100 members, and—
- (a) the scheme provides benefits for directors of a company which is the employer, or such directors and others;
 - (b) there is a qualifying insurance policy taken out under the scheme which is specifically allocated to the provision of benefits under the scheme and the directors' interests under which are used as security for the loan;
 - (c) Her Majesty's Revenue and Customs' requirements concerning the loan have been satisfied;
 - (d) the directors agreeing to the interests under the policy concerned being used as security for the loan have so agreed in writing, and
 - (e) the loan was made and the security given before 9th August 1999.

⁽⁵⁾ 1985 c. 6. Section 736 was substituted, together with section 736A, by section 144(1) of the Companies Act 1989 (c. 40).

⁽⁶⁾ S.I. 1996/3127; those Regulations were amended by the other instruments referred to in the Schedule to these Regulations.

(13) This regulation applies to any security given over a qualifying insurance policy to secure obligations of the employer, or of any person who is connected with, or an associate of, the employer, where—

- (a) the scheme provides benefits for any director of a company which is the employer;
- (b) the policy is specifically allocated to the provision of benefits under the scheme for that director;
- (c) the obligations secured are to the insurer who issued the policy;
- (d) Her Majesty's Revenue and Customs' requirements concerning the loan and the giving of the security have been satisfied; and
- (e) the director mentioned in sub-paragraph (b) has agreed in writing to the security being given.