An tÚdarás Pinsean
The Pensions Authority

FAQs ON THE OCCUPATIONAL PENSION SCHEMES (INVESTMENT) REGULATIONS, 2006

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1. What schemes do these regulations apply to?

All schemes except small schemes (i.e. those with less than 100 active and deferred members) must prepare a Statement of Investment Policy Principles (SIPP). The remaining parts of the Occupational Pension Schemes (Investment) Regulations, 2006 to 2010 (the Investment Regulations), apply to all schemes, except for one member arrangements (see below). This includes defined benefit (DB) and defined contribution (DC), and both active and frozen schemes.

The Investment Regulations apply to all assets of a scheme, including those acquired before 23 September 2005. Specific rules apply to borrowing, and these are discussed below.

The Investment Regulations do not apply to Personal Retirement Savings Accounts (PRSAs). PRSAs are not occupational pension schemes for the purposes of the Pensions Act, 1990, as amended.

2. What is a one-member arrangement?

A one-member arrangement is a scheme whose rules limit membership to a single member (except where a Pension Adjustment Order applies), and where the member has discretion as to how the resources of the scheme are invested. The following comments may be of assistance in deciding whether or not a scheme qualifies:

(a) For the purposes of deciding whether a scheme is a one-member arrangement, deferred members must be counted.

(b) It is considered that the requirement for member investment control is satisfied where the consent of the member is required for investments. The presence of a pensioneer trustee will not on its own disqualify a scheme from being a one-member arrangement. Similarly, investment in pooled funds will not disqualify a scheme from being a one-member arrangement as long as the choice of funds and/or fund manager requires the member's consent.

3. What borrowing is allowed?

Schemes (apart from one member arrangements) may not borrow except for short-term liquidity reasons.

The prohibition applies to borrowing made after 23 September 2005. This includes borrowing approved before 23 September 2005 but not drawn down until after that date. Refinancing of previous borrowing would not be considered as new borrowing, but additional borrowing (including interest roll-up) would not be permitted.

There is no specific definition of short-term liquidity, but the following comments may be of assistance to trustees. It should be noted that these comments are illustrative only, and are not an exhaustive definition:

(a) A scheme may occasionally need to borrow to meet a claim or benefit payment where liquidation of assets will take time. However, immediate steps should be taken to sell assets to redeem the borrowing. Trustees should note the requirements under regulation 6(3) of the Investment Regulations to ensure appropriate liquidity.

(b) It is the Pensions Authority's (the Authority) view that borrowing in order to finance assets would not normally be permitted under the Investment Regulations.

(c) Even where schemes are permitted to borrow under the Investment Regulations, trustees are reminded of their overriding duty to invest the assets of the scheme appropriately and in the best interests of scheme members.

4. What information should be provided in a Statement of Investment Policy Principles?

The form and content of the SIPP are not prescribed in detail in the Investment Regulations or legislation. However, the Investment Regulations do set out minimum information that must be provided, and this is examined further below.

The SIPP requirements do not impose any specific investment practices on pension schemes: the SIPP is intended to be a description of the investment policies of the trustees. There is no minimum (or maximum) length of SIPP required. The information provided should be stated clearly and unambiguously, but it may be possible for a SIPP to be no more than a page or two long.

Some comments on the contents of the SIPP are as follows:

(a) Investment objectives – for DB schemes and for DC schemes where no member investment choice is available, the Authority would expect this to include the objectives of meeting the liabilities and the attitude to risk. For other DC schemes, the Authority would expect it to include a description of the rationale for the investment choice made available to members.

(b) Investment risk measurement methods – the Authority would expect that this would identify the investment risks faced by the scheme and how these risks are measured. Different schemes use differing approaches toward measuring risk, and no one approach is prescribed here. DC schemes may choose to provide a separate response for each investment fund.

(c) Risk management processes – the Authority would expect this section to describe how the scheme trustees manage ongoing investment risk. There are many possible approaches, but for example, the SIPP may include the guidelines provided to the investment managers, and a policy statement relating to a periodic review of investment performance and risk. Again, DC schemes may provide a separate description for each fund.

(d) Strategic asset allocation with respect to the nature and duration of the pension liabilities – for DB schemes, the Authority would expect a statement of the asset allocation strategy and how the nature of the liabilities of the scheme have been taken into account in setting it. For DC schemes, the Authority would expect this section to include a description of the investment funds made available, along with any restriction on member investment choice.

Further guidance from the Authority in relation to the preparation of a Statement of Investment Policy Principles for a DB Scheme can be found here.

5. What, if any, additional requirements are imposed by regulation 6(3)?

Regulation 6(3) imposes a general responsibility on scheme trustees to invest the assets of the scheme in a manner appropriate to the circumstances of the scheme. It is the view of the Authority that the requirements of this regulation are similar to the obligations imposed on trustees under trust law, i.e. to invest the assets prudently and in the interests of the scheme members.

6. What restrictions are imposed by the obligation to invest in regulated markets?

Regulation 6(4) states that the scheme assets must be invested 'predominantly' on regulated markets. Regulated markets are defined in regulation 2. It is the Authority's view that 'predominantly' means more than 50% of the assets of the scheme. Regulation 6(4) further requires that investment in markets that are not regulated should nonetheless be kept to prudent levels. This may mean that the liabilities of the scheme are such, that a lower level of investment in unregulated markets would be appropriate.

The Authority considers that monies on deposit with a regulated financial institution comprise investment in a regulated market. Note that property investment is not a regulated market. This applies even when the investment is made through a collective investment arrangement (see below).

If, as a result of market movements, a scheme finds itself with more than the permitted proportion of unregulated investments, the trustees should take immediate steps to make the scheme compliant. It may be prudent to allow sufficient margins to ensure that small market movements will not oblige the trustees to make investment changes.

7. What restrictions are there on self-investment?

Self-investment is the investment of the pension scheme's resources in the employer or undertakings within the same group as the employer. With effect from 23 September 2010, investments by schemes in their sponsoring employer in excess of 5% of the resources of the scheme are prohibited. Where the sponsoring employer belongs to a group, investment in the employer group, inclusive of the sponsoring employer, must not exceed 10% of the scheme's resources. The self-investment restrictions do not apply to one member arrangements and small member-controlled schemes are permitted to self-invest up to a 20% limit.

Certain investments are specifically excluded from the definition of self-investment. These include investments in:

- government bonds,
- cash deposits with an authorised deposit taking institution,
- insurance policies with authorised life companies,
- segregated, managed or other collective investment funds managed by employer entities who are authorised by the Central Bank,
- an unit trust managed by employer entities who are authorised by the Central Bank,
- an investment company authorised by the Central Bank,
- collective investment schemes, such as UCITS, authorised by the Central Bank, or

- an undertaking for collective investment in transferable securities authorised in another member state, or
- land and buildings of the employer or employer entities.

Trustees must always ensure that their investments are prudent and appropriately diversified, so self-investment in accordance with the above limits may not always be appropriate.

8. Is investment in derivatives permitted?

Investment in derivatives is only permitted to reduce investment risks or to facilitate efficient management of the portfolio. The Authority expects trustees to satisfy themselves that any investment in derivatives can be justified on these grounds before the investment is made, and to be in a position to provide documentation of their decision to the Authority if required.

9. How do these regulations apply to schemes invested in insurance policies or pooled investments?

Investments in insurance policies are governed by regulation 6(7) (b), (c) and (d). There are different rules for unit-linked and non-linked insurance policies.

For unit-linked policies, compliance will depend on the underlying assets of the funds to which the policy proceeds are linked. Where a policy is invested in unit trusts or a fund of funds, it is the ultimate assets and not the trusts that will determine the scheme's compliance with the Investment Regulations. So long as the assets that underly these funds comply with the diversification and regulated market requirements, the investment in the insurance policy will be deemed to satisfy those same requirements. For example, a typical managed fund is well diversified and primarily invested in equities and bonds. A policy linked to such a fund would satisfy the Investment Regulations. On the other hand, were a policy wholly linked to a fund invested in unregulated equities, or in a single property, this investment would not satisfy the Investment Regulations unless it comprised only a reasonable proportion of the scheme's investments.

For non-linked policies, including with-profit policies, the investment in the insurance policy will be deemed to satisfy the regulated market and diversification obligations if the policy proceeds are guaranteed at maturity to be at least equal to the sum of all the premiums.

Any annuity policies held by a scheme will be deemed to satisfy the Investment Regulations.

Note that the prohibition on borrowing applies only to direct borrowing by scheme trustees: it does not apply to borrowing undertaken within a pooled fund or insurance policy.

10. How do these regulations affect defined contribution schemes?

As stated above, the Investment Regulations apply to all schemes, including DC schemes. Therefore, the trustees must abide by these regulations when choosing the investments to be made available to scheme members, even where the members can choose from a number of investment alternatives. In particular:

(a) Trustees of DC schemes, and the DC elements of DB schemes with more than 100 active and deferred members must prepare and maintain a SIPP.

(b) Trustees of all DC schemes, and the DC elements of DB schemes, must choose scheme investments that are appropriate to the liabilities of the members.

(c) Trustees of all DC schemes, and the DC elements of DB schemes, except one member arrangements, must ensure that the investments of each member comply with the regulations governing regulated markets, diversification, etc. For example, no member may invest more than 50% of his or her funds in unregulated market assets.

11. What other notifications are schemes required to make to the Pensions Authority?

The trustees of a scheme, other than a small scheme, are required to notify the Authority where all or part of the resources of the scheme are directly invested in debt instruments, excluding investments in collective investment undertakings and investments in an insurance policy. Trustees are required to, on request, furnish the Authority with all relevant information on the credit assessment process applied by a scheme.