

2003 No. 433

LOCAL GOVERNMENT

**Local Government Pension Scheme (Management and
Investment of Funds) (Amendment) Regulations
(Northern Ireland) 2003**

Made - - - - - 6th October 2003

Coming into operation 17th November 2003

The Department of the Environment, in exercise of the powers conferred by Article 9 of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972(a) and now vested in it(b) and of every other power enabling it in that behalf and after consultation with the Northern Ireland Local Government Association, the Northern Ireland Local Government Officers' Superannuation Committee and such representatives of other persons likely to be affected by the Regulations as appeared to it to be appropriate, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Local Government Pension Scheme (Management and Investment of Funds) (Amendment) Regulations (Northern Ireland) 2003.

(2) These Regulations shall come into operation on 17th November 2003.

Amendment of Regulations

2. The Local Government Pension Scheme (Management and Investment of Funds) Regulations (Northern Ireland) 2000(c), (“the principal Regulations”) shall be amended in accordance with regulations 3 to 7.

General definitions

3. In regulation 2 –

- (a) the existing provision shall be renumbered as paragraph (1);
- (b) the definitions of “European authorised institution” and “European institution” shall be omitted;
- (c) the definition of “home-regulated investment business” shall be omitted;
- (d) for the definition of “relevant institution” there shall be substituted –

“ “relevant institution” means –

- (a) a person who has permission under Part IV of the Financial Services and Markets Act 2000(d) to accept deposits;
- (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

(a) S.I. 1972/1073 (N.I. 10)

(b) S.R. & O. (N.I.) 1973 No. 504 Art. 7 (1); S.I. 1976/424 (N.I. 6)

(c) S.R. 2000 No. 178; relevant amending regulations are S.R. 2001 No. 62

(d) 2000 c. 8

qualifying for authorisation under paragraph 12(1) of that Schedule) to accept deposits; or

(c) a person who is an exempt person in respect of accepting deposits as a result of an order made under section 38(1) of that Act;”;

(e) after paragraph (1) as so renumbered there shall be inserted –

“(2) The definition of “relevant institution” in paragraph (1), together with regulations 3(4) to (5A) and 4(2) and paragraph 4 of Part I of the Schedule, must be read with –

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.”.

Definition of “investment”

4. In regulation 3 –

(1) for paragraphs (4) and (5) there shall be substituted –

“(4) A contract of insurance is an investment if and only if it is a contract of a relevant class, and is entered into with a person within paragraph (5) for whom entering into the contract constitutes the carrying on of a regulated activity (within the meaning of the Financial Services and Markets Act 2000).

(5) The persons within this paragraph are –

(a) a person who has permission under Part IV of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance of a relevant class;

(b) an EEA firm of the kind mentioned in paragraph 5(d) 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 effect or carry out contracts of insurance of a relevant class; or

(c) a person who does not fall within sub-paragraph (a) or (b) and who, because he has his head office in an EEA State (within the meaning of that Act) other than the United Kingdom, is permitted by the law of that State to effect or carry out contracts of insurance of a relevant class.

(5A) A contract of insurance is of a relevant class for the purposes of paragraphs (4) and (5) if it is –

(a) a contract of insurance on human life or a contract to pay an annuity on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contract) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified); or

(b) a contract to manage the investments of pension funds, whether or not combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.”.

(2) For paragraphs (6) and (7) there shall be substituted –

“(6) A stock lending arrangement is an investment if and only if, in respect of it, the conditions in rules 5.14.4R and 5.14.6R in the Collective Investment Scheme Sourcebook are complied with.

(7) For the purposes of paragraph (6) –

(a) references in rules 5.14.4R and 5.14.6R to the trustee must be read as if they were references to the Committee; and

(b) the “Collective Investment Scheme Sourcebook” means the Collective Investment Scheme Sourcebook made by the Financial Services Authority under Part X of the Financial Services and Markets Act 2000.”.

Definition of “investment manager”

5. In regulation 4 for paragraphs (2) to (4) there shall be substituted –

“(2) A person is an investment manager if –

- (a) he has permission under Part IV of the Financial Services and Markets Act 2000 to manage investments and may lawfully manage the assets of occupational pension schemes;
- (b) he is an EEA firm of the kind mentioned in sub-paragraph (a), (b) or (c) of paragraph 5 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 manage investments and may lawfully manage the assets of occupational pension schemes; or
- (c) he is a person –
 - (i) who does not carry on regulated activities (within the meaning of that Act) from a permanent place of business maintained by him in the United Kingdom;
 - (ii) whose head office is situated in an EEA State (within the meaning of that Act) other than the United Kingdom;
 - (iii) who is recognised by the law of that EEA State as a national of that or another EEA State;
 - (iv) who is authorised under that law to carry on one or more regulated activities (within the meaning of that Act); and
 - (v) who is not prevented by that law from managing the assets of occupational pension schemes or assets belonging to another person.”.

Statement of investment principles

6. In regulation 10 –

(a) after paragraph (3) there shall be inserted the following paragraph –

“(3A) A statement published after 19th January 2004 must also –

- (a) state the extent to which the Committee complies with the ten principles of investment practice set out in the document published in April 2002 by CIPFA, the Chartered Institute of Public Finance and Accountancy, and called “CIPFA Pensions Panel Principles for Investment Decision Making in the Local Government Pension Scheme in the United Kingdom (Guidance note issue No. 5)”^(a); and
 - (b) give the reasons for not complying where it does not do so.”; and
- (b) in paragraph (4), for “paragraph (2)” there shall be substituted “paragraphs (2) and (3A)”.

Limits on Investments

7. In the Schedule –

(1) For paragraph 4 of Part I there shall be substituted –

“4. All deposits with –

- (a) any local authority, or
- (b) any body with power to issue a precept or requisition to a local authority, or to the expenses of which a local authority can be required to contribute,

which is an exempt person (within the meaning of the Financial Services and Markets Act 2000) in respect of accepting deposits as a result of an order made under section 38(1) of that Act, and all loans (but see paragraph 14).”.

(2) In paragraph 17 of Part III (Interpretation of Parts I and II) –

(a) in the definitions of –

^(a) Published by CIPFA, The Chartered Institute of Public Finance and Accountancy, 3 Robert Street, London WC2N 6RL

- (i) “Collective investment scheme” for the words “section 75 of the Financial Services Act 1986” there shall be substituted the words “section 235 of the Financial Services and Markets Act 2000”; and
 - (ii) “Open-ended investment company” for the words “section 75(8) of the Financial Services Act 1986” there shall be substituted the words “section 236 of the Financial Services and Markets Act 2000”;
- (b) after the definition of “Loan” there shall be inserted –
- “ “local authority” means a district council established under the Local Government Act (Northern Ireland) 1972(a) and includes a local authority as defined in section 270 of the Local Government Act 1972(b) and section 235 of the Local Government (Scotland) Act 1973(c);”.

Transitional provision

8. Nothing in these Regulations requires the Committee which has published a statement under regulation 10 of the principal Regulations (as in operation immediately before the date on which these Regulations come into operation) to prepare a new statement but it must revise the statement which it has published so as to include the matters referred to in regulation 10(3A) of the principal Regulations and publish the revised statement by 20th January 2004.

Sealed with the Official Seal of the Department of the Environment on 6th October 2003.

(L.S.)

John Ritchie

A senior officer of the Department of the Environment

(a) 1972 c. 9
(b) 1972 c. 70; section 270 was amended by the Local Government (Wales) Act 1994 (c. 19), section 1
(c) 1973 c. 65

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations further amend the Local Government Pension Scheme (Management and Investment of Funds) Regulations (Northern Ireland) 2000 (“the principal Regulations”).

The amendments made by regulations 3 to 5 and 7 are a consequence of the principal repeals and revocations made by Article 3 of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649). References to enactments repealed, or to expressions used in those enactments, have been amended in the principal Regulations so that they now refer to the appropriate provisions or expressions under the Financial Services and Markets Act 2000.

Regulation 6 adds a provision to the principal Regulations requiring the Northern Ireland Local Government Officers’ Superannuation Committee (NILGOSC) to publish a written statement of investment principles. The new provision requires that such statement must set out the extent to which NILGOSC complies with the ten principles of investment practice contained in the document published in April 2002 by CIPFA, the Chartered Institute of Public Finance and Accountancy, and called “CIPFA Pensions Panel Principles for Investment Decision Making in the Local Government Pension Scheme in the United Kingdom (Guidance note issue No. 5)”. NILGOSC must publish, by no later than 20th January 2004, its policy on the extent to which it complies with the ten principles and give its reasons where it does not comply.

The Guidance Note can be purchased from CIPFA, 3 Robert Street, London WC2N 6RL, tel. 020 7543 5605. The publication costs £50 to members of the public, £25 to local authorities and £12.50 to NILGOSC.

The ten investment principles were issued by the Government in October 2001 in response to proposals in the Myners Review of Institutional Investment in the United Kingdom, issued in March 2001. Further information about these can be obtained from HM Treasury Public Enquiry Unit. Tel. 020 7270 4558 or from HM Treasury’s web site www.hm-treasury.gov.uk.

Regulation 8 is a transitional provision which provides that NILGOSC is not required to prepare a new statement of investment principles but only to revise the statement in operation immediately before these regulations come into operation.

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