



Pensions Act 1995

1995 CHAPTER 26

PART I

OCCUPATIONAL PENSIONS

Functions of trustees

36 Choosing investments

- (1) The trustees of a trust scheme must exercise their powers of investment in accordance with subsections (2) to (4) and any fund manager to whom any discretion has been delegated under section 34 must exercise the discretion in accordance with subsection (2).
- (2) The trustees or fund manager must have regard—
 - (a) to the need for diversification of investments, in so far as appropriate to the circumstances of the scheme, and
 - (b) to the suitability to the scheme of investments of the description of investment proposed and of the investment proposed as an investment of that description.
- (3) Before investing in any manner (other than in a manner mentioned in Part I of Schedule 1 to the Trustee Investments Act 1961) the trustees must obtain and consider proper advice on the question whether the investment is satisfactory having regard to the matters mentioned in subsection (2) and the principles contained in the statement under section 35.
- (4) Trustees retaining any investment must—
 - (a) determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice as is mentioned in subsection (3), and
 - (b) obtain and consider such advice accordingly.

Status: This is the original version (as it was originally enacted).

- (5) The trustees, or the fund manager to whom any discretion has been delegated under section 34, must exercise their powers of investment with a view to giving effect to the principles contained in the statement under section 35, so far as reasonably practicable.
- (6) For the purposes of this section “proper advice” means—
- (a) where giving the advice constitutes carrying on investment business in the United Kingdom (within the meaning of the Financial Services Act 1986), advice—
 - (i) given by a person authorised under Chapter III of Part I of that Act,
 - (ii) given by a person exempted under Chapter IV of that Part who, in giving the advice, is acting in the course of the business in respect of which he is exempt,
 - (iii) given by a person where, by virtue of paragraph 27 of Schedule 1 to that Act, paragraph 15 of that Schedule does not apply to giving the advice, or
 - (iv) given by a person who, by virtue of regulation 5 of the Banking Coordination (Second Council Directive) Regulations 1992, may give the advice though not authorised as mentioned in sub-paragraph (i) above.
 - (b) in any other case, the advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of trust schemes.
- (7) Trustees shall not be treated as having complied with subsection (3) or (4) unless the advice was given or has subsequently been confirmed in writing.
- (8) If the trustees of a trust scheme do not obtain and consider advice in accordance with this section, sections 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.