



STATUTORY INSTRUMENTS.

S.I. No. 455 of 2010

OCCUPATIONAL PENSION SCHEMES
(INVESTMENT) (AMENDMENT) REGULATIONS 2010

(Prn. A10/1395)

**OCCUPATIONAL PENSION SCHEMES
(INVESTMENT) (AMENDMENT) REGULATIONS 2010**

The Minister for Social Protection, in exercise of the powers conferred on him by section 5 (as amended by section 44 of the Social Welfare Law Reform and Pensions Act 2006 (No. 5 of 2006)), 59(1) (as amended by section 33 of the Social Welfare and Pensions Act 2005 (No. 4 of 2005)) and 59(1A) (inserted by section 33 of the Social Welfare and Pensions Act 2005) of the Pensions Act 1990 (No. 25 of 1990) (as adapted by the Social and Family Affairs (Alteration of Name of Department and Title of Minister) Order 2010 (S.I. 186 of 2010)) hereby makes the following Regulations:

Citation, Construction and Commencement.

1. (1) These Regulations may be cited as the Occupational Pension Schemes (Investment) (Amendment) Regulations, 2010.
- (2) The Occupational Pension Schemes (Investment) Regulations 2006 (No. 294 of 2006), the Occupational Pension Schemes (Investment) (Amendment) Regulations 2007 (No. 188 of 2007) and these Regulations may be cited together as the Occupational Pension Schemes (Investment) Regulations 2006 to 2010 and shall be construed together as one.
- (3) These Regulations come into operation on 23 September 2010.

Amendments.

2. The Occupational Pension Schemes (Investment) Regulations, 2006 are amended—

(a) in Article 2 by—

- (i) inserting the following definitions after the definition of “the Act”—

“active member” in relation to a scheme, means any member who is in reckonable service at the commencement of the relevant scheme year;

“affiliate” means another body corporate that is a subsidiary company or a holding company (within the meaning of section 155 of the Companies Act, 1963) of the employer or a fellow subsidiary of the employer’s holding company;”

- (ii) inserting the following definitions after the definition of “collective investment undertaking”—

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 28th September, 2010.*

“ “the employer”, in relation to a scheme means the employer of any person employed in relevant employment;

“the employer group” in relation to a scheme means any one or more of the following persons:—

(I) the employer,

(II) an affiliate of the employer,

(III) any director or shadow director (within the meaning of section 27 of the Companies Act 1990 (No. 33 of 1990)) of the employer or of an affiliate.”

(iii) inserting the following definition after the definition of “one member arrangement”—

“ “person” has the meaning given to that term in the Interpretation Act 2005;”

(iv) inserting the following definitions after the definition of “regulated market”—

“ “self-investment”, in relation to a scheme, means investment of all or part of the resources of the scheme in the employer or, as appropriate, the employer group and for this purpose “investment” shall be deemed to include investment in—

(I) property, other than land or buildings, which is used for the purpose of any business carried on by;

(II) loans to;

(III) moneys due to the scheme held by;

the employer or, as appropriate, the employer group;

(IV) shares or other securities issued by a person in the employer group, who is a body corporate,

but shall not include—

(V) investment in a cash deposit with any person in the employer group who is an authorised deposit taking institution; or

(VI) investment in

(A) an insurance policy or contract of assurance issued by a person in the employer group who is the holder of an authorisation within the meaning of article 2 of the European Communities (Life

Assurance) Framework Regulations, 1994 (S.I. No. 360 of 1994);

- (B) a segregated fund or a managed fund or other collective investment fund, managed by a person in the employer group who is the holder of an authorisation issued by the Central Bank and Financial Services Authority of Ireland pursuant to the Investment Intermediaries Act, 1995 (No. 11 of 1995); the European Communities Markets in Financial Instruments Regulations, 2007 (S.I. No. 60 of 2007) or any other appropriate authorisation;
- (C) a unit trust scheme authorised by the Central Bank and Financial Services Authority of Ireland under the Unit Trusts Act, 1990 (No. 37 of 1990) and managed by a person in the employer group;
- (D) an investment company authorised by the Central Bank and Financial Services Authority of Ireland under Part XIII of the Companies Act, 1990 (No. 33 of 1990);
- (E) a collective investment scheme authorised by the Central Bank and Financial Services Authority of Ireland under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 2003 (S.I. No. 211 of 2003) as amended, consolidated or substituted from time to time;
- (F) an undertaking for collective investment in transferable securities authorised by a competent authority in another member state of the European Communities in accordance with Council Directive 85/611/EEC as amended, consolidated or substituted from time to time; or
- (G) bonds issued by the Government of any Member State,

provided that “investment” shall be deemed to include the proportion attributable to the resources of the scheme (whether directly or through any intervening fund) of any investment in the employer group—

- (aa)* by the manager of a segregated fund or a managed fund or other collective investment fund or by a unit trust scheme, an investment company or a collective investment scheme or

(bb) which is comprised in an investment fund to which an insurance policy or contract of assurance falling within Class III or Class VII of the classes of insurance specified in Annex I to the European Communities (Life Assurance) Framework Regulations, 1994 (S.I. No. 360 of 1994) is linked;

“small member-controlled scheme” means a scheme with not more than 12 active members, all of whom are trustees of the scheme;”

(b) by inserting the following after Article 7—

- “8. (i) In respect of a scheme other than a one member arrangement or a small member-controlled scheme, self-investment in the employer shall not exceed 5% of the resources of the scheme and total self-investment in the employer group shall not exceed 10% of the resources of the scheme.
- (ii) In respect of a small member-controlled scheme, self investment in the employer group shall not exceed 20% of the resources of the scheme.
- (iii) This article shall not apply to a one member arrangement.”



L.S.

GIVEN under my Official Seal,
22 September 2010.

ÉAMON Ó CUÍV,
Minister for Social Protection.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

Article 18(1)(f) of Directive 2003/41 EC on the activities and supervision of Institutions for Occupational Retirement Provision (IORPs) prohibits pension schemes from investing more than 5% of their resources in the employer. Where the employer belongs to a group the article provides that investment in the group as a whole shall not represent more than 10% of the resources of the scheme.

The overarching requirements of prudence and appropriate diversification continue to apply which may result in lower self-investment concentration limits than those set out above being appropriate.

These Regulations amend the Occupational Pension Schemes (Investment) Regulations 2006 to 2007 by providing that investments by schemes in their sponsoring employer shall represent no more than 5% of the portfolio as a whole. Where the sponsoring employer belongs to a group, the regulations provide that investment in the employer group, inclusive of the sponsoring employer, shall not exceed 10% of the scheme's resources.

Article 8 permits a higher upper limit of self-investment by small member-controlled schemes of 20%, subject to the overriding constraints of the prudent person principle.

Article 8 does not apply to one member arrangements.

The definition of self-investment in Article 2 contains a number of carve outs. These include, for example, investments in Government Bonds by public sector schemes and investments in cash deposits with an authorised deposit taking institution.

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