



STATUTORY INSTRUMENTS.

S.I. No. 635 of 2021

OCCUPATIONAL PENSION SCHEMES (FUNDING STANDARD)
(AMENDMENT) REGULATIONS 2021

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I, HEATHER HUMPHREYS, Minister for Social Protection, in exercise of the powers conferred on me by section 5, section 42 (as amended by section 27 of the Social Welfare and Pensions Act 2012 (No. 12 of 2012)), section 43 (as amended by section 28 of the Social Welfare and Pensions Act 2012 (No. 12 of 2012)) and section 47 (as amended by section 32 of the Social Welfare and Pensions Act 2012 (No. 12 of 2012)) of the Pensions Act 1990 (No. 25 of 1990) (as adapted by the Employment Affairs and Social Protection (Alteration of Name of Department and Title of Minister) Order 2020 (S.I. No. 447 of 2020)), hereby make the following Regulations:

Citation and Construction

1. These Regulations may be cited as the Occupational Pension Schemes (Funding Standard) (Amendment) Regulations 2021.
2. These Regulations and the Occupational Pension Schemes (Funding Standard) Regulations 1993 to 2019 shall be construed together as one and may be cited as the Occupational Pension Schemes (Funding Standard) Regulations 1993 to 2021.

Amendments

3. The Occupational Pension Schemes (Funding Standard) Regulations 1993 (S.I. No. 419 of 1993) are amended –
 - (a) in Article 3 by –
 - (i) in the definition of “affiliate”, by the substitution of “(within the meaning of sections 7 and 8 of the Companies Act 2014 (No. 38 of 2014) respectively)” for “(within the meaning of section 155 of the Companies Act, 1963)”;
(ii) in the definition of “associate”, by the substitution of “(within the meaning of section 7 of the Companies Act 2014 (No. 38 of 2014))” for “(within the meaning of section 155 of the Companies Act, 1963)”;
(iii) in the definition of “concentration of investment”, in paragraph (iii), by the substitution of “(within the meaning of section 221 of the Companies Act 2014 (No. 38 of 2014))” for “(within the meaning of section 27 of the Companies Act, 1990 (No. 33 of 1990));
(iv) the insertion of the following definition after the definition of “concentration of investment”:

“ “insurance policy” has the meaning assigned to it in section 59AB(10) of the Act;”;

- (v) by the substitution of the following definition for the definition of “self-investment”:

“ "self-investment", in relation to a scheme, means investment of all or part of the resources of the scheme in the business of any one or more of the following persons -

- (a) the employer of any person employed in the relevant employment,
- (b) an affiliate of the employer of any person employed in the relevant employment,
- (c) any director or shadow director (within the meaning of section 221 of the Companies Act 2014) of the employer or of an affiliate, or of an associate of any such director or shadow director,

and for this purpose, "investment" -

- (i) 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 any such person referred to in paragraphs (a), (b) or (c) of this definition;
 - (II) loans to any such person referred to in paragraphs (a), (b) or (c) of this definition;
 - (III) moneys due to the scheme held by any such person referred to in paragraphs (a), (b) or (c) of this definition;
 - (IV) shares or other securities issued by any such person referred to in paragraphs (a), (b) or (c) of this definition who is a body corporate,
- (ii) but shall not include
 - (I) investment in a cash deposit with any such person referred to in paragraphs (a), (b) or (c) of this definition who is an authorised deposit taking institution; or
 - (II) investment in -
 - (A) an insurance policy or contract of assurance issued by any such person 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 any such person who is the holder of an authorisation issued by the Central Bank of Ireland pursuant to -
 - (aa) the Investment Intermediaries Act, 1995 (No. 11 of 1995),
 - (bb) the European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No. 375 of 2017), or
 - (cc) any other enactment,
- (C) a unit trust scheme authorised by the Central Bank of Ireland under the Unit Trusts Act, 1990 (No. 37 of 1990) and managed by any such person,
- (D) an investment company authorised by the Central Bank of Ireland under Part 24 of the Companies Act 2014 (No. 38 of 2014),
- (E) a collective investment scheme authorised by the Central Bank of Ireland under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011),
- (F) a collective investment scheme established in another Member State of the European Communities that has been authorised in accordance with Council Directive 2009/65/EC of the European Parliament and of the Council,

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 business of any such person –

- (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.”;
- (vi) by the deletion of the definition of “small member-controlled scheme”;
- (b) by the substitution of the following Article for Article 4:
“For the purposes of section 42 of the Act –
 - (a) an actuarial funding certificate in respect of a relevant scheme shall be in the form set out in Schedule BD to these Regulations or in a form substantially to the like effect,
 - (b) a funding standard reserve certificate in respect of a relevant scheme shall be in the form set out in Schedule BE to these Regulations or in a form substantially to the like effect.”;
- (c) by the substitution of the following Article for Article 5:
“In an actuarial funding certificate, any calculation of the resources of a relevant scheme shall, except to the extent (if any) otherwise permitted under the guidance referred to in article 5A(2), exclude –
 - (a) any self-investment, and
 - (b) concentration of investment in excess of 10 per cent of the resources of the scheme.”;
- (d) by the deletion of Schedule A;
- (e) by the deletion of Schedule B;

- (f) by the deletion of Schedule BA;
- (g) by the deletion of Schedule BB, and
- (h) by the deletion of Schedule BC.



GIVEN under my Official Seal,
25 November, 2021.

HEATHER HUMPHREYS,
Minister for Social Protection.

EXPLANATORY NOTE

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

These Regulations amend S.I. No. 419 of 1993, as amended, by -

- amending Article 3 to, amongst other things, ensure that the definitions refer to extant legislative provisions;
- the substitution of a new Article for Article 4 in respect of actuarial funding certificates and funding standard reserve certificates;
- the substitution of a new Article for Article 5 to specify the investments to be excluded, for the purposes of an actuarial funding certificate, within calculations of the resources of a relevant scheme, and
- the deletion Schedules A to BC which no longer have any operational effect.

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