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OCCUPATIONAL PENSION SCHEMES (INVESTMENT) REGULATIONS, 2006

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**OCCUPATIONAL PENSION SCHEMES
(INVESTMENT) REGULATIONS, 2006**

The Minister for Social and Family Affairs, 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)), 59(1A) and (1C) (inserted by section 33 of the Social Welfare and Pensions Act 2005) and section 61B (inserted by section 36 of the Social Welfare and Pensions Act 2005) of the Pensions Act 1990 (No. 25 of 1990) hereby makes the following Regulations:

Citation 1. These Regulations may be cited as the Occupational Pension Schemes (Investment) Regulations, 2006.

Definitions. 2. In these regulations –

“the Act” means the Pensions Act 1990 (No. 25 of 1990);

“collective investment undertaking” means –

- (a) an investment undertaking within the meaning assigned to it in section 739B of the Taxes Consolidation Act, 1997,
- (b) a unit trust which neither is, nor is deemed to be, an authorised unit trust scheme (within the meaning of the Unit Trust Act, 1990 (No. 37 of 1990)),
- (c) an undertaking for collective investment in transferable securities (within the meaning assigned to it by Council Directive 85/611/EEC of 20 December 1985)¹ situate in another Member State,
- (d) a common contractual fund within the meaning of section 739I (1)(a)(i) of the Taxes Consolidation Act, 1997 (no.39 of 1997) (inserted by section 44 of the Finance Act 2005) (No.5 of 2005);

“insurance policy” means an insurance policy or contract of assurance issued by any

¹ O.J. L375, 31.12.1985, p.3

person who is the holder of an authorisation -

- (a) granted by the Minister for Enterprise, Trade and Employment under the European Communities (Life Assurance) Framework Regulations, 1994, (S.I. No. 360 of 1994), or under the European Communities (Life Assurance) Regulations 1984 (S.I. No. 57 of 1984) and still in force, or
- (b) granted by the authority charged with the duty of supervising the activities of insurance undertakings in a Member State other than the State in accordance with Article 6 of Council Directive 79/267/EEC² (as inserted by Article 3 of the Council Directive 92/96/EEC³);

“one member arrangement” means a scheme which is established for one person only and that one person will always be the only member and that member has discretion as to how the resources of the scheme are invested, unless the scheme is made the subject of a Pension Adjustment Order, in which case it may also include the person or persons referred to in the Pension Adjustment Order;

“regulated market” means -

- (a) transferable securities and money market instruments admitted to or dealt in on a regulated market within the meaning of Article 1(13) of Council Directive 93/22/EEC⁴,
- (b) transferable securities and money market instruments dealt in on another regulated market in a Member State which operates regularly and is recognised and open to the public; or
- (c) transferable securities and money market instruments admitted to official listing on a stock exchange in a non-Member State or dealt in on another regulated market in a non-Member State which operates regularly and is recognised and open to the public provided that the choice of stock exchange or market has been approved by the local competent authorities.

Revocation. 3. The Occupational Pension Schemes (Investment) Regulations 2005 (S.I. No. 593 of 2005) are revoked.

Borrowing rules. 4. For the purposes of section 61B of the Act -

² O.J. L63, 13.3.79, p.1

³ O.J. L360, 9.12.92, p.1

⁴ O.J. L141, 11.6.1993, p.27

- (a) the trustees of a scheme may borrow money but only for liquidity purposes and only on a temporary basis, and
- (b) the trustees of a one member arrangement may borrow money.

Statement of investment policy principles. 5. The statement of investment policy principles required under section 59(1B) of the Act shall be in writing and shall include the following matters -

- (a) the investment objectives of the trustees,
- (b) the investment risk measurement methods,
- (c) the risk management processes to be used, and
- (d) the strategic asset allocation implemented with respect to the nature and duration of pension liabilities.

Investment rules. 6. (1) This Article applies to any scheme other than a one member arrangement.

(2) In providing for the proper investment of the resources of a scheme under section 59(1)(b) of the Act, trustees shall comply with the rules set out in this article.

(3) The assets of the scheme must be invested in a manner designed to ensure the security, quality, liquidity and profitability of the portfolio as a whole so far as is appropriate having regard to the nature and duration of the expected liabilities of the scheme.

(4) The assets of the scheme must be invested predominantly on regulated markets; investment in assets which are not admitted to trading on a regulated market must in any event be kept to a prudent level.

(5) The assets of the scheme must be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group must not expose the scheme to excessive risk concentration.

(6) Investment in derivative instruments may be made only in so far as they -

- (a) contribute to a reduction of investment risks, or

(b) facilitate efficient portfolio management,

and any such investment must be made so as to avoid excessive risk exposure to a single counterparty and to other derivative operations.

(7) For the purposes of this article-

- (a) investment in a collective investment undertaking shall be treated as being invested on a regulated market in accordance with sub-article (4) and diversified in accordance with sub-article (5) to the extent that the investments held by that undertaking are themselves so invested,
- (b) investment in an insurance policy falling within the class of insurance specified at paragraph III of Annex 1 of Council Directive 2002/83⁵ shall be treated as invested on a regulated market in accordance with sub-article (4) and diversified in accordance with sub-article (5) to the extent that the selection by trustees of the investments by which the return on the insurance policy will be determined complies with those sub-articles,
- (c) investment in an insurance policy the terms of which provide that the proceeds of the insurance policy at maturity will be equal to or greater than the amount of the investment over the term of the insurance policy, shall be treated as invested on a regulated market in accordance with sub-article (4) and diversified in accordance with sub-article (5),
- (d) investment in an insurance policy of a type to which Article 2(1)(b) of Council Directive 2002/83 relates shall be treated as invested on a regulated market in accordance with sub-article (4) and diversified in accordance with sub-article (5), and
- (e) investment in bonds issued by the Government of any Member State shall be treated as diversified in accordance with sub-article (5).

⁵ O.J. L345, 19.12.2002, p.1

GIVEN under the Official Seal of the Minister for Social and Family Affairs, this 24th day of May 2006.

L.S. **SÉAMUS BRENNAN**

Minister for Social and Family Affairs

EXPLANATORY NOTE

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

These Regulations revoke and replace Regulation 593 of 2005.

Recent case law in Ireland has suggested that a provision of domestic legislation cannot be used for the purposes of implementing EC law unless it is clear that such delegated legislation is clearly authorised by the primary legislation.

To this end, section 5 of the Pensions Act 1990 was amended by section 44 of the Social Welfare Law Reform and Pensions Act, 2006 to expressly state that regulations made under the Pensions Act may be used to implement law.

Regulation 593 of 2005 was made under section 3 of the European Communities Act 1972 due to uncertainty with regard to using the powers under the Pensions Act. However, now that those powers have been clarified these regulations are now being re made under the Pensions Act powers.