

Chapter 10

Guidance on activities related to pension schemes

10.2 General issues

Q2. I propose to provide services to a pension scheme - in what circumstances will I need to be authorised under the Act or be an exempt person?

You will need to be an *authorised* or *exempt person* if you will:

- be carrying on *regulated activities*;
- be doing so by way of business; and
- be doing so in the *United Kingdom*.

Q3. How will I know if my proposed activities are regulated?

Regulated activities are specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("the *Regulated Activities Order*"). They include:

- *dealing* (broadly, entering into a transaction as principal or agent to *buy* or *sell* certain investments);
- *arranging* (broadly, bringing about an investment transaction between other parties or making arrangements to assist other *persons* to enter into such transactions);
- *managing investments* (broadly, discretionary management of assets that include or may include certain investments);
- *assisting in the administration and performance of a contract of insurance* (broadly, notifying and providing evidence in support of or negotiating claims on behalf of policyholders);
- *safeguarding and administering investments*, being assets that include or may include certain investments (otherwise known as custody services);
- *advising on investments* (broadly, advising an investor on the merits of his *buying* or *selling* certain particular investments);
- *advising on conversion or transfer of pension benefits* (broadly advising a *member of a pension scheme* on converting, transferring or paying out *safeguarded benefits* in a pension scheme);
- *establishing, operating or winding up a stakeholder pension scheme*;
- *establishing, operating or winding up a personal pension scheme*.

Q4. What kind of investments do these regulated activities relate to?

Securities, such as shares, debt securities, warrants, unit trusts, contractual schemes or rights under a personal pension scheme or a stakeholder pension scheme and *contractually based investments* such as options, futures and cash-settled instruments (contracts for differences) or long-term insurance policies with an investment element (such as unit-linked insurance or annuities). Some *regulated activities*, such as *arranging* and *advising on investments*, also relate to all *contracts of insurance*.

The activity of *advising on conversion or transfer of pension benefits* relates exclusively to rights or interests under a pension scheme which provides *safeguarded benefits*.

Q5. What exclusions are available?

There are various exclusions - some relate to a single activity and others relate to several. Further guidance on exclusions is given in the remaining questions.

Q6. How do I know if I am carrying on activities by way of business?

Whether a particular *person* will be carrying on a *regulated activity* by way of business (and so needs *authorisation* or exemption) will invariably depend on that person's individual circumstances. A number of factors need to be taken into account in determining whether the by-way-of-business test is met. These include:

- the degree of continuity;
- the existence of a commercial element;
- the scale of the activity;
- the proportion which the activity bears compared to other activities carried on by the same person which are not regulated; and
- the nature of the particular regulated activity that is carried on.

Corporate pension scheme trustees and other persons who provide professional services to pension schemes are likely to be carrying on their activities by way of business. Unpaid individuals who act as trustees are not likely to be. Neither are in-house trustee companies set up by an employer to operate its *occupational pension scheme* ("OPS") or the employer if it acts as the trustee itself. In this respect, however, article 4 of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 ("the *Business Order*") amends this test for trustees and other persons who manage the assets of an OPS. The effect of the amendment is that a trustee will need to be authorised if he is managing the investments of an OPS, whether or not he would normally be regarded as doing so by way of business. This is unless certain conditions are met (as explained in questions 7 to 22).

In addition, article 3(4) of the *Business Order* provides that any person who carries on an *insurance distribution activity* by way of business must be remunerated for doing so. Guidance on the application of the by way of business' test to insurance distribution activities is in Chapter 5.4 of PERG.