

Chapter 10

Guidance on activities related to pension schemes



10.4A The application of requirements which implemented EU directives

Q41A. Are pension scheme trustees and administration service providers likely to be subject to authorisation under the UK provisions which implemented the Markets in Financial Instruments Directive?

This is possible, but in many instances it is likely that pension scheme trustees and service providers will either not be providing an investment service for the purposes, or otherwise be exempt under the exemptions which were set out in article 2.1 of the *Markets in Financial Instruments Directive* but have been onshored in Part 1 of Schedule 3 to the *Regulated Activities Order*. The following table expands on this in broad terms.

Detailed guidance on the scope of the UK provisions which implemented the *MiFID* is in ■ PERG 13.

In the table below, references to relevant paragraphs of Article 2.1 of *MiFID* should be read as the equivalent exemptions which have been onshored in Part 1 of Schedule 3 to the *Regulated Activities Order*, or, in respect of Article 3 of *MiFID*, which can now be found in regulation 8 of the *MiFI Regulations*.

Activity	Potential MiFID investment activity or service?	Potential application of MiFID or of a MiFID article 2.1 exemption?
Dealing in scheme assets as trustee	Execution of orders on behalf of clients	MiFID will not apply provided the trustees are either not acting by way of business or otherwise are not holding themselves out as persons who provide a dealing service to third parties. This is because the trustees would not be regarded as providing an investment service to third parties on a professional basis In any event, the trustee should be exempt under article 2.1(i) as manager or depositary (or both) of a pension fund

Issuing rights under a stakeholder or personal pension scheme to members	None - the rights are not MiFID financial instruments	MiFID does not apply
Pension scheme service provider:		
a. dealing in scheme assets as agent for the trustees	a. Execution of orders on behalf of clients	MiFID will potentially apply where the investments are MiFID financial instruments (such as shares, debt securities or units)
b. arranging deals in scheme assets as agent for the trustees	b. Receiving and transmitting orders	However, many pension schemes will be employee participation schemes, the administration of which is exempt under article 2.1(f)
c. arranging for persons to join the scheme or to switch or dispose of, or to acquire further, rights under the scheme	c. None - the rights are not MiFID financial instruments and neither are any rights to or interests in financial instruments that the scheme member may acquire under the scheme	Where the service provider is providing services exclusively for the benefit of a corporate trustee who is a member of its group, the exemption in article 2.1(b) should apply. And article 2.1(g) will provide for the exclusions in 2.1(b) and 2.1(f) to be combined where the service provider is both administering an employee participation scheme and providing services to a trustee who is a group member
Managing the assets of the scheme	Investment management	Where the activity is receiving and transmitting orders and the service provider is authorised, the optional intermediaries exemption in article 3 of MiFID may apply If the service provider is acting as the operator of a stakeholder or personal pension scheme (for example, as the scheme administrator), he should be exempt under article 2.1(i) as manager of a pension fund MiFID will not apply to trustees provided they are either not acting by way of business or

		<p>otherwise are not holding themselves out as, or additionally remunerated for, providing investment management services. This is because the trustees would not be regarded as providing an investment service to third parties on a professional basis</p> <p>In any event, trustees should be exempt under article 2.1(i) as manager or depositary (or both) of a pension fund</p> <p>If a service provider is acting as the operator of a stakeholder or personal pension scheme, he should also be exempt under article 2.1(i) as manager of a pension fund</p> <p>But a service provider who is merely managing the assets of a pension fund without being the manager or depositary of the scheme will not be exempt under article 2.1(i). The manager and depositary are those persons charged with responsibility for managing the fund or safeguarding its assets and not persons to whom such functions may be delegated or outsourced</p>
Safeguarding and administering the scheme assets	None	Safekeeping and administration of investments is a MiFID ancillary service
Establishing, operating or winding up a stakeholder or personal pension scheme	None	MiFID does not apply
a. Pension scheme trustee advising fellow trustees or members or prospective members	Investment advice	MiFID will potentially apply where the advice concerns MiFID financial instruments (such

b. Pension scheme service provider advising trustees or members or prospective members

as shares, debt securities or units) and so may apply to advice given to the trustees about scheme assets. However, beneficial interests in financial instruments held under the trusts of a pension scheme will not themselves be financial instruments under MiFID. And rights under a personal pension or stakeholder pension scheme are also not financial instruments. So, advice given to scheme members or prospective members should not be investment advice under MiFID

MiFID will not apply to trustees who are advising their fellow trustees for the purposes of the trust provided they are not additionally remunerated for providing investment advisory services

Also, trustees will be exempt under article 2.1(i) in respect of anything they do in the capacity of manager or depositary of a pension fund (including advising their fellow trustees)

If a service provider is acting as the operator of a stakeholder or personal pension scheme, he should also be exempt under article 2.1(i) as manager of a pension fund if he gives advice to the trustees

Where the service provider is providing advice to a corporate trustee who is a member of its group, the exemption in article 2.1(b) may apply (and may be combined with

the exemption for administration of an employee participation scheme under article 2.1(g) where relevant)

Q41B. [deleted]

Q41C. As a professional trustee of a pension scheme, am I affected by the implementation of the *IDD* ?

No. A pension scheme trustee may perform tasks on behalf of the other trustees (such as signing proposal forms or giving dealing instructions to insurers or brokers or notifying claims on the death of a scheme member). But that trustee will not be providing an insurance distribution service to them. This is because, under the policy, the trustee will share equal rights and equal responsibility with his co-trustees and so may be regarded as acting solely in the capacity of policyholder rather than intermediary. Also, the pension scheme trustee will not be providing an insurance distribution

service on behalf of the members as the members will not be policyholders.

Q41D. As a pension scheme administration service provider, am I affected by the implementation of the *IDD*?

You may be. Detailed guidance about the potential effect of the *IDD* on the normal activities of administration service providers is in Q31 to Q41 and the table in ■ PERG 10 Annex 3.