

Chapter 10

Guidance on activities related to pension schemes

Table summarising regulatory position of pension scheme trustees and service providers

Potential regulated activity	When will such regulated activities be carried on?
<i>Dealing in investments as principal</i> (article 14 of the <i>Regulated Activities Order</i>)	Pension scheme trustees will be entering into investment transactions as principal but should be able to rely on the exclusions in articles 15, 16 or 66(1) of the <i>Regulated Activities Order</i> (see Q23(1)).
<i>Dealing in investments as agent</i> (article 21 of the <i>Regulated Activities Order</i>)	<p>Service providers who enter into investment transactions under delegated authority from pension scheme trustees or members are likely to be dealing in investments as agent (see Q31(2)).</p> <p>Pension scheme trustees are not dealing in investments as agent simply because their actions result in co-trustees acquiring or disposing of interests in trust assets. This is because they will be acting as principals (see Q23(1)).</p> <p>Article 22 of the <i>Regulated Activities Order</i> excludes from its scope, subject to certain conditions, an <i>unauthorised person</i> who deals in investments as agent with or through an <i>authorised person</i>. This exclusion is disapplied where the arrangements relate to a contract of insurance (such as a unit-linked policy, an annuity, term assurance or any general insurance contract). Service providers may be able to make limited use of this exclusion (see Q33).</p> <p>Article 67 of the <i>Regulated Activities Order</i> provides an exclusion for persons whose profession or business does not otherwise consist of regulated activities and who deal in investments as agent as a necessary part of their profession or business without being separately remunerated for doing so. This exclusion does not apply, in broad terms, where a person is carrying on <i>insurance distribution</i> or <i>reinsurance distribution</i>. Service providers may be able to make limited use of this exclusion - for instance, where providing payroll services (see Q34).</p> <p>Article 69 of the <i>Regulated Activities Order</i> excludes persons who are dealing in investments other than contracts of insurance as agent for other members of their <i>group</i>. However, service providers who are carrying on <i>insurance distribution activities</i> solely for, and are remunerated solely by, another group member will not satisfy the by-way-of-business test (see Q35).</p>
<i>Arranging (bringing about) deals in investments and making arrangements with a view to transactions in investments</i> (article 25 of the <i>Regulated Activities Order</i>)	<p>Service providers who arrange transactions involving <i>securities</i> or <i>relevant investments</i> for pension scheme trustees or members are likely to be carrying on one or both of the <i>arranging</i> activities (see Q31(1)).</p> <p>Pension scheme trustees are not arranging simply because their actions result in co-trustees acquiring or disposing of interests in trust assets. This is because they will be acting as principal (see Q29).</p>

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	<p>Service providers should be able to make good use of the exclusion in article 29 of the Regulated Activities Order for arranging deals with or through an <i>authorised person</i>. However, this exclusion does not apply where the arrangements relate to a contract of insurance (such as a unit-linked policy, an annuity, term assurance or any general insurance contract). This may affect the position of service providers where they are involved with such things as:</p> <ul style="list-style-type: none"> (1) arranging trust investments for the trustees; (2) arranging for employees to participate in a personal pension scheme; or (3) arranging for employees to participate in a <i>stakeholder pension scheme</i>. <p>Where such activities relate to a contract of insurance, the service provider is likely to need to be an authorised or exempt person provided he satisfies the by-way-of-business test (see Q33).</p> <p>Article 67 of the Regulated Activities Order provides an exclusion for persons whose profession or business does not otherwise consist of regulated activities and who are arranging as a necessary part of their profession or business without being separately remunerated for doing so. This exclusion does not apply, in broad terms, where a <i>person</i> is carrying on <i>insurance distribution</i> or <i>reinsurance distribution</i>. Service providers may be able to make limited use of this exclusion - for instance, where providing payroll services (see Q34).</p> <p>Article 69 of the Regulated Activities Order provides an exclusion for persons who are arranging on behalf of other members of their <i>group</i>. This exclusion does not apply where the transaction involves a contract of insurance.</p> <p>However, service providers who are carrying on <i>insurance distribution activities</i> solely for, and are remunerated solely by, another group member will not satisfy the by-way-of-business test (see Q35).</p>
Managing investments (article 37 of the Regulated Activities Order)	<p>Trustees of occupational pension schemes (whether or not they would otherwise be regarded as acting by way of business) will need authorisation or exemption for managing investments unless:</p> <ul style="list-style-type: none"> • the scheme is a small self-administered scheme that meets certain requirements; or • they do not need to take any day-to-day decisions about investing the scheme's assets; or • they delegate the taking of all day-to-day decisions to an authorised, exempt or overseas person; or • the only day-to-day decisions that they take relate to pooled investment vehicles and they obtain and consider advice from an expert (see Q7 to Q22). <p>The flow chart in Annex B sets out the steps that an OPS trustee will need to go through to determine whether he will need authorisation or exemption for managing investments. This also applies to any other person who may be managing the assets of an OPS.</p> <p>A personal pension scheme trustee will not need authorisation if he is unpaid. Other trustees who manage the investments</p>

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<i>Assisting in the administration and performance of a contract of insurance (article 39A of the Regulated Activities Order)</i>	<p>of a personal pension scheme will not be managing investments provided they do not:</p> <ul style="list-style-type: none"> • hold themselves out as providing a service of managing investments; or • receive additional remuneration for managing investments (see Q23(3)). <p>Pension scheme trustees will not be regarded as carrying on this activity simply because they make claims on behalf of their co-trustees as well as on their own behalf. This is where the trustees are acting jointly and share the same rights and obligations as policyholders (see Q30).</p> <p>Service providers are likely to carry on this activity if they notify a claim under the 'death in service' benefits under a scheme in conjunction with handling the claim on behalf of the pension scheme trustees. This is because such services involve assisting in both administration and performance. But they will not be carrying on this activity provided they do not assist the trustees to perform any contractual obligation that they may have under the relevant policy. For example, the trustees may notify the claim themselves in accordance with the policy leaving the service provider to deal with administration only. Redeeming units under a unit-linked contract of insurance with a view to funding benefits or assigning benefits for any reason will not involve making a claim or otherwise assisting in performance (see Q31(3)).</p> <p>The exclusion in article 67 of the Regulated Activities Order extends to persons whose profession or business does not otherwise consist of carrying on a regulated activity and who are assisting in the administration and performance of a contract of insurance as a necessary part of their profession or business without being separately remunerated for doing so. The exclusion only applies where a person is not required to be regulated by the Insurance Mediation Directive. This means, in effect, that service providers will only be able to use the exclusion in connection with assisting in the administration and performance of a contract of insurance if they are merely providing information (see Q34).</p> <p>Where a person is assisting in the administration and performance of a contract of insurance solely for, and is remunerated solely by, another <i>group</i> member, that person will not satisfy the 'by-way-of-business' test because they are not carrying on <i>insurance distribution activities</i> for a third party and so does not require to be authorised or exempt (see Q35).</p>
<i>Safeguarding and administering investments or arranging safeguarding and administration of assets (article 40 of the Regulated Activities Order).</i>	<p>Some pension scheme trustees will not be carrying on this activity by way of business. For example, individuals who act as unpaid trustees of an occupational pension scheme (see Q6).</p> <p>Other trustees will not be carrying on this activity provided they do not:</p> <ul style="list-style-type: none"> • hold themselves out as providing a service of safeguarding and administering investments or arranging safeguarding and administration of investments; or • receive additional remuneration for safeguarding and administering investments or arranging safeguarding and administration of investments.

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	<p>In addition, trustees will not be arranging safeguarding and administration of investments where they arrange for this to be done by a regulated person or a person acting on his behalf (see Q23(4)).</p> <p>Service providers would be arranging safeguarding and administration of investments if they arrange for the appointment of a custodian on behalf of the trustees. But they will not be arranging for another person to safeguard and administer simply by virtue of instructing a fund manager to buy investments which the fund manager will then safeguard and administer in accordance with pre-existing arrangements (see Q31(4)).</p>
<i>Establishing, operating or winding up a stakeholder pension scheme or establishing, operating or winding up a personal pension scheme (article 52 of the Regulated Activities Order)</i>	<p>The trustee of a trust-based stakeholder or personal pension scheme may be its operator. This is where the trustee is not merely a bare trustee and is responsible under the instruments establishing the scheme for complying with the management and administration requirements in respect of the assets and income of, and the benefits payable under, the scheme as imposed under relevant pensions and tax legislation. Persons who are not scheme trustees are only likely to be carrying on these activities if they are the scheme administrator (see Q26).</p>
<i>Advising on investments (except P2P agreements) (article 53(1) of the Regulated Activities Order)</i>	<p>Trustees of pension schemes will not be advising on investments provided the advice is given only:</p> <ul style="list-style-type: none"> • to a fellow trustee for the purposes of the trust; or • to a member about their interest in the trust fund, <p>and provided that the trustee:</p> <ul style="list-style-type: none"> • does not receive additional remuneration for advising on investments; and • is not required to be regulated under the <i>IDD</i> (which should not be the case either because the trustee does not provide mediation services to his co-trustees or because the trustee is not remunerated specifically for giving advice) (see Q23(5) and Q30). <p>Service providers would be advising on investments if they provide advice to the trustees on the merits of the trust making particular investments (see Q39 and Q40).</p> <p>Article 67 of the <i>Regulated Activities Order</i> provides an exclusion for persons whose profession or business does not otherwise consist of regulated activities and who are advising on investments as a necessary part of their profession or business without being separately remunerated for doing so. This exclusion does not apply, in broad terms, where a person is carrying on <i>insurance distribution</i> or <i>reinsurance distribution</i>. Service providers may be able to make limited use of this exclusion - for instance, where providing actuarial advice to the trustees of an occupational pension scheme (see Q34).</p>