

---

S T A T U T O R Y I N S T R U M E N T S

---

**2000 No.**

**INCOME TAX**

**The Personal Pension Schemes (Restriction on Discretion to Approve) (Permitted Investments) Regulations 2000**

<i>Made</i>	-	-	-	-	2000
<i>Laid before the House of Commons</i>					2000
<i>Coming into force</i>					2000

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by section 638A of the Income and Corporation Taxes Act 1988<sup>(a)</sup>, hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Personal Pension Schemes (Restriction on Discretion to Approve) (Permitted Investments) Regulations 2000 and shall come into force on 2000.

**Interpretation**

2. (1) In these Regulations unless the context otherwise requires –

“approved pension arrangement” means a pension scheme –

(a) which is an “approved pension arrangement” as defined in section 660A(11)<sup>1</sup>, and

(b) under which all the benefits that may be provided are money purchase benefits;

“authorised person” shall be construed in accordance with Chapter III of Part I of the Financial Services Act 1986<sup>2</sup>;

---

<sup>(a)</sup> 1988 c.1; section 638A was inserted by section 94 of the Finance Act 1998 (c.36).

<sup>1</sup> Section 660A was inserted by paragraph 1 of Schedule 17 to the Finance Act 1995 (c.4) and subsections (11) and (12) of that section were added by paragraph 26(4) of Schedule 13 to the Finance Act 2000 (c.17).

“authorised unit trust scheme” means a unit trust scheme in the case of which an order under section 78 of the Financial Services Act 1986 is in force;

“the Board” means the Commissioners of Inland Revenue;

“deposit-taker” has the meaning given by section 481(2)<sup>3</sup>;

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2<sup>nd</sup> May 1992<sup>4</sup>, as adjusted by the Protocol signed at Brussels on 17<sup>th</sup> March 1993<sup>5</sup>;

“EEA State” means a State, other than the United Kingdom, which is a Contracting Party to the EEA Agreement;

“employee” includes the holder of an office;

“employer” in relation to a scheme –

(a) means an employer who, by virtue of the governing instrument, is entitled to pay contributions to the scheme; and

(b) includes a person under whom an office is held;

“exempted person” shall be construed in accordance with Chapter IV of Part I of the Financial Services Act 1986;

“governing instrument” in relation to a scheme means a trust deed, or other document by which the scheme is established, and any other document which contains provisions by which the administration of the scheme is governed;

“insurance company” has the meaning given by section 431(2)<sup>6</sup>;

“investment company” has the meaning given by section 266 of the Companies Act 1985<sup>7</sup>;

“member” has the meaning given by section 630(1);

“open-ended investment company” except in relation to the phrase “qualifying EEA open-ended investment company” –

---

<sup>2</sup> 1986 c.60.

<sup>3</sup> Section 481(2) was amended by paragraph 8(3) of Schedule 5 and Part IV of Schedule 19 to the Finance Act 1990 (c.29).

<sup>4</sup> O.J. No. L1, 3.1.94, p.3.

<sup>5</sup> O.J. No. L1, 3.1.94, p.572.

<sup>6</sup> The definition of insurance company in section 431(2) was substituted by section 52(1) of the Finance Act 1995.

<sup>7</sup> 1985 c.6; section 266 was amended by section 117(3) of the Finance Act 1988 (c.39).

(a) has the meaning given by section 468(10)<sup>8</sup>; and

(b) also includes a UCITS situated in a member state other than the United Kingdom which has been authorised by the competent authorities of that member state and is a recognised scheme;

“personal pension scheme” has the meaning given by section 630(1)<sup>9</sup>, and “scheme” shall be construed accordingly;

“pooled fund” in relation to a personal pension scheme means a fund -

(a) which is open to the public and is described in the documents relating to the scheme as being a fund open to all members;

(b) in relation to the management of which the scheme administrator is not required to consult with any member of the scheme except to the extent that an investment offers choices that are available to any person (whether or not a member of the scheme), and

(c) the value of which is applied to all members and not segregated among certain members or linked to certain members by reason of particular assets comprised in the fund;

“qualifying EEA investment company” means an investment company –

(a) which is formed under the law of an EEA State,

(b) which may lawfully offer its shares to the public in an EEA State, and

(c) in relation to which, on the basis of its last published annual accounts, the ratio between the company’s loan capital and the value of its ordinary shares is 50 per cent. or less;

“qualifying EEA open-ended investment company” means an open-ended investment company within the meaning given by section 75(8) of the Financial Services Act 1986 which –

(a) is formed under the law of a EEA State,

(b) is not a UCITS, and

(c) may lawfully offer its shares to the public in an EEA State;

---

<sup>8</sup> Subsections (10) to (18) of section 468 were added in relation to open-ended investment companies by regulation 10(4) of S.I. 1997/1154.

<sup>9</sup> The definition of personal pension scheme in section 630(1) was amended by paragraph 2(2) of Schedule 11 to the Finance Act 1995 (c.4).

“qualifying UK investment company” means an investment company –

(a) which is incorporated in the United Kingdom, and

(b) in relation to which, on the basis of its last published accounts, the ratio between the company’s loan capital and the value of its ordinary shares is 50 per cent. or less;

“recognised futures exchange” has the meaning given by section 288(6) of the Taxation of Chargeable Gains Act 1992<sup>10</sup>;

“recognised investment exchange” has the meaning given by section 36(1) of the Financial Services Act 1986;

“recognised scheme” has the meaning given by section 86, 87 or 88 of the Financial Services Act 1986 (as the case may be);

“recognised stock exchange” has the meaning given by section 841;

“residential property” means property normally used, or adapted for use, as one or more dwellings;

“scheme administrator” means the person referred to in section 638(1);

“self-invested personal pension scheme” has the meaning given by regulation 3;

“the Taxes Act” means the Income and Corporation Taxes Act 1988;

“UCITS” means an undertaking for collective investment in transferable securities within the meaning of Article 1 of Council Directive 85/611<sup>11</sup>;

“unit trust scheme” has the meaning given by section 75(8) of the Financial Services Act 1986.

(2) For the purposes of these Regulations and subject to paragraph (3), any question whether a person is connected with another person shall be determined in accordance with section 839<sup>12</sup>.

(3) A person shall not be regarded as connected with another person for the purposes of these Regulations where the connection arises as a result of a transaction entered into in the course of normal investment management by a scheme in relation to a fund that is a pooled fund.

---

<sup>10</sup> 1992 c.12.

<sup>11</sup> O.J.No. L375, 31.12.1985, p.3-18, amended by Council Directive 88/220 (O.J.No. L100, 19.04.1988, p.31-32).

<sup>12</sup> Section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995.

(4) In these Regulations references to a particular provision, without more, are references to that provision of the Taxes Act.

### **Definition of self-invested personal pension scheme**

**3.** (1) In these Regulations “self-invested personal pension scheme” means a personal pension scheme the arrangements made in accordance with which by a member –

(a) are arrangements under which the member is able to direct the manner in which some or all of the contributions paid to the scheme are to be invested by the scheme administrator, and

(b) are not arrangements falling within paragraph (2).

(2) Arrangements fall within this paragraph if they are either -

(a) arrangements under which -

(i) all the investments held for the purposes of the scheme comprise policies of insurance or units in unit trust schemes, and

(ii) in managing those investments, the scheme administrator does not consult with any member of the scheme except to the extent necessary by virtue of the investment offering choices that are available to any person (whether or not a member of the scheme); or

(b) arrangements under which -

(i) all contributions paid are, after deduction of expenses, invested in deposits with deposit-takers, and

(ii) the payment of interest on those deposits comprises the only income of the scheme from its investments.

### **Restrictions on discretion to approve – general**

**4.** Regulations 5 to 9 impose restrictions on the Board’s discretion to approve personal pension schemes under Chapter IV of Part XIV of the Taxes Act.

### **Restriction on investments - self-invested personal pension schemes**

**5.** (1) No investments may be held directly or indirectly for the purposes of a self-invested personal pension scheme other than the investments listed in Part I of the Schedule to these Regulations.

(2) Subject to paragraph (3), no amount may be borrowed by a self-invested personal pension scheme for any purpose.

- (3) A self-invested personal pension scheme may borrow an amount towards the purchase of a freehold or leasehold interest in commercial property to be held directly or indirectly as an investment for the purposes of the scheme, but the amount borrowed –
- (a) must not exceed 75 per cent. of the purchase price of the property concerned, and
  - (b) must be secured only on that property and not on any other asset of the scheme.

**Restriction on investments – personal pension schemes other than self-invested personal pension schemes**

6. (1) This regulation applies to personal pension schemes other than self-invested personal pension schemes.

(2) None of the assets specified in paragraph (3) may be held directly or indirectly as an investment by a personal pension scheme.

(3) The assets specified in this paragraph are -

- (a) any personal chattels other than choses in action (or, in Scotland, any movable property other than incorporeal movable property);
- (b) any residential property other than that specified in paragraph (4).

(4) The residential property specified in this paragraph is -

- (a) property which is, or is to be, occupied by an employee, whether or not a member of the personal pension scheme or connected with a member of the scheme, who is not connected with his employer and is required as a condition of his employment to occupy the property, and
- (b) property which is, or is to be, occupied by a person who is neither a member of the personal pension scheme nor connected with a member of the scheme in connection with the occupation by that person of business premises held as an investment by the scheme.

(5) For the purposes of paragraphs (2) and (3), a personal pension scheme shall not be regarded as indirectly holding as an investment residential property where the scheme holds as an investment units in a unit trust scheme that holds residential property and-

- (a) is an authorised unit trust scheme or a recognised scheme, or
- (b) is a unit trust scheme where all the unit holders would be wholly exempt from capital gains tax or corporation tax (otherwise than by reason of residence) if they disposed of their units.

(6) For the purposes of paragraphs (2) and (3), a personal pension scheme shall not be regarded as indirectly holding as an investment residential property where –

- (a) the scheme holds as an investment a right which confers entitlement to receive payment of any rentcharge, ground annual, feu duty or other annual payment reserved in respect of, or charged on or issuing out of, that property, and
- (b) the property is not occupied by a member of the scheme or a person connected with him.

### **Restrictions on lending**

7. (1) A self-invested personal pension scheme may not lend money to any person (whether or not that person is an individual who is a member of the scheme).

(2) A personal pension scheme that is not a self-invested personal pension scheme may not lend money to a member of the scheme or a person connected with him.

(3) A personal pension scheme shall be regarded, for the purposes of paragraphs (1) and (2), as lending money to a member of the scheme or a person connected with him in circumstances where -

- (a) the scheme holds as an investment, whether directly or indirectly, assets of a person, and
- (b) that person lends money to the member concerned or a person connected with him.

### **Restrictions on transactions with scheme member and others**

8. (1) Subject to paragraph (2), no interest in an asset may be acquired by a personal pension scheme in circumstances where a member of that scheme, or a person connected with him, has or, at any time in the period of three years prior to the date of the acquisition, had an interest in that asset.

(2) Paragraph (1) does not apply in relation to the transfer of eligible shares in a company in accordance with section 638(9) and (12)<sup>13</sup>.

(3) Subject to paragraph (4), no interest in an asset may directly or indirectly be sold or leased by a personal pension scheme to a member or a person connected with him .

(4) Commercial property an interest in which is acquired by a personal pension scheme otherwise than in the circumstances specified in paragraph (1) may, subject to the condition specified in paragraph (5), be leased by the scheme to a member for the

---

<sup>13</sup> Section 638 was amended by paragraph 13 of Schedule 13 to the Finance Act 2000.

purposes of a business carried on by him, including a business carried on by a member in partnership with another person or persons.

(5) The condition specified in this paragraph is that the lease is granted, and the rent reserved under the lease is payable, on commercial terms determined in accordance with an independent professional valuation.

(6) For the purposes of paragraph (3) a sale by the scheme shall not be regarded as a sale indirectly to a member, or a person connected with him, if the purchase by the member or the person connected with him took place three years or more after the sale by the scheme.

### **Restrictions on investments relating to members of self-invested personal pension schemes**

**9.** (1) A self-invested personal pension scheme may not set up after the pension date of a member of the scheme either –

(a) a borrowing arrangement for that member, or

(b) in the case of a serialised borrowing arrangement in existence at the time of the pension date, a further instalment of the loan for that member.

(2) Paragraph (1) applies notwithstanding that the purpose of the borrowing arrangement or, as the case may be, the further instalment of the loan would be to purchase or take on lease particular investments in accordance with the member's direction.

(3) No commercial property may be acquired by a self-invested personal pension scheme in respect of a member of the scheme after the member's pension date or his attaining the age of 65, whichever is the later.

(4) In paragraphs (1) and (2) "pension date" has the meaning given by section 630(1)<sup>14</sup>.

2000

Two of the Commissioners of Inland Revenue

SCHEDULE

Regulation 5

PART I

---

<sup>14</sup> The definition of "pension date" in section 630(1) was inserted by paragraph 2(2) of Schedule 11 to the Finance Act 1995.

LIST OF INVESTMENTS THAT MAY BE HELD DIRECTLY OR  
INDIRECTLY FOR THE PURPOSES OF A SELF-INVESTED PERSONAL  
PENSION SCHEME

Stocks and shares traded on any recognised stock exchange

Futures and options, relating to stocks and shares, traded on any recognised  
futures exchange

Units in –

- (a) an authorised unit trust scheme,
- (b) a unit trust scheme that is a recognised scheme, or
- (c) a unit trust scheme which is an unauthorised unit trust within the  
meaning of paragraph 2(4) of Schedule 10 to the Finance Act  
1996<sup>15</sup> and whose gains are not chargeable gains by virtue of  
section 100(2) of the Taxation of Chargeable Gains Act 1992

Shares in an open-ended investment company

Policies of insurance linked to insurance company managed funds, unit-linked  
funds or investment funds of an insurance company resident in the United  
Kingdom or authorised in accordance with Article 6 of Council Directive  
79/267 (First Council Directive on Direct Life Assurance)<sup>16</sup>;

Traded endowment policies transacted with a person regulated by the Financial  
Services Authority

Deposits in any currency held in deposit accounts with any deposit-taker

A freehold or leasehold interest in commercial property (including land) where  
the interest is acquired from any person other than a member of the scheme or  
a person connected with him, but excluding property consisting of hotels,  
motels, guest houses or nursing homes

Ground rents, rent charges, ground annuals, feu duties or other annual  
payments reserved in respect of, or charged on or issuing out of, property,  
except where the property concerned is occupied by a member of the scheme  
or a person connected with him

Individual pension accounts within the meaning of Part II of this Schedule.

PART II

---

<sup>15</sup> 1996 c.8.

<sup>16</sup> O.J. 1979, L63/1. Article 6 was substituted by Article 3 of Directive 92/96 (O.J. 1992, L360(1)).

## INDIVIDUAL PENSION ACCOUNTS

1. “Individual pension account” means a scheme of investment (“the scheme”) to which an individual may subscribe as an account holder and which at all times satisfies the conditions specified in paragraphs 2 to 10 below.
2. The funds of the scheme must consist only of monies received from the trustees, managers or administrators of approved pension arrangements, and income and gains arising from those monies when held as funds of the scheme.
3. Any monies so received must consist either of contributions to an approved pension arrangement by a member, or the employer of a member, of that approved pension arrangement, or of amounts transferred to an approved pension arrangement from another approved pension arrangement.
4. The funds and other assets of the scheme must be held –
  - (a) by the trustees, managers or administrators of the approved pension arrangements whose members subscribe to the scheme as account holders, and
  - (b) on behalf of the individual account holders as beneficial owners subject to the scheme arrangement.
5. The funds and other assets of the scheme must be used only to provide benefits for individual account holders under approved personal pension arrangements and subject to the limits and rules of those approved personal pension arrangements.
6. The assets of the scheme, other than cash awaiting investment, must consist of one or more of the following investments –
  - (a) units in an authorised unit trust scheme or in a unit trust scheme that is a recognised scheme;
  - (b) shares in a qualifying EEA open-ended investment company;
  - (c) units in a UCITS formed under the laws of a member state other than the United Kingdom which has been authorised by the competent authorities of that member state and is a recognised scheme;
  - (d) shares in a body corporate which is a qualifying UK investment company;
  - (e) shares in a body corporate which is a qualifying EEA investment company; and
  - (f) investments falling within paragraph 3 of Part I of Schedule I to the Financial Services Act 1986 (Government and public securities).

7. Where monies are received by the scheme that comprise an individual's investment in more than one approved pension arrangement, the amount relating to each approved pension arrangement must be separately identified by the manager of the scheme.

8. The scheme must be managed by a person authorised under Chapter III of Part I of the Financial Services Act 1986.

9. Whenever required to do so by an officer of the Board, the scheme must provide to that officer the following information –

(a) the names of individuals who are members of the scheme,

(b) details of the approved pension arrangements of which those individuals are members,

(c) the amount of the funds, and the description and value of the assets, held on behalf of each member of the scheme,

(d) the amount of income and gains accruing to each member of the scheme from funds and assets held on that individual's behalf,

(e) transfers of funds to another such scheme on behalf of a member.

10. Whenever required to do so by an officer of the Board, the scheme must enable that officer to audit and inspect all aspects of the management and administration of the scheme, including records and systems relating to the management or administration of the scheme.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations impose restrictions on the Board of Inland Revenue's discretion to approve a personal pension scheme by restricting the investments in which the scheme may invest.

Regulation 2 provides for citation and commencement, and regulation 2 for interpretation.

Regulation 3 defines a "self-invested personal pension scheme" for the purposes of these regulations.

Regulation 4 introduces regulations 5 to 9 which impose restrictions on the investments in which a personal pension scheme may invest.

Regulation 5 provides that a self-invested personal pension scheme may only invest in those investments listed in Part I of the Schedule to the Regulations, and stipulates restrictions on a self-invested personal pension scheme's borrowing powers. Part II defines individual pension accounts, one of the investments listed in Part I of the Schedule.

Regulation 6 prohibits personal pension schemes other than self-invested personal pension schemes from investing in personal chattels or residential property.

Regulation 7 prohibits self-invested personal pension schemes from lending to any person, and personal pension schemes that are not self-invested personal pension schemes from lending to members of the scheme or persons connected with members.

Regulation 8 prohibits personal pension schemes from purchasing, selling or leasing assets from or to members of the scheme or persons connected with members (subject to an exception relating to commercial property).

Regulation 9 prohibits self-invested personal pension schemes from setting up borrowing arrangements for a member, or issuing further instalments of an existing serialised loan, after an annuity first becomes payable to the member under the scheme or the member elects to defer the purchase of an annuity ("the member's pension date"). The regulation also prohibits such schemes from acquiring commercial property for a member after the member's pension date or he attains 65, whichever is the later.