Core Unit 2 – Regulation of Retirement Provision

Assignment 2 Notes

*(Part 2 – Trust Law, The Role of Trustees and Establishing a Trust-Based Pension Scheme)*

*Recommended Time: 1 Hour*

# Outline the distinctions between a trust and a contract.

**5 marks**

Answer should cover:

* a contract is enforceable only if it is made by deed or if it is supported by consideration (i.e., something is given in return for it), whereas a beneficiary under a trust can enforce the trust even though he has given no consideration;
* as long as the Contracts (Rights of Third Parties) Act 1999 is excluded, only the parties to a contract can enforce it, whereas a trust can be enforced only by the beneficiaries (who will not be a party to the trust instrument) unless the settlor specifically reserves the right to enforce the trust when it is created;
* a trust cannot be terminated because of a major breach of trust, whereas a major breach of contract may lead to the termination of the contract; and
* most trusts, unlike contracts, exist for a long period of time. Consequently, a trust will usually be capable of variation. In addition, the Courts have the power to vary the provisions of a trust instrument and to advise the trustees on the proper scope of their powers.

(Relevant section of the manual is Part 2 Chapter 1.9)

# Name 5 trustee policies that must be included in a Statement of Investment Principles.

**5 marks**

Answer should include 5 of the following:

* securing compliance with the requirements of section 36 of the Pensions Act 1995
* the kinds of investments to be held by the scheme (i.e., equities, gilts, cash, property, etc.);
* the proportions in which the scheme’s assets are to be invested in different types of investments;
* risk (including the ways in which risks are to be measured and managed);
* expected returns on investments;
* the realization of investments (i.e., how easily they can be turned into cash);
* the extent (if at all) to which social, environmental or ethical considerations are to be taken into account in the selection, retention and realisation of investments;
* the exercise of the rights (including voting rights) attaching to the investments.

(Relevant section of the manual is Part 2 Chapter 2.11.4)

# Outline the various mechanisms that may be used to appoint pension scheme Trustees.

**10 marks**

Answer should cover:

* Trust deed: principal employer appoints the first trustees in the trust deed. Trust deed also sets out how additional or replacement trustees are appointed;
* TPR: has the power to appoint trustees under section 7 of the Pensions Act 1995;
* Trustee Act 1925: gives existing trustees the power to appoint a new trustee in certain circumstances, where the trust deed does not deal with the appointment of new trustees;
* The Court: may appoint a trustee in the absence of any other person(s) having the power to do so;
* Articles of Association: individuals appointed to act as directors of a Corporate Trustee must be appointed in accordance with the company's Articles of Association.

(Relevant section of the manual is Part 2 Chapter 2.2)

# Outline the provisions of the power of amendment in the Definitive Trust Deed and the two mechanisms by which amendments can be made.

**10 marks**

Answer should cover:

* The power of amendment in the Definitive Trust Deed will state:
	+ who has the power to amend the trust deed (e.g., the employer alone, the trustees alone or, more commonly, the employer with the consent of the trustees or the trustees with the consent of the employer);
	+ how an amendment can be made (e.g., by resolution of the trustees or the board of directors of the employer or by deed); it may also give the trustees the power to operate the scheme on the basis of announcements made to members until such time as they are incorporated into the scheme’s trust deed by formal amendment;
	+ whether a requirement exists to consult with or take professional advice from a third party (e.g., the scheme actuary) before exercising the power;
	+ the extent to which the amendments may have retrospective effect.
* Deeds/Resolutions:
	+ Majority of schemes require amendments to be made by deed;
	+ Advantage of amending by deed;
	+ Resolutions – power of amendments will state if resolution is to be made by employer or trustee;
	+ If employer, board of directors will usually make the resolution;
	+ More usual for trustee to make the resolution, generally with employer consent.

 (Relevant section of the manual is Part 2 Chapter 3.5.9.)

# Outline the information which must be included in the Trustees' Annual Report and Accounts.

**10 marks**

Answer should cover:

* the names of trustees during the year;
* details of how the trustees are appointed and removed;
* the persons/organizations appointed by the trustees to advise them, including any changes since the previous report
* the number of members in each category (active, deferred and pensioner);
* any changes to the scheme during the year;
* details of increases in pensions and deferred benefits;
* a statement about the calculation basis used for transfer values paid;
* a copy of the audited accounts including the auditors’ report;
* a copy of the latest actuarial statement (often sent with an actuarial valuation report);
* an investment report;
* the Chair’s statement, if applicable;
* an address (postal and electronic) for enquiries.

(Relevant section of the manual is Part 2 Chapter 2.8.4)

# List 5 statutory duties with which trustees must comply.

**5 marks**

Answer should cover:

* Duty of care;
* Payment of tax;
* Disclosure;
* Notifiable events;
* One other statutory duty listed under “*Other Statutory Duties*”

(Relevant section of the manual is Part 2 Chapter 2.7.2)

# Briefly outline the way in which most pension schemes pay lump sum death benefits and how the Expression of Wish form can aid trustee decisions.

**5 marks**

Answer should cover:

* Lump sum death benefits payable under discretionary trust;
* Generally avoids inheritance tax liability;
* Trustees have discretion over the recipient(s) of the benefits;
* Member can name their preferred recipients by completing an Expression of Wish form which helps the trustees with their discretionary decision;
* Trustees will take full account of the member’s wishes but is not bound by them and may use their power to pay benefits to others after investigating the member’s personal circumstances;

(Relevant section of the manual is Part 2 Chapter 3.4.6)