
STATUTORY INSTRUMENTS

2005 No. 255

The Pensions (Northern Ireland) Order 2005

PART VI

**OCCUPATIONAL AND PERSONAL PENSION
SCHEMES: MISCELLANEOUS PROVISIONS**

Payment of surplus to employer

Payment of surplus to employer

227. For Article 37 of the 1995 Order (payment of surplus to employer) substitute—

“Payment of surplus to employer

37.—(1) This Article applies to a trust scheme if—

- (a) apart from this Article power is conferred on the employer or any other person to make payments to the employer out of funds held for the purposes of the scheme, and
- (b) the scheme is not being wound up.

(2) Where the power referred to in paragraph (1)(a) is conferred by the scheme on a person other than the trustees—

- (a) it cannot be exercised by that person but may instead be exercised by the trustees, and
- (b) any restriction imposed by the scheme on the exercise of the power shall, so far as capable of doing so, apply to its exercise by the trustees.

(3) The power referred to in paragraph (1)(a) may only be exercised if—

- (a) the trustees have obtained a written valuation of the scheme's assets and liabilities prepared and signed by a prescribed person,
- (b) there is a certificate in force—
 - (i) stating that in the opinion of that person the prescribed requirements are met as at the date by reference to which the assets are valued and the liabilities are calculated, and
 - (ii) specifying what in the opinion of that person is the maximum amount of payment that may be made to the employer,
- (c) the payment does not exceed the maximum amount specified in the certificate,
- (d) the trustees are satisfied that it is in the interests of the members that the power is exercised in the manner proposed,

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Changes to legislation: The Pensions (Northern Ireland) Order 2005, Cross Heading: Payment of surplus to employer is up to date with all changes known to be in force on or before 14 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (e) where the power is conferred by the scheme on the employer, the employer has asked for the power to be exercised, or consented to its being exercised, in the manner proposed,
 - (f) there is no freezing order in force in relation to the scheme under Article 19 of the Pensions (Northern Ireland) Order 2005, and
 - (g) notice of the proposal to exercise the power has been given, in accordance with prescribed requirements, to the members of the scheme.
- (4) Provision may be made by regulations as to—
- (a) the requirements (which may be alternative requirements) that must be met, in relation to any proposed payment to the employer out of funds held for the purposes of a scheme, with respect to the value of the scheme's assets and the amount of its liabilities,
 - (b) the assets and liabilities to be taken into account for that purpose and the manner in which their value or amount is to be determined, calculated and verified,
 - (c) the maximum amount of the payment that may be made to the employer, having regard to the value of the scheme's assets and the amount of its liabilities,
 - (d) the giving of a certificate as to the matters mentioned in sub-paragraphs (a) and (c), and
 - (e) the period for which such a certificate is to be in force.
- (5) The trustees must also comply with any other prescribed requirements in connection with the making of a payment under this Article.
- (6) If the trustees—
- (a) purport to exercise the power referred to in paragraph (1)(a) without complying with the requirements of this Article, or
 - (b) fail to comply with any requirement of regulations under paragraph (5),
- Article 10 applies to any of them who has failed to take all reasonable steps to secure compliance.
- (7) If a person other than the trustees purports to exercise the power referred to in paragraph (1)(a), Article 10 applies to him.
- (8) Regulations may provide that in prescribed circumstances this Article does not apply, or applies with prescribed modifications, to schemes of a prescribed description.”

Commencement Information

- II** [Art. 227](#) wholly in operation at 6.4.2006; [art. 227](#) not in operation at date of making see [art. 1\(2\)](#); [art. 227](#) in operation for certain purposes at 9.3.2006 and wholly in operation at 6.4.2006 by [S.R. 2006/95](#), [art. 2\(a\)](#), [Sch. Pt. 1](#)

Payment of surplus to employer: transitional power to amend scheme

228.—(1) This Article applies to a scheme

[^{F1}(a) which is one to which Article 37 of the 1995 Order applies, and

(b) which immediately before the coming into operation of Article 227 was one to which Article 37 of the 1995 Order applied (see paragraph (1) of that Article, as it then had effect).

(2) No payment to the employer may be made out of funds held for the purposes of the scheme except by virtue of a resolution of the trustees under this Article.

This applies even if the payment is one proposed to be made in fulfilment of an agreement or arrangement entered into before the coming into operation of this Article.

[^{F2}(2A) But paragraph (2) does not apply in the case of any of the payments listed in paragraphs (c) to (f) of section 175 of the Finance Act 2004 (authorised employer payments other than public service scheme payments or authorised surplus payments).]

(3) Where the scheme was so expressed as (apart from the said Article 37, as it [^{F3}applied immediately before the coming into operation of Article 227]) to confer power to make payments to the employer out of funds held for the purposes of the scheme otherwise than in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Income and Corporation Taxes Act 1988 (c. 1), the trustees may resolve that the power—

- (a) shall become exercisable according to its terms, or
- (b) shall become so exercisable, but only in such circumstances and subject to such conditions as may be specified in the resolution.

(4) Where the scheme was so expressed as to confer power to make payments to the employer out of funds held for the purposes of the scheme only in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Income and Corporation Taxes Act 1988 (c. 1), the trustees may resolve that the power shall instead be exercisable in such circumstances and subject to such conditions as may be specified in the resolution.

(5) In either case the trustees must be satisfied that it is in the interests of the members of the scheme that the power is exercised in the manner proposed.

(6) The power conferred by paragraph (3) or (4)—

- (a) may not be exercised unless notice of the proposal to exercise it has been given, in accordance with prescribed requirements, to the employer and to the members of the scheme,

[^{F4}(aa) may be exercised even if the payments to which it relates are, to any extent, payments to which paragraph (2) does not apply,]

- (b) may [^{F5}be exercised, after the coming into operation of section 23 of the Pensions Act (Northern Ireland) 2012, only once (whether or not also exercised before 6 April 2011)], and

(c) ceases to be exercisable [^{F6}on 6 April 2016].

[^{F7}(6A) A resolution passed under this Article after the coming into operation of section 23 of the Pensions Act (Northern Ireland) 2012 may amend or revoke a resolution passed under this Article before 6 April 2011.]

(7) The exercise of any power to make payments to the employer by virtue of a resolution under this Article is subject to Article 37 of the 1995 Order as substituted by Article 227.

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| F1 | Art. 228(1)(a)(b) inserted (2.6.2012) by Pensions Act (Northern Ireland) 2012 (c. 3), ss. 23(2) , 34(2) (with s. 23(7)) |
| F2 | Art. 228(2A) inserted (2.6.2012) by Pensions Act (Northern Ireland) 2012 (c. 3), ss. 23(3) , 34(2) (with s. 23(7)) |
| F3 | Words in art. 228(3) substituted (2.6.2012) by Pensions Act (Northern Ireland) 2012 (c. 3), ss. 23(4) , 34(2) (with s. 23(7)) |
| F4 | Art. 228(6)(aa) inserted (2.6.2012) by Pensions Act (Northern Ireland) 2012 (c. 3), ss. 23(5)(a) , 34(2) (with s. 23(7)) |
| F5 | Words in art. 228(6)(b) substituted (2.6.2012) by Pensions Act (Northern Ireland) 2012 (c. 3), ss. 23(5)(b) , 34(2) (with s. 23(7)) |
| F6 | Words in art. 228(6)(c) substituted (2.6.2012) by Pensions Act (Northern Ireland) 2012 (c. 3), ss. 23(5)(c) , 34(2) (with s. 23(7)) |

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F7 Art. 228(6A) inserted (2.6.2012) by Pensions Act (Northern Ireland) 2012 (c. 3), **ss. 23(6), 34(2)** (with s. 23(7))

Commencement Information

I2 Art. 228 wholly in operation at 6.4.2006; art. 228 not in operation at date of making see art. 1(2); art. 228 in operation for certain purposes at 9.3.2006 and wholly in operation at 6.4.2006 by S.R. 2006/95, **art. 2(a)**, Sch. Pt. 1

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