
Status: Point in time view as at 01/09/2021. This version of this schedule contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)

SCHEDULES

SCHEDULE 8 **N.I.**

Section 117

THE PENSIONS REGULATOR: NORTHERN IRELAND

PART 1 **N.I.**

AMENDMENTS OF THE PENSIONS (NORTHERN IRELAND) ORDER 2005

Introductory

- 1 The Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) is amended as follows.

Commencement Information

- II** Sch. 8 para. 1 in force at 1.9.2021 for specified purposes by S.R. 2021/240, art. 2(1)(a)

Grounds for issuing an Article 34 contribution notice

- 2 (1) In Article 34 (contribution notices where avoidance of employer debt)—
- (a) in paragraph (5)(a)—
 - (i) after “test” insert “, the employer insolvency test or the employer resources test”;
 - (ii) for “Article 34A)” substitute “ Articles 34A, 34C and 34E) ”;
 - (b) in paragraph (12)(c), after “test” insert “, the employer insolvency test or the employer resources test ”.
- (2) After Article 34B insert—

“Article 34 contribution notice: meaning of “employer insolvency test”

- 34C (1) For the purposes of Article 34 the employer insolvency test is met in relation to an act or failure to act if the Regulator is of the opinion that—
- (a) immediately after the relevant time, the value of the assets of the scheme was less than the amount of the liabilities of the scheme, and
 - (b) if a debt under Article 75(4) of the 1995 Order (deficiencies in scheme assets: employer insolvency etc) had fallen due from the employer to the scheme immediately after the relevant time, the act or failure would have materially reduced the amount of the debt likely to be recovered by the scheme.
- (2) For the purposes of paragraph (1)—

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- (a) the value of the assets of the scheme immediately after the relevant time is the value which the Regulator estimates to be their value,
 - (b) the amount of the liabilities of the scheme immediately after the relevant time is the amount which the Regulator estimates to be the amount of those liabilities, and
 - (c) the amount of the debt is the amount which the Regulator estimates to be the amount of the debt under Article 75(4) of the 1995 Order that would have fallen due immediately after the relevant time.
- (3) When estimating the value and the amounts referred to in paragraph (2), the Regulator must take into account how assets and liabilities, and their value or amount, are determined and calculated for the purposes of Article 75(4) of the 1995 Order.
- (4) When estimating—
- (a) the value of the assets of the scheme immediately after the relevant time, and
 - (b) the amount of the debt under Article 75(4) of the 1995 Order falling due immediately after the relevant time,
- the Regulator must disregard the amount of any debt due immediately after the relevant time from the employer under Article 75 of the 1995 Order.
- (5) In this Article “the relevant time” means—
- (a) in the case of an act, the time of the act, or
 - (b) in the case of a failure to act—
 - (i) the time when the failure occurred, or
 - (ii) where the failure continued for a period of time, the time which the Regulator determines and which falls within that period;
- and, in the case of acts or failures to act forming part of a series, any reference in this paragraph to an act or failure to act is a reference to the last of the acts or failures in that series.

*Article 34 contribution notice issued by
 reference to employer insolvency test: defence*

- 34D(1) This Article applies where—
- (a) a warning notice is given to any person (“P”) in respect of a contribution notice under Article 34, and
 - (b) the contribution notice under consideration would be issued wholly or partly by reference to the Regulator's opinion that the employer insolvency test is met in relation to an act or deliberate failure to act to which P was a party.
- (2) If the Regulator is satisfied that P has shown that—
- (a) conditions A and C are met, and
 - (b) where applicable, condition B is met,
- the Regulator must not issue the contribution notice by reference to its being of the opinion mentioned in paragraph (1)(b).

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- (3) If the Regulator is satisfied that P or another person has shown that condition D is met, the Regulator must not issue the contribution notice by reference to its being of the opinion mentioned in paragraph (1)(b).
- (4) Condition A is that, before becoming a party to the act or failure, P gave due consideration to the extent to which, if a debt under Article 75(4) of the 1995 Order were to fall due from the employer to the scheme—
 - (a) immediately after the act or failure, or
 - (b) where the failure might continue for a period of time, at any time within that period,the act or failure might materially reduce the amount of the debt likely to be recovered by the scheme.
- (5) Condition B is that, in any case where as a result of that consideration P considered that the act or failure might have such an effect, P took all reasonable steps to eliminate or minimise the potential for the act or failure to have such an effect.
- (6) Condition C is that, having regard to all relevant circumstances prevailing at the time of the act or at the time when the failure to act first occurred, it was reasonable for P to conclude that, if a debt under Article 75(4) of the 1995 Order were to fall due from the employer to the scheme—
 - (a) immediately after the act or failure, or
 - (b) where the failure might continue for a period of time, at any time within that period,the act or failure would not materially reduce the amount of the debt likely to be recovered by the scheme.
- (7) Condition D is that, immediately after the relevant time, the value of the assets of the scheme equalled or was more than the amount at that time of the liabilities of the scheme.
- (8) P is to be regarded as giving the consideration mentioned in condition A only if P has made the enquiries, and done the other acts, that a reasonably diligent person would have made or done in the circumstances.
- (9) For the purposes of condition C the reference to the circumstances mentioned in that condition is a reference to those circumstances of which P was aware, or ought reasonably to have been aware, at the time of the act or the time when the failure to act first occurred (including acts or failures to act which have occurred before that time and P's expectation at that time of other acts or failures to act occurring).
- (10) For the purposes of conditions A, C and D the amount of any debt due at the time in question from the employer under Article 75 of the 1995 Order is to be disregarded.
- (11) In the case of acts or failures to act forming part of a series, P is to be regarded as having shown the matters mentioned in paragraph (2) if P shows in the case of each of the acts or failures in the series that—
 - (a) conditions A and C are met, and (where applicable) condition B is met, in relation to the act or failure, or

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- (b) the act or failure was one of a number of acts or failures (a “group” of acts or failures) selected by P in relation to which the following matters are shown.
- (12) The matters to be shown are that—
- (a) before becoming a party to the first of the acts or failures in the group, condition A is met in relation to the effect of the acts or failures in the group taken together,
 - (b) condition B is (where applicable) met in relation to that effect, and
 - (c) condition C is then met in relation to each of the acts or failures in the group (determined at the time at which each act or failure concerned occurred or first occurred).
- (13) If at any time P considers that condition C will not be met in relation to any particular act or failure in the group—
- (a) the previous acts or failures in the group are to be regarded as a separate group for the purposes of paragraph (11), and
 - (b) P may then select another group consisting of the particular act or failure concerned, and any subsequent act or failure, in relation to which P shows the matters mentioned in paragraph (12).
- Nothing in sub-paragraph (b) is to be read as preventing P from showing the matters mentioned in paragraph (11)(a).
- (14) If—
- (a) P is unable to show in the case of each of the acts or failures in the series that the matters set out in paragraph (11)(a) or (b) are met, but
 - (b) does show in the case of some of them that those matters are met,
- the acts or failures within sub-paragraph (b) are not to count for the purposes of Article 34C as acts or failures to act in the series.
- (15) In this Article—
- (a) “the relevant time” has the meaning given by Article 34C;
 - (b) “a warning notice” means a notice given as mentioned in Article 91(2)(a);
 - (c) a reference to a party to an act or failure to act includes a reference to a person who knowingly assists in the act or failure.”
- (3) After Article 34D (inserted by sub-paragraph (2)) insert—

Article 34 contribution notice: meaning of “employer resources test”

- “34E(1) For the purposes of Article 34 the employer resources test is met in relation to an act or failure to act if the Regulator is of the opinion that—
- (a) the act or failure reduced the value of the resources of the employer, and
 - (b) that reduction was a material reduction relative to the estimated Article 75 debt in relation to the scheme.
- (2) For the purposes of this Article—
- (a) what constitutes the resources of the employer is to be determined in accordance with regulations;

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- (b) the value of the resources of the employer is to be determined, calculated and verified in a prescribed manner.
- (3) In this Article the “estimated Article 75 debt” means the amount which the Regulator estimates to be the amount of the debt which would become due from the employer to the trustees or managers of the scheme under Article 75 of the 1995 Order (deficiencies in the scheme assets) if—
- (a) Article 75(2) applied, and
 - (b) the time designated by the trustees or managers of the scheme for the purposes of Article 75(2) were the relevant time.
- (4) When calculating the estimated Article 75 debt under paragraph (3), the amount of any debt due at the relevant time from the employer under Article 75 of the 1995 Order is to be disregarded.
- (5) In this Article “the relevant time” means—
- (a) in a case where the act or failure to act forms part of a series of acts or failures to act, the time immediately before the first of the acts occurred or the first of the failures to act first occurred;
 - (b) in any other case, the time immediately before the act occurred or the failure to act first occurred.

Article 34 contribution notice issued by reference to employer resources test: defence

- 34F (1) This Article applies where—
- (a) a warning notice is given to any person (“P”) in respect of a contribution notice under Article 34, and
 - (b) the contribution notice under consideration would be issued wholly or partly by reference to the Regulator's opinion that the employer resources test is met in relation to an act or deliberate failure to act to which P was a party.
- (2) If the Regulator is satisfied that P has shown that—
- (a) conditions A and C are met, and
 - (b) where applicable, condition B is met,
- the Regulator must not issue the contribution notice by reference to its being of the opinion mentioned in paragraph (1)(b).
- (3) Condition A is that, before becoming a party to the act or failure, P gave due consideration to the extent to which the act or failure might reduce the value of the resources of the employer relative to the estimated Article 75 debt in relation to the scheme.
- (4) Condition B is that, in any case where as a result of that consideration P considered that the act or failure might have such an effect, P took all reasonable steps to eliminate or minimise the potential for the act or failure to have such an effect.
- (5) Condition C is that, having regard to all relevant circumstances prevailing at the time of the act or at the time when the failure to act first occurred, it was reasonable for P to conclude that the act or failure would not bring about a reduction in the value of the resources of the employer that would

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be a material reduction relative to the estimated Article 75 debt in relation to the scheme.

- (6) P is to be regarded as giving the consideration mentioned in condition A only if P has made the enquiries, and done the other acts, that a reasonably diligent person would have made or done in the circumstances.
- (7) For the purposes of condition C the reference to the circumstances mentioned in that condition is a reference to those circumstances of which P was aware, or ought reasonably to have been aware, at the time of the act or the time when the failure to act first occurred (including acts or failures to act which have occurred before that time and P's expectation at that time of other acts or failures to act occurring).
- (8) For the purposes of conditions A and C—
- (a) the “estimated Article 75 debt” means the amount which is a reasonable estimate of the amount of the debt which would become due from the employer to the trustees or managers of the scheme under Article 75 of the 1995 Order (deficiencies in the scheme assets) if—
 - (i) Article 75(2) applied, and
 - (ii) the time designated by the trustees or managers of the scheme for the purposes of Article 75(2) were the time immediately before the act occurred or the failure to act first occurred;
 - (b) the amount of any debt due at the time in question from the employer under Article 75 of the 1995 Order is to be disregarded.
- (9) In the case of acts or failures to act forming part of a series, P is to be regarded as having shown the matters mentioned in paragraph (2) if P shows in the case of each of the acts or failures in the series that—
- (a) conditions A and C are met, and (where applicable) condition B is met, in relation to the act or failure, or
 - (b) the act or failure was one of a number of acts or failures (a “group” of acts or failures) selected by P in relation to which the following matters are shown.
- (10) The matters to be shown are that—
- (a) before becoming a party to the first of the acts or failures in the group, condition A is met in relation to the effect of the acts or failures in the group taken together,
 - (b) condition B is (where applicable) met in relation to that effect, and
 - (c) condition C is then met in relation to each of the acts or failures in the group (determined at the time at which each act or failure concerned occurred or first occurred).
- (11) If at any time P considers that condition C will not be met in relation to any particular act or failure in the group—
- (a) the previous acts or failures in the group are to be regarded as a separate group for the purposes of paragraph (9), and
 - (b) P may then select another group consisting of the particular act or failure concerned, and any subsequent act or failure, in relation to which P shows the matters mentioned in paragraph (10).

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Nothing in sub-paragraph (b) is to be read as preventing P from showing the matters mentioned in paragraph (9)(a).

(12) If—

- (a) P is unable to show in the case of each of the acts or failures in the series that the matters set out in paragraph (9)(a) or (b) are met, but
- (b) does show in the case of some of them that those matters are met, the acts or failures within sub-paragraph (b) are not to count for the purposes of Article 34E as acts or failures to act in the series.

(13) In this Article—

- (a) Article 34E(2) (the resources of the employer and their value) has effect for the purpose of this Article as it has effect for the purposes of Article 34E;
- (b) “a warning notice” means a notice given as mentioned in Article 91(2)(a);
- (c) a reference to a party to an act or failure to act includes a reference to a person who knowingly assists in the act or failure.”

Commencement Information

I2 Sch. 8 para. 2(3) in force at 1.9.2021 for specified purposes by S.R. 2021/240, art. 2(1)(c)

VALID FROM 01/10/2021

Reasonableness of issuing contribution notice

- 3
- (1) Article 34 (contribution notices where avoidance of employer debt) is amended as follows.
 - (2) In paragraph (7) (matters that may be relevant to imposing liability), after sub-paragraph (d) insert—
 - “(da) if the act or failure to act was a notifiable event for the purposes of Article 64A (duty to give notices and statements to the Regulator in respect of certain events), any failure by the person to comply with any obligation imposed on the person by Article 64A.”
 - (3) In paragraph (7), after sub-paragraph (eb) insert—
 - “(ec) the effect of the act or failure to act on the value of the assets or liabilities of the scheme or any relevant transferee scheme.”
 - (4) After paragraph (7A) insert—
 - “(7B) In paragraph (7)(ec) “relevant transferee scheme” and the reference to the assets or liabilities of any relevant transferee scheme have the same meaning as in Article 34A.”

Commencement Information

I3 Sch. 8 para. 3(1) in force at 1.10.2021 for specified purposes by S.R. 2021/271, art. 2(3)(a) (with art. 3(1)(2))

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14 Sch. 8 para. 3(3)(4) in force at 1.10.2021 by S.R. 2021/271, **art. 2(3)(a)** (with art. 3(1)(2))

VALID FROM 01/10/2021

Determination of sum specified in a contribution notice

- 4 (1) Article 35 (the sum specified in an Article 34 contribution notice) is amended as follows.
- (2) For paragraph (4) substitute—
- “(4) For the purposes of this Article “the relevant time” means the end of the scheme year which ended most recently before the day on which the Regulator gives a determination notice under Article 91(2)(d) in respect of an intended contribution notice under Article 34.”
- (3) Omit paragraph (4A).

Commencement Information

15 Sch. 8 para. 4 in force at 1.10.2021 by S.R. 2021/271, **art. 2(3)(b)** (with art. 3(1)(2))

VALID FROM 01/10/2021

Sanctions for failure to comply with a contribution notice

- 5 (1) In Article 36 (content and effect of an Article 34 contribution notice)—
- (a) after paragraph (2) insert—
- “(2A) Without prejudice to paragraphs (3) and (7), the contribution notice must also specify a date for the purposes of Articles 38A(2) and 38B(2) (sanctions for failure to comply with a contribution notice).”;
- (b) in paragraph (9), after sub-paragraph (b) (and before the “and”) insert—
- “(ba) specifies the same date for the purposes of Articles 38A(2) and 38B(2) as is specified in P’s contribution notice.”.
- (2) In Article 37 (Article 34 contribution notice: relationship with employer debt)—
- (a) after paragraph (8) insert—
- “(8A) An application under paragraph (7) may not be made after—
- (a) the date specified under Article 36(2A) for the purposes of Articles 38A(2) and 38B(2) (sanctions for failure to comply with a contribution notice), or
- (b) if a different date has effect instead of that date (see paragraphs (10A) and (11B)), that different date.”;
- (b) after paragraph (10) insert—

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- “(10A) Where an application under paragraph (7) is made to the Regulator, the Regulator may, if it is of the opinion that it is appropriate to do so—
- (a) change the date that has effect for the purposes of Articles 38A(2) and 38B(2) (whether specified in the contribution notice or an earlier revised contribution notice), and
 - (b) specify the revised date in the revised contribution notice issued under paragraph (9)(b) or, if the Regulator does not issue a revised contribution notice under paragraph (9)(b), issue a revised contribution notice specifying the revised date.”;
- (c) after paragraph (11) insert—

“(11A) Paragraph (11B) applies where—

- (a) P's contribution notice specifies that P is jointly and severally liable for the debt with other persons, and
- (b) the Regulator issues a revised contribution notice to P under paragraph (9)(b) or (10A)(b) specifying a revised date for the purposes of Articles 38A(2) and 38B(2).

(11B) Where this paragraph applies, the Regulator must—

- (a) change the date that has effect for the purposes of Articles 38A(2) and 38B(2) in the case of the contribution notices or revised contribution notices issued in respect of the debt to those other persons, and
- (b) specify the revised date in the revised contribution notices issued to those other persons under paragraph (11) or, if the Regulator does not issue revised contribution notices under paragraph (11), issue revised contribution notices to those other persons specifying the revised date.”

(3) After Article 38 insert—

“Offence of failing to comply with an Article 34 contribution notice

38A(1) This Article applies where a contribution notice is issued to a person under Article 34.

- (2) If the person, without reasonable excuse, fails to pay the debt due by virtue of the contribution notice to—
- (a) the trustees or managers of the scheme, or
 - (b) the Board (as the case may be),

before the date specified in the contribution notice for the purposes of this paragraph (see Article 36(2A)), the person is guilty of an offence.

- (3) A person guilty of an offence under paragraph (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Proceedings for an offence under paragraph (2) may not be instituted if an application under Article 37(7) has been made—
- (a) in relation to the contribution notice, or

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- (b) in relation to a contribution notice which is a corresponding contribution notice for the purposes of Article 36(8), and the application has not been determined, withdrawn or abandoned.
- (5) Proceedings for an offence under paragraph (2) may be instituted only—
 - (a) by the Regulator or the Department, or
 - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.”
- (4) After Article 38A (inserted by sub-paragraph (3)) insert—

“Financial penalty for failure to comply with an Article 34 contribution notice

- 38B (1) This Article applies where a contribution notice is issued to a person under Article 34.
- (2) Article 83A (financial penalties) applies to the person if the person, without reasonable excuse, fails to pay the debt due by virtue of the contribution notice to—
- (a) the trustees or managers of the scheme, or
 - (b) the Board (as the case may be),
- before the date specified in the contribution notice for the purposes of this paragraph (see Article 36(2A)).
- (3) The Regulator may not issue a warning notice to the person in respect of the imposition of a penalty under Article 83A as it applies by virtue of paragraph (2) if an application under Article 37(7) has been made—
- (a) in relation to the contribution notice, or
 - (b) in relation to a contribution notice which is a corresponding contribution notice for the purposes of Article 36(8), and the application has not been determined, withdrawn or abandoned.
- (4) In this Article “warning notice” means a notice given as mentioned in Article 91(2)(a).”

Commencement Information

I6 Sch. 8 para. 5 in force at 1.10.2021 by [S.R. 2021/271](#), [art. 2\(3\)\(c\)](#) (with [art. 3\(1\)-\(3\)](#))

VALID FROM 01/10/2021

Sanctions for avoidance of employer debt etc

- 6 (1) After Article 54 insert—

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“Sanctions for avoidance of employer debt etc

Offence of avoidance of employer debt

- 54A(1) This Article applies in relation to an occupational pension scheme other than—
- (a) a money purchase scheme, or
 - (b) a prescribed scheme or a scheme of a prescribed description.
- (2) A person commits an offence only if—
- (a) the person does an act or engages in a course of conduct that—
 - (i) prevents the recovery of the whole or any part of a debt which is due from the employer in relation to the scheme under Article 75 of the 1995 Order (deficiencies in the scheme assets),
 - (ii) prevents such a debt becoming due,
 - (iii) compromises or otherwise settles such a debt, or
 - (iv) reduces the amount of such a debt which would otherwise become due,
 - (b) the person intended the act or course of conduct to have such an effect, and
 - (c) the person did not have a reasonable excuse for doing the act or engaging in the course of conduct.
- (3) A reference in this Article to an act or course of conduct includes a failure to act.
- (4) This Article does not apply to a person if the act done, or course of conduct engaged in, by the person is in accordance with the person's functions as an insolvency practitioner in relation to another person.
- (5) For the purposes of this Article a reference to a debt due under Article 75 of the 1995 Order includes a contingent debt under that Article.
- (6) Accordingly, in the case of such a contingent debt, the reference in paragraph (2)(a) to preventing a debt becoming due is to be read as including a reference to preventing the occurrence of any of the events specified in Article 75(4C)(a) or (b) of the 1995 Order upon which the debt is contingent.
- (7) A person guilty of an offence under paragraph (2) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.
- (8) Proceedings for an offence under paragraph (2) may be instituted only—
- (a) by the Regulator or the Department, or
 - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.

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- (9) For the purposes of this Article and Articles 54B to 54D “insolvency practitioner”, in relation to a person, means—
- (a) a person acting as an insolvency practitioner, in relation to that person, in accordance with Article 3 of the Insolvency Order, or
 - (b) an insolvency practitioner within the meaning of Article 105(9)(b) (persons of a prescribed description).

Offence of conduct risking accrued scheme benefits

54B (1) This Article applies in relation to an occupational pension scheme other than—

- (a) a money purchase scheme, or
 - (b) a prescribed scheme or a scheme of a prescribed description.
- (2) A person commits an offence only if—
- (a) the person does an act or engages in a course of conduct that detrimentally affects in a material way the likelihood of accrued scheme benefits being received (whether the benefits are to be received as benefits under the scheme or otherwise),
 - (b) the person knew or ought to have known that the act or course of conduct would have that effect, and
 - (c) the person did not have a reasonable excuse for doing the act or engaging in the course of conduct.
- (3) A reference in this Article to an act or a course of conduct includes a failure to act.
- (4) A reference in this Article to accrued scheme benefits being received is a reference to benefits the rights to which have accrued by the relevant time being received by, or in respect of, the persons who were members of the scheme before that time.
- (5) In this Article “the relevant time” means—
- (a) in the case of an act, the time of the act,
 - (b) in the case of a failure to act—
 - (i) the time when the failure occurred, or
 - (ii) where the failure continued for a period of time, the end of that period, or
 - (c) in the case of a course of conduct, the time when the course of conduct ended.
- (6) A reference in this Article to rights which have accrued is to be read in accordance with Article 67A(6) and (7) of the 1995 Order (reading any reference in those paragraphs to a subsisting right as a reference to a right which has accrued).
- (7) For the purposes of this Article the benefits that may be received under the following provisions are to be disregarded—
- (a) Chapter 3 of Part 3 (the Board of the Pension Protection Fund: pension protection), and
 - (b) section 286 of the Pensions Act 2004 (the financial assistance scheme for members of certain pension schemes).

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- (8) This Article does not apply to a person if the act done, or course of conduct engaged in, by the person is in accordance with the person's functions as an insolvency practitioner in relation to another person (see Article 54A(9)).
- (9) A person guilty of an offence under paragraph (2) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine, or both.
- (10) Proceedings for an offence under paragraph (2) may be instituted only—
- (a) by the Regulator or the Department, or
 - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.”

(2) After Article 54B (inserted by sub-paragraph (1)) insert—

“Financial penalty for avoidance of employer debt

54C (1) This Article applies in relation to an occupational pension scheme other than—

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(2) Article 83A (financial penalties) applies to a person who was party to an act or deliberate failure to act the main purpose or one of the main purposes of which was—

- (a) to prevent the recovery of the whole or any part of a debt which is due from the employer in relation to the scheme under Article 75 of the 1995 Order (deficiencies in the scheme assets),
- (b) to prevent such a debt becoming due,
- (c) to compromise or otherwise settle such a debt, or
- (d) to reduce the amount of such a debt which would otherwise become due,

if it was not reasonable for the person to act or fail to act in the way that the person did.

(3) This Article does not apply where the Regulator is of the opinion that the person, in being a party to the act or failure, was acting in accordance with the person's functions as an insolvency practitioner in relation to another person (see Article 54A(9)).

(4) For the purposes of this Article a reference to a debt due under Article 75 of the 1995 Order includes a contingent debt under that Article.

(5) Accordingly, in the case of such a contingent debt, the reference in paragraph (2) to preventing a debt becoming due is to be read as including a reference to preventing the occurrence of any of the events specified in Article 75(4C)(a) or (b) of the 1995 Order upon which the debt is contingent.

(6) For the purposes of this Article the parties to an act or deliberate failure to act include those persons who knowingly assist in the act or failure.

Status: Point in time view as at 01/09/2021. This version of this schedule contains provisions that are not valid for this point in time.
Changes to legislation: *There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)*

- (7) If the Regulator is of the opinion that—
- (a) a person was party to a series of acts or deliberate failures to act, and
 - (b) the requirements of paragraph (2) are met in relation to the series, the series of acts or failures to act is to be regarded as an act or failure to act in relation to which the requirements of paragraph (2) are met.

Financial penalty for conduct risking accrued scheme benefits

- 54D(1) This Article applies in relation to an occupational pension scheme other than—
- (a) a money purchase scheme, or
 - (b) a prescribed scheme or a scheme of a prescribed description.
- (2) Article 83A (financial penalties) applies to a person who was party to an act or deliberate failure to act that detrimentally affected in a material way the likelihood of accrued scheme benefits being received (whether the benefits are to be received as benefits under the scheme or otherwise), if—
- (a) the person knew or ought to have known that the act or failure to act would have that effect, and
 - (b) it was not reasonable for the person to act or fail to act in the way that the person did.
- (3) This Article does not apply where the Regulator is of the opinion that the person, in being a party to the act or failure, was acting in accordance with the person's functions as an insolvency practitioner in relation to another person (see Article 54A(9)).
- (4) In this Article a reference to accrued scheme benefits being received is a reference to benefits the rights to which have accrued by the relevant time being received by, or in respect of, the persons who were members of the scheme before that time.
- (5) In this Article “the relevant time” means—
- (a) in the case of an act, the time of the act;
 - (b) in the case of a failure to act—
 - (i) the time when the failure to act occurred, or
 - (ii) where the failure continued for a period of time, the end of that period;
 and, in the case of acts or failures to act forming part of a series, any reference in this paragraph to an act or failure to act is a reference to the last of the acts or failures in that series.
- (6) A reference in this Article to rights which have accrued is to be read in accordance with Article 67A(6) and (7) of the 1995 Order (reading any reference in those paragraphs to a subsisting right as a reference to a right which has accrued).
- (7) In determining for the purposes of this Article whether an act or failure to act has detrimentally affected in a material way the likelihood of accrued scheme benefits being received, the following provisions are to be disregarded—

Status: Point in time view as at 01/09/2021. This version of this schedule contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)

- (a) Chapter 3 of Part 3 (the Board of the Pension Protection Fund: pension protection), and
 - (b) section 286 of the Pensions Act 2004 (the financial assistance scheme for members of certain pension schemes).
- (8) For the purposes of this Article the parties to an act or deliberate failure to act include those persons who knowingly assist in the act or failure.
- (9) If the Regulator is of the opinion that—
- (a) a person was party to a series of acts or deliberate failures to act, and
 - (b) the requirements of paragraph (2) are met in relation to the series, the series of acts or failures to act is to be regarded as an act or failure to act in relation to which the requirements of paragraph (2) are met.”

Commencement Information

I7 Sch. 8 para. 6 in force at 1.10.2021 by S.R. 2021/271, art. 2(3)(d) (with art. 3(1)(4))

VALID FROM 01/10/2021

Duty to notify the Regulator of certain events

- 7 (1) In Article 64 (duty to notify the Regulator of certain events)—
- (a) in paragraph (7), for “Article 10 of the 1995 Order (civil penalties)” substitute “ Article 83A (financial penalties) ”;
 - (b) in paragraph (8), for “That Article” substitute “ Article 83A ”.
- (2) In Article 75 (offences of providing false or misleading information to the Regulator), in paragraph (1)(a), after head (ii) insert—
- “(ia) Article 64 (duty to notify the Regulator of certain events),”.

Commencement Information

I8 Sch. 8 para. 7 in force at 1.10.2021 by S.R. 2021/271, art. 2(3)(e) (with arts. 4, 8)

Duty to give notices and statements to the Regulator in respect of certain events

- 8 (1) After Article 64 insert—

“Duty to give notices and statements to the Regulator in respect of certain events

- 64A (1) Except where the Regulator otherwise directs, the appropriate person must—
- (a) give notice to the Regulator of any notifiable event;
 - (b) give notice to the Regulator of any material change in, or in the expected effects of, a notifiable event;

Status: Point in time view as at 01/09/2021. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)

- (c) give notice to the Regulator if a notifiable event is not going to, or does not, take place.
- (2) In paragraph (1) “notifiable event” means a prescribed event in respect of the employer in relation to an eligible scheme.
- (3) For the purposes of paragraph (1) each of the following is “the appropriate person”—
 - (a) the employer in relation to the scheme,
 - (b) a person connected with the employer,
 - (c) an associate of the employer, and
 - (d) a person of a prescribed description.
- (4) Regulations may make provision about the meaning of a “material change” for the purposes of this Article.
- (5) A notice under paragraph (1) must be given to the Regulator—
 - (a) in the case of a notice under paragraph (1)(a), as soon as reasonably practicable after the person giving it becomes aware of the notifiable event, subject to paragraph (6),
 - (b) in the case of a notice under paragraph (1)(b), as soon as reasonably practicable after the person giving it becomes aware of the material change, subject to paragraph (6), or
 - (c) in the case of a notice under paragraph (1)(c), as soon as reasonably practicable after the person giving it becomes aware that the notifiable event is not going to take place or (as the case may be) did not take place.
- (6) Regulations may require a notice under paragraph (1)(a) or (b) to be given before the beginning of the prescribed period ending with—
 - (a) the notifiable event in question, or
 - (b) the material change in question.
- (7) A notice under paragraph (1)(a) or (b) must be accompanied by a statement (an “accompanying statement”).
- (8) An accompanying statement must contain prescribed information.
- (9) The information that may be prescribed under paragraph (8) includes, in particular—
 - (a) a description of the event,
 - (b) a description of any adverse effects of the event on the eligible scheme,
 - (c) a description of any steps taken to mitigate those adverse effects, and
 - (d) a description of any communication with the trustees or managers of the eligible scheme about the event.
- (10) Where a person gives the Regulator a notice under paragraph (1), the person must give a copy of the notice and any accompanying statement to the trustees or managers of the eligible scheme at the same time.
- (11) A notice or accompanying statement under this Article must be in writing.

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(12) No duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a notice or accompanying statement under this Article.

This is subject to Article 283 (protected items).

(13) Article 83A (financial penalties) applies to a person who, without reasonable excuse, fails to comply with an obligation imposed on the person by this Article.

(14) For the purposes of this Article—

- (a) Article 4 of the Insolvency Order (associated persons) applies as it applies for the purposes of that Order, and
- (b) Article 7 of the Insolvency Order (connected persons) applies as it applies for the purposes of any provision of Parts 2 to 7 of that Order.

(15) In this Article—

“eligible scheme” has the meaning given by Article 110;

“event” includes a failure to act.”

(2) In Article 75 (offences of providing false or misleading information to the Regulator), after paragraph (1)(a)(iia) (inserted by paragraph 7(2)) insert—

“(iib) Article 64A (duty to give notices and statements to the Regulator in respect of certain events),”.

Commencement Information

19 Sch. 8 para. 8(1) in force at 1.9.2021 for specified purposes by S.R. 2021/240, art. 2(1)(d)

Interviews

9 (1) After Article 67 insert—

“Interviews

67A(1) The Regulator may, by notice in writing, require any person to whom Article 67(2) applies to attend before the Regulator, at a time and place specified in the notice, to answer questions and provide explanations on one or more matters specified in the notice that are relevant to the exercise of any of the Regulator's functions.

(2) A notice under paragraph (1) must contain such other information as may be prescribed.”

(2) In Article 67 (provision of information), omit paragraphs (1A) and (1B).

(3) In Article 72 (penalties relating to Articles 67 to 70)—

(a) after paragraph (1) insert—

“(1A) A person who, without reasonable excuse, neglects or refuses—

(a) to attend before the Regulator as required under Article 67A(1), or

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Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)

- (b) to answer a question or provide an explanation on a matter specified in the notice under Article 67A(1), when so attending before the Regulator,
is guilty of an offence.”;
- (b) in paragraph (3), after “paragraph (1)” insert “, (1A) ”;
- (c) in paragraph (4), after “paragraph (1)” insert “, (1A) ”.

Commencement Information

I10 Sch. 8 para. 9(1) in force at 1.9.2021 for specified purposes by S.R. 2021/240, art. 2(1)(e)

VALID FROM 01/10/2021

Inspection of premises

- 10 (1) Article 68 (inspection of premises) is amended as follows.
- (2) In paragraph (2)—
- (a) after sub-paragraph (da) insert—
“(db) Part 2 of the Pension Schemes Act 2021;”;
 - (b) in sub-paragraph (e)—
 - (i) at the beginning insert “ the Pension Schemes Act 2017 and ”;
 - (ii) for “(da)” substitute “ (db) ”.
- (3) After paragraph (2) insert—
- “(2A) An inspector may, for the purposes of investigating whether the Regulator has grounds in the case of an occupational pension scheme for issuing—
- (a) a contribution notice under Article 34 (contribution notices where avoidance of employer debt),
 - (b) a financial support direction under Article 39 (financial support directions),
 - (c) a contribution notice under Article 43 (contribution notices where non-compliance with financial support direction),
 - (d) a restoration order under Article 48 (restoration orders where transactions at an undervalue),
 - (e) a contribution notice under Article 51 (contribution notice where failure to comply with restoration order), or
 - (f) a notice, direction or order under any corresponding provision in force in Great Britain,
- at any reasonable time enter premises liable to inspection.”
- (4) After paragraph (5) insert—
- “(5A) An inspector may, for the purposes of investigating whether the relevant provisions are being, or have been, complied with in the case of a scheme, at any reasonable time enter premises liable to inspection.
- (5B) In paragraph (5A), “the relevant provisions” means provisions contained in or made by virtue of—

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Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)

- (a) such provisions of the pensions legislation as may be prescribed;
- (b) any provisions in force in Great Britain, corresponding to the provisions so prescribed.”

(5) In paragraph (6) (premises liable to inspection)—

- (a) in sub-paragraph (b), omit the “or” at the end;
- (b) after sub-paragraph (c) insert—
 - “(d) documents relevant to the administration of the business of the employer in relation to the scheme are being kept there,
 - (e) the administration of the business of the employer in relation to the scheme, or work connected with that administration, is being carried out there, or
 - (f) in the case of an occupational pension scheme other than a money purchase scheme, a prescribed scheme or a scheme of a prescribed description, documents relevant to a change in the ownership of the employer or of a significant asset of the employer are being kept there.”

(6) After paragraph (6) insert—

“(6A) In the application of this Article in relation to a provision mentioned in paragraph (1), (2A), (3), (4) or (5A), references in this Article to “employer” are to be read as having the meaning that it has for the purposes of the provision in question.

(6B) In this Article a reference to an employer in relation to an occupational pension scheme includes a reference to a person who has been the employer in relation to the scheme.”

(7) In paragraph (7), for “this Article,” substitute “this Article—

“the pensions legislation” means any statutory provision contained in or made by virtue of—

- (a) the Pension Schemes Act,
- (b) Part 2 or Article 30 or 42 of the 1999 Order,
- (c) this Order,
- (d) Schedule 18 to the Pensions Act (Northern Ireland) 2015, or
- (e) section 51 or 52 of the Pension Schemes Act 2015;”.

Commencement Information

- I11** Sch. 8 para. 10(1) in force at 1.10.2021 for specified purposes by [S.R. 2021/271](#), [art. 2\(3\)\(f\)](#)
- I12** Sch. 8 para. 10(2)(b)(i)(3)-(7) in force at 1.10.2021 by [S.R. 2021/271](#), [art. 2\(3\)\(f\)](#)

Fixed penalty notices and escalating penalty notices

11 After Article 72 (penalties relating to Articles 67 to 70) insert—

*Status: Point in time view as at 01/09/2021. This version of this
 schedule contains provisions that are not valid for this point in time.*
Changes to legislation: *There are currently no known outstanding effects for the
 Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)*

“Fixed penalty notices

- 72A(1) The Regulator may issue a fixed penalty notice to a person if it considers that the person—
- (a) has failed to comply with a notice under Article 67 or 67A,
 - (b) has failed to comply with a requirement under Article 70, or
 - (c) has prevented or hindered an inspector exercising any power under Article 68, 69 or 70.
- (2) A fixed penalty notice is a notice requiring the person to whom it is issued to pay a penalty within the period specified in the notice.
- (3) The penalty—
- (a) is to be determined in accordance with regulations, and
 - (b) must not exceed £50,000.
- (4) A fixed penalty notice must—
- (a) state the amount of the penalty;
 - (b) state the date by which the penalty must be paid, which must be at least 28 days after the date on which the notice is issued;
 - (c) state the period to which the penalty relates;
 - (d) specify the failure or conduct to which the penalty relates;
 - (e) state that the Regulator may issue an escalating penalty notice under Article 72B if the person fails to comply with a notice under Article 67 or 67A;
 - (f) notify the person to whom the notice is issued of the review process under section 43 of the Pensions (No. 2) Act (Northern Ireland) 2008 and the right of referral to a tribunal under section 44 of that Act (as applied by paragraph (5)).
- (5) The following sections of the Pensions (No. 2) Act (Northern Ireland) 2008 apply to a penalty notice under this Article as they apply to a penalty notice under section 40 of that Act—
- (a) section 42 (penalty notices: recovery);
 - (b) section 43 (review of penalty notices);
 - (c) section 44 (references to First-tier Tribunal or Upper Tribunal).
- (6) This Article does not apply in a case where section 40 of the Pensions (No. 2) Act (Northern Ireland) 2008 applies.

Escalating penalty notices

- 72B(1) The Regulator may issue an escalating penalty notice to a person if it considers that the person has failed to comply with a notice under Article 67 or 67A.
- (2) But the Regulator may not issue an escalating penalty notice to a person if—
- (a) the person has exercised the right of referral to a tribunal under section 44 of the Pensions (No. 2) Act (Northern Ireland) 2008 (as applied by Article 72A(5)) in respect of a fixed penalty notice issued

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Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)

- under Article 72A in relation to that notice under Article 67 or 67A, and
- (b) the reference has not been determined.
- (3) An escalating penalty notice is a notice requiring a person to pay an escalating penalty if the person fails to comply with a notice under Article 67 or 67A before a specified date.
- (4) An escalating penalty is a penalty which is calculated by reference to a daily rate.
- (5) The daily rate—
- (a) is to be determined in accordance with regulations, and
- (b) must not exceed £10,000.
- (6) An escalating penalty notice must—
- (a) specify the failure to which the penalty relates;
- (b) state that, if the person fails to comply with the notice under Article 67 or 67A before a specified date, the person will be liable to pay an escalating penalty;
- (c) state the daily rate of the escalating penalty and the way in which the penalty is calculated;
- (d) state the date from which the escalating penalty will be payable, which must not be earlier than the date specified in the fixed penalty notice under Article 72A(4)(b);
- (e) state that the escalating penalty will continue to be payable at the daily rate until the date on which the person complies with the notice under Article 67 or 67A or such earlier date as the Regulator may determine;
- (f) notify the person to whom the notice is issued of the review process under section 43 of the Pensions (No. 2) Act (Northern Ireland) 2008 and the right of referral to a tribunal under section 44 of that Act (as applied by paragraph (7)).
- (7) The following sections of the Pensions (No. 2) Act (Northern Ireland) 2008 apply to an escalating penalty notice under this Article as they apply to an escalating penalty notice under section 41 of that Act—
- (a) section 42 (penalty notices: recovery);
- (b) section 43 (review of penalty notices);
- (c) section 44 (references to First-tier Tribunal or Upper Tribunal).
- (8) This Article does not apply in a case where section 41 of the Pensions (No. 2) Act (Northern Ireland) 2008 applies.”

Commencement Information

I13 Sch. 8 para. 11 in force at 1.9.2021 for specified purposes by S.R. 2021/240, art. 2(1)(f)

Status: Point in time view as at 01/09/2021. This version of this schedule contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)

VALID FROM 01/10/2021

Provision of false or misleading information to Regulator

12 After Article 75 (offences of providing false or misleading information) insert—

“Financial penalty for providing false or misleading information to Regulator

75A(1) Article 83A (financial penalties) applies to a person who has knowingly or recklessly provided the Regulator with information which is false or misleading in a material particular, if the information was provided to the Regulator in the circumstances mentioned in paragraph (2)(a), (b) or (c).

(2) The circumstances referred to in paragraph (1) are—

- (a) that the information was provided in purported compliance with a requirement under—
 - (i) Article 57 (the register: duties of trustees or managers),
 - (ii) Article 59 (duty of trustees or managers to provide scheme return),
 - (iii) Article 64 (duty to notify the Regulator of certain events),
 - (iv) Article 64A (duty to give notices and statements to the Regulator in respect of certain events),
 - (v) Article 67 (provision of information),
 - (vi) Article 67A (interviews),
 - (vii) Article 70 (inspection of premises: powers of inspectors), or
 - (viii) regulations under section 11 of the Pensions (No. 2) Act (Northern Ireland) 2008 (information about employers' duties to be given to the Regulator);
- (b) that the information is provided in applying for registration of a pension scheme under Article 4 of the 1999 Order (registration of stakeholder pension schemes);
- (c) that the information was provided otherwise than as mentioned in sub-paragraph (a) or (b) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Regulator for the purpose of exercising its functions under—
 - (i) the 1995 Order,
 - (ii) this Order,
 - (iii) the Pensions (No. 2) Act (Northern Ireland) 2008,
 - (iv) Schedule 18 to the Pensions Act (Northern Ireland) 2015, or
 - (v) Part 2 of the Pension Schemes Act 2021.”

Commencement Information

I14 Sch. 8 para. 12 in force at 1.10.2021 for specified purposes by [S.R. 2021/271](#), [art. 2\(3\)\(g\)](#) (with [art. 6](#))

Status: Point in time view as at 01/09/2021. This version of this schedule contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)

VALID FROM 01/10/2021

Provision of false or misleading information to trustees or managers

13

After Article 75A (inserted by paragraph 12) insert—

“Financial penalty for providing false or misleading information to trustees or managers

75B (1) This Article applies in relation to an occupational pension scheme other than—

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(2) Article 83A (financial penalties) applies to a person who has knowingly or recklessly provided a trustee or manager of the scheme with information which is false or misleading in a material particular, if the information was provided to the trustee or manager of the scheme in the circumstances mentioned in paragraph (3)(a) or (b).

(3) The circumstances referred to in paragraph (2) are—

- (a) that the information was provided in purported compliance with a requirement under—
 - (i) regulations under Article 9 of the Superannuation (Northern Ireland) Order 1972 (superannuation of persons employed in local government service etc),
 - (ii) regulations under section 109A of the Pension Schemes Act (power to require disclosure of information about transfers from one scheme to another),
 - (iii) Article 22(2B)(c) of the 1995 Order (insolvency practitioner or official receiver to give notice of certain events to trustees of scheme),
 - (iv) Article 26 of that Order (insolvency practitioner or official receiver to give information to trustees),
 - (v) regulations under Article 47(9) of that Order (power to impose duties on employers, auditors and actuaries to disclose information),
 - (vi) a direction under Article 72B of that Order (directions by Regulator for facilitating winding up of scheme);
- (b) that the information was provided otherwise than as mentioned in sub-paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the trustee or manager who receives it in that person's capacity as a trustee or manager of the scheme.”

Commencement Information

115 Sch. 8 para. 13 in force at 1.10.2021 by [S.R. 2021/271](#), [art. 2\(3\)\(h\)](#) (with [art. 7](#))

Status: Point in time view as at 01/09/2021. This version of this schedule contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)

VALID FROM 01/10/2021

Financial penalties

14 After Article 83 insert—

*“Financial penalties**Financial penalties*

- 83A(1) Where the Regulator is satisfied that by reason of an act this Article applies to a person, the Regulator may issue a notice to the person requiring the person to pay a penalty in respect of that act of an amount specified in the notice within a period specified in the notice.
- (2) The amount of the penalty is to be an amount, not exceeding £1 million, determined by the Regulator.
- (3) Regulations may amend paragraph (2) by substituting a higher amount for the amount for the time being specified in paragraph (2).
- (4) The date on which the period specified in the notice ends must be at least 28 days after the date on which the notice is issued.
- (5) The notice must specify the provision by virtue of which the penalty is imposed.
- (6) Where—
- (a) a penalty under this Article may, apart from this paragraph, be imposed on a body corporate, and
 - (b) the act in question was done with the consent or connivance of a director, manager, secretary or other similar officer of the body or a person purporting to act in any such capacity,
- this Article applies to that person.
- (7) Where the affairs of a body corporate are managed by its members, paragraph (6) applies in relation to the acts of a member in connection with the member's functions of management as to a director of a body corporate.
- (8) Where—
- (a) a penalty under this Article may, apart from this paragraph, be imposed on a Scottish partnership, and
 - (b) the act in question was done with the consent or connivance of a partner,
- this Article applies to that person.
- (9) If the Regulator requires a person to pay a penalty under this Article by virtue of paragraph (6) or (8), it may not also require the body corporate or the Scottish partnership to pay a penalty under this Article in respect of the same act.

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- (10) The Regulator may not issue a notice under this Article to a person in relation to an act if—
- (a) the person has been convicted of an offence in respect of the same act, or
 - (b) criminal proceedings for the offence have been instituted against the person in respect of the act and the proceedings have not been concluded.
- (11) The Regulator may not issue a notice under this Article to a person in respect of an act if the Regulator has required the person to pay a penalty under Article 10 of the 1995 Order (civil penalties) in respect of the same act.
- (12) In this Article “act” includes omission.

Financial penalties: time for recovery

- 83B (1) Paragraph (3) applies where—
- (a) the Regulator is satisfied that Article 83A applies to a person by virtue of Article 54C or 54D (financial penalty for avoidance of employer debt etc),
 - (b) the Regulator issues a notice under Article 83A requiring the person to pay a penalty in respect of the act or failure to act in question, and
 - (c) when the notice under Article 83A is issued, the person is subject to one or more contribution notices issued under Article 34 (contribution notices where avoidance of employer debt).
- (2) Paragraph (3) does not apply if, when the notice under Article 83A is issued, a qualifying insolvency event has occurred in relation to the employer in relation to the scheme by reference to which the penalty under Article 83A is imposed.
- (3) The Regulator may not take any step to recover the penalty specified in the notice under Article 83A (including accepting an amount offered in payment or part payment of the penalty) until after—
- (a) the relevant date relating to the contribution notice or (as the case may be) the latest of the relevant dates relating to the contribution notices, or
 - (b) if sooner, the date on which a qualifying insolvency event occurs in relation to the employer in relation to the scheme by reference to which the penalty under Article 83A is imposed.
- (4) In this Article—
- “qualifying insolvency event” has the meaning given by Article 111(3);
- “the relevant date” means, in relation to a contribution notice issued under Article 34—
- (a) the date specified under Article 36(2A) for the purposes of Articles 38A(2) and 38B(2), disregarding any date that has effect instead of that date by virtue of Article 37(10A) or (11B), or

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(b) if sooner, the date on which the sum specified in the contribution notice is paid.

Financial penalties: recovery

83C (1) A penalty under Article 83A is recoverable by the Regulator.

(2) Such a penalty is, if the county court so orders, recoverable under Article 4 of the Judgments Enforcement (Northern Ireland) Order 1981 or otherwise as if it were payable under an order of that court.

(3) The Regulator must pay into the Consolidated Fund a penalty recovered under this Article.”

Commencement Information

I16 Sch. 8 para. 14 in force at 1.10.2021 by [S.R. 2021/271](#), [art. 2\(3\)\(i\)](#) (with [art. 3\(5\)](#))

PART 2 **N.I.**

MINOR AND CONSEQUENTIAL AMENDMENTS

VALID FROM 01/10/2021

Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

15 In Article 10 of the Pensions (Northern Ireland) Order 1995 (civil penalties) after paragraph (9) insert—

“(10) The Authority may not require a person to pay a penalty under this Article in respect of an act or omission if the Authority have issued a notice to the person under Article 83A of the Pensions (Northern Ireland) Order 2005 (financial penalties) in respect of the same act or omission.”

Commencement Information

I17 Sch. 8 para. 15 in force at 1.10.2021 by [S.R. 2021/271](#), [art. 2\(4\)\(a\)](#)

Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))

16 The Pensions (Northern Ireland) Order 2005 is amended as follows.

Commencement Information

I18 [Sch. 8 para. 16](#) in force at 1.9.2021 for specified purposes by [S.R. 2021/240](#), [art. 2\(2\)\(a\)](#)

Status: Point in time view as at 01/09/2021. This version of this schedule contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)

VALID FROM 01/10/2021

- 17 In Article 34B (Article 34 contribution notice issued by reference to material detriment test: defence), in paragraph (12), for sub-paragraph (b) substitute—
- “(b) a reference to party to an act or failure to act includes a reference to a person who knowingly assists in the act or failure;”.

Commencement Information

I19 Sch. 8 para. 17 in force at 1.10.2021 by [S.R. 2021/271](#), [art. 2\(4\)\(c\)](#)

VALID FROM 01/10/2021

- 18 In Article 70 (inspection of premises: powers of inspectors), in paragraph (1)—
- (a) after “paragraph (1),” insert “(2A), ”;
- (b) for “(3) or (4)” substitute “(3), (4) or (5A) ”.

Commencement Information

I20 Sch. 8 para. 18 in force at 1.10.2021 by [S.R. 2021/271](#), [art. 2\(4\)\(c\)](#)

VALID FROM 01/10/2021

- 19 (1) Article 71 (inspection of premises: supplementary) is amended as follows.
- (2) In paragraph (3)(a)—
- (a) after “virtue of”, in the second place it occurs, insert “ Article 72A, 72B or 83A of this Order, ”;
- (b) for “either of them” substitute “ any of those provisions ”.
- (3) In paragraph (9)—
- (a) after “(1),” insert “(2A), ”;
- (b) for “(3) or (4)” substitute “(3), (4) or (5A) ”.

Commencement Information

I21 Sch. 8 para. 19 in force at 1.10.2021 by [S.R. 2021/271](#), [art. 2\(4\)\(c\)](#)

VALID FROM 01/10/2021

- 20 In Article 73 (warrants), in paragraph (1)(c)(iii)—
- (a) after “virtue of”, in the first place it occurs, insert “ Article 72A, 72B or 83A of this Order, ”;
- (b) for “either of them” substitute “ any of those provisions ”.

Status: Point in time view as at 01/09/2021. This version of this schedule contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)

Commencement Information

I22 Sch. 8 para. 20 in force at 1.10.2021 by [S.R. 2021/271](#), [art. 2\(4\)\(c\)](#)

VALID FROM 01/10/2021

- 21 (1) Article 75 (offences of providing false or misleading information) is amended as follows.
- (2) In paragraph (1)(a), after head (iii) insert—
 “(iiia) Article 67A (interviews).”
- (3) In paragraph (1)(c), for “under this Order or the 1995 Order” substitute “under—
 (i) the 1995 Order,
 (ii) this Order,
 (iii) the Pensions (No. 2) Act (Northern Ireland) 2008,
 (iv) Schedule 18 to the Pensions Act (Northern Ireland) 2015,
 or
 (v) Part 2 of the Pension Schemes Act 2021”.

Commencement Information

I23 Sch. 8 para. 21 in force at 1.10.2021 for specified purposes by [S.R. 2021/271](#), [art. 2\(4\)\(d\)](#)

- 22 In Article 85 (codes of practice), in paragraph (2)—
- (a) in sub-paragraph (aa), after “test” insert “, the employer insolvency test or the employer resources test”;
- (b) after sub-paragraph (b) insert—
 “(ba) the discharge of the duties imposed by Article 64A (duty to give notices and statements to the Regulator in respect of certain events);”.

Commencement Information

I24 Sch. 8 para. 22(a) in force at 1.9.2021 by [S.R. 2021/240](#), [art. 2\(2\)\(c\)](#)

VALID FROM 01/10/2021

- 23 (1) Article 91 (the Regulator's standard procedure in relation to its regulatory functions) is amended as follows.
- (2) In paragraph (1A)(b), after “test” insert “, the employer insolvency test or the employer resources test”.
- (3) In paragraph (1B)—
- (a) in sub-paragraph (a), after “34B,” insert “ 34D or 34F (as the case may be)”;

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Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)

- (b) in sub-paragraph (b), for “paragraph (2) of that Article” substitute “ Article 34B(2), 34D(2) and (3) or 34F(2) (as the case may be) ”.

Commencement Information

I25 Sch. 8 para. 23 in force at 1.10.2021 by [S.R. 2021/271](#), [art. 2\(4\)\(f\)](#)

VALID FROM 01/10/2021

- 24 In Article 233 (no indemnification for fines or civil penalties), in paragraph (1) (b), after “virtue of” insert “ Article 72A, 72B or 83A of this Order, ”.

Commencement Information

I26 Sch. 8 para. 24 in force at 1.10.2021 by [S.R. 2021/271](#), [art. 2\(4\)\(f\)](#)

VALID FROM 01/10/2021

- 25 (1) Article 282 (admissibility of statements) is amended as follows.
- (2) In paragraph (3)(b)—
- (a) after “financial penalty” insert “ on a relevant ground ”;
- (b) after “virtue of—” insert—
- “(ai) Article 83A (financial penalties),”;
- (c) for head (i) (and the “or” following it) substitute—
- “(i) section 164 of the Pension Schemes Act (breach of regulations),
- (ia) Article 10 of the 1995 Order (civil penalties),
- (ib) paragraph 10 of Schedule 17 to the Pensions Act (Northern Ireland) 2015 (penalties for contravention of regulations etc),
- (ic) paragraph 3 of Schedule 18 to that Act (penalties for contravention of regulations etc),”;
- (d) for head (ii) substitute—
- “(ii) section 168 of the Pension Schemes Act 1993 (breach of regulations),
- (iii) section 10 of the Pensions Act 1995 (civil penalties),
- (iv) section 88A of the Pensions Act 2004 (financial penalties),
- (v) section 238G of that Act (penalties for contravention of regulations under section 238D),
- (vi) paragraph 10 of Schedule 17 to the Pensions Act 2014 (penalties for contravention of regulations etc), or

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Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)

(vii) paragraph 3 of Schedule 18 to that Act (penalties for contravention of regulations etc).”

(3) After paragraph (3) insert—

“(3A) For the purposes of this Article a financial penalty is payable on a relevant ground if it is payable otherwise than under—

(a) Article 83A as it applies by virtue of—

(i) Article 75A (financial penalty for providing false or misleading information to Regulator), or

(ii) Article 75B (financial penalty for providing false or misleading information to trustees or managers), or

(b) section 88A of the Pensions Act 2004 as it applies by virtue of—

(i) section 80A of that Act (financial penalty for providing false or misleading information to Regulator), or

(ii) section 80B of that Act (financial penalty for providing false or misleading information to trustees or managers).”

(4) In paragraph (4), in the definition of “information requirement”, after paragraph (c) insert—

“(ca) Article 67A (requirement to attend interview etc);”.

Commencement Information

I27 Sch. 8 para. 25 in force at 1.10.2021 by [S.R. 2021/271](#), [art. 2\(4\)\(f\)](#)

26 (1) Article 288 (Assembly etc. control of orders and regulations) is amended as follows.

(2) In paragraph (3) (orders and regulations subject to confirmatory procedure), after sub-paragraph (aa) insert—

“(aaa) regulations under Article 34E(2)(a) (Article 34 contribution notice: constitution of resources of employer);

(aab) regulations under Article 34E(2)(b) (Article 34 contribution notice: valuation of resources of employer);”.

(3) In paragraph (3), after sub-paragraph (ab) insert—

“(ac) regulations under Article 54A(1) (offence of avoidance of employer debt: power to except certain schemes);

(ad) regulations under Article 54B(1) (offence of conduct risking accrued scheme benefits: power to except certain schemes);

(ae) regulations under Article 54C(1) (financial penalty for avoidance of employer debt: power to except certain schemes);

(af) regulations under Article 54D(1) (financial penalty for conduct risking accrued scheme benefits: power to except certain schemes);

(ag) regulations under Article 68(5B)(a) (inspection of premises: power to specify provisions by reference to which there may be inspection);

(ah) regulations under Article 83A(3) (financial penalties: power to amend maximum amount of penalty);”.

Status: Point in time view as at 01/09/2021. This version of this schedule contains provisions that are not valid for this point in time.
Changes to legislation: There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8. (See end of Document for details)

Commencement Information

I28 Sch. 8 para. 26(2) in force at 1.9.2021 by S.R. 2021/240, art. 2(2)(d)

VALID FROM 28/07/2022

- 27 In Schedule 1 (the Pensions Regulator), in Part 1 (delegation), in paragraph 2(2), after paragraph (d) insert—
- “(da) the power to issue a notice under Article 67A;
 - (db) the power to issue a fixed penalty notice under Article 72A;
 - (dc) the power to issue an escalating penalty notice under Article 72B;
 - (dd) the power to require payment of a penalty under Article 83A;”.

VALID FROM 28/07/2022

- 28 In Schedule 2 (the reserved regulatory functions), after paragraph 41 insert—
- “41A The power to require a person to pay a penalty under Article 83A.”

VALID FROM 28/07/2022

- Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.))*
- 29 The Pensions (No. 2) Act (Northern Ireland) 2008 is amended as follows.
- 30 In section 40 (fixed penalty notices), in subsection (1)—
- (a) omit the “or” after paragraph (c);
 - (b) after paragraph (d) insert “, or
 - (e) a notice issued under Article 67A of that Order (interviews), so far as relevant to the exercise of its functions under or by virtue of this Part.”
- 31 In section 41 (escalating penalty notices), in subsection (1)—
- (a) omit the “or” after paragraph (c);
 - (b) after paragraph (d) insert “, or
 - (e) a notice issued under Article 67A of that Order (interviews), so far as relevant to the exercise of its functions under or by virtue of this Part.”

Status:

Point in time view as at 01/09/2021. This version of this schedule contains provisions that are not valid for this point in time.

Changes to legislation:

There are currently no known outstanding effects for the Pension Schemes Act 2021, SCHEDULE 8.