
STATUTORY INSTRUMENTS

1995 No. 3213

The Pensions (Northern Ireland) Order 1995

PART II

OCCUPATIONAL PENSIONS

Supervision by the Authority

[^{F1}Prohibition orders

3.—(1) The Authority may by order prohibit a person from being a trustee of—

- (a) a particular trust scheme,
- (b) a particular description of trust schemes, or
- (c) trust schemes in general,

if they are satisfied that he is not a fit and proper person to be a trustee of the scheme or schemes to which the order relates.

(2) Where a prohibition order is made under paragraph (1) against a person in respect of one or more schemes of which he is a trustee, the order has the effect of removing him.

(3) The Authority may, on the application of any person prohibited under this Article, by order revoke the order either generally or in relation to a particular scheme or description of schemes.

(4) An application under paragraph (3) may not be made—

- (a) during the period within which the determination to exercise the power to make the prohibition order may be referred to [^{F2}a tribunal] under Article 91(3) or 94(7) of the Pensions (Northern Ireland) Order 2005, and
- (b) if the determination is so referred, until the reference, and any appeal against [^{F3}the determination of the tribunal concerned], has been finally disposed of.

(5) A revocation made at any time under this Article cannot affect anything done before that time.

(6) The Authority must prepare and publish a statement of the policies they intend to adopt in relation to the exercise of their powers under this Article.

(7) The Authority may revise any statement published under paragraph (6) and must publish any revised statement.

(8) ^{F4}.....]

F1 2005 NI 1

F2 Words in art. 3(4)(a) substituted (6.4.2010) by [Pensions Regulator Tribunal \(Transfer of Functions\) Act \(Northern Ireland\) 2010 \(c. 4\)](#), ss. 3(1), 5(2), [Sch. 1 para. 3\(a\)\(i\)](#) (with transitional and saving in Sch. 2); S.R. 2010/101, [art. 2](#)

Status: Point in time view as at 06/04/2010.

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- F3** Words in art. 3(4)(b) substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), **Sch. 1 para. 3(a)(ii)** (with transitional and saving in Sch. 2); S.R. 2010/101, **art. 2**
- F4** Art. 3(8) repealed (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3, 5(2), Sch. 1 para. 3(b), **Sch. 3** (with transitional and saving in Sch. 2); S.R. 2010/101, **art. 2**

Suspension orders

- 4.—(1) The Authority may by order suspend a trustee of a trust scheme—
- (a) pending consideration being given to the making of an order against him under Article 3(1),
 - [^{F5}(aa) pending consideration being given to the institution of proceedings against him for an offence involving dishonesty or deception,]
 - (b) where proceedings have been instituted against him for an offence involving dishonesty or deception and have not been concluded,
 - (c) where a petition has been presented to the court for an order adjudging him bankrupt, or for the sequestration of his estate, and proceedings on the petition have not been concluded,
 - (d) where the trustee is a company, if a petition for the winding up of the company has been presented to the court and proceedings on the petition have not been concluded,
 - (e) where an application has been made to the court for a disqualification order against him under [^{F6} the Company Directors Disqualification (Northern Ireland) Order 2002] or for such an order under any corresponding enactment for the time being in force in Great Britain and proceedings on the application have not been concluded, or
 - (f) where the trustee is a company and, if any director were a trustee, the Authority would have power to suspend him under sub-paragraph (b), (c) or (e).
- (2) An order under paragraph (1)—
- (a) if made by virtue of sub-paragraph (a) [^{F5} or (aa)], has effect for an initial period not exceeding twelve months, and
 - (b) in any other case, has effect until the proceedings in question are concluded;

but the Authority may by order extend the initial period referred to in sub-paragraph (a) for a further period of twelve months, and any order suspending a person under paragraph (1) ceases to have effect [^{F5} in relation to a trust scheme] if an order is made against that person under Article 3(1) [^{F5} in relation to that scheme].

(3) An order under paragraph (1) has the effect of prohibiting the person suspended, during the period of his suspension, from exercising any functions as trustee of any trust scheme to which the order applies; and the order may apply to a particular trust scheme, a particular [^{F5} description] of trust schemes or trust schemes in general.

(4) An order under paragraph (1) may be made on one of the grounds in sub-paragraphs (b) to (e) whether or not the proceedings were instituted, petition presented or application made (as the case may be) before or after the coming into operation of that paragraph.

(5) The Authority may, on the application of any person suspended under paragraph (1), by order revoke the order, either generally or in relation to a particular scheme or a particular [^{F5} description] of schemes; but a revocation made at any time cannot affect anything done before that time.

- [^{F5}(5A) An application under paragraph (5) may not be made—

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- (a) during the period within which the determination to exercise the power to make an order under paragraph (1) may be referred to [^{F7}a tribunal] under Article 91(3) or 94(7) of the Pensions (Northern Ireland) Order 2005, and
- (b) if the determination is so referred, until the reference, and any appeal against [^{F8}the determination of the tribunal concerned], has been finally disposed of.]

(6) An order under this Article may make provision as respects the period of the trustee's suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and for adjusting any rules governing the proceedings of the trustees to take account of the reduction in the number capable of acting.

(7) ^{F9}.....

F5	2005 NI 1
F6	2002 NI 4
F7	Words in art. 4(5A)(a) substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), Sch. 1 para. 4(a)(i) (with transitional and saving in Sch. 2); S.R. 2010/101, art. 2
F8	Words in art. 4(5A)(b) substituted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), Sch. 1 para. 4(a)(ii) (with transitional and saving in Sch. 2); S.R. 2010/101, art. 2
F9	Art. 4(7) repealed (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3, 5(2), Sch. 1 para. 4(b), Sch. 3 (with transitional and saving in Sch. 2); S.R. 2010/101, art. 2

Art. 5 rep. by 2005 NI 1

Removal or suspension of trustees: consequences

6.—(1) A person who purports to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under Article 3 or suspended in relation to the scheme under Article 4 is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine or imprisonment or both.

(2) An offence under paragraph (1) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction of the offence.

(3) Things done by a person purporting to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under Article 3 or suspended in relation to the scheme under Article 4 are not invalid merely because of that prohibition or suspension.

(4) Nothing in Article 3 or 4 or this Article affects the liability of any person for things done, or omitted to be done, by him while purporting to act as trustee of a trust scheme.

Appointment of trustees

7.—(1) Where a trustee of a trust scheme is removed by an order under Article 3, or^{F10} . . . by reason of his disqualification, the Authority may by order appoint another trustee in his place.

(2) Where a trustee appointed under paragraph (1) is appointed to replace a trustee appointed under^{F10} Article 23(1)], Articles 22 to 26 shall apply to the replacement trustee as they apply to a trustee appointed under^{F10} Article 23(1)].

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(3) The Authority may also by order appoint a trustee of a trust scheme where they are satisfied that it is [^{F11}reasonable] to do so in order—

- (a) to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme,
- (b) to secure that the number of trustees is sufficient for the proper administration of the scheme, ^{F12} . . .
- (c) to secure the proper use or application of the assets of the scheme.

[^{F13}, or

- (d) otherwise to protect the interests of the generality of the members of the scheme.]

Para. (4) rep. by 2005 NI 1

(5) The power to appoint a trustee by an order under this Article includes power by such an order—

- (a) to determine the appropriate number of trustees for the proper administration of the scheme,
- (b) to require a trustee appointed by the order to be paid fees and expenses out of the scheme's resources,
- (c) to provide for the removal or replacement of such a trustee.

[^{F10}(5A) An application may be made to the Authority in relation to a trust scheme by—

- (a) the trustees of the scheme,
- (b) the employer, or
- (c) any member of the scheme,

for the appointment of a trustee of the scheme under paragraph (3)(a) or (c).]

(6) Regulations may make provision about the descriptions of persons who may or may not be appointed trustees under this Article.

F10 2005 NI 1

F11 Word in art. 7(3) substituted (26.1.2009) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 106(1)(a), 118(1); S.R. 2009/22, art. 2(1)(c)

F12 Word in art. 7(3)(b) repealed (26.1.2009) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 106(1)(b), 116, 118(1), Sch. 10 Pt. 5; S.R. 2009/22, art. 2(1)(c)

F13 Art. 7(3)(d) and preceding word added (26.1.2009) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 106(1)(c), 118(1); S.R. 2009/22, art. 2(1)(c)

Appointment of trustees: consequences

8.—[^{F14}(1) An order under Article 7 appointing a trustee may provide for any fees and expenses of trustees appointed under the order to be paid—

- (a) by the employer,
- (b) out of the resources of the scheme, or
- (c) partly by the employer and partly out of those resources.

(2) Such an order may also provide that an amount equal to the amount (if any) paid out of the resources of the scheme by virtue of paragraph (1)(b) or (c) is to be treated for all purposes as a debt due from the employer to the trustees of the scheme.]

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(3) Subject to paragraph (4), a trustee appointed under Article 7 shall, unless he is the independent trustee and Article 22 applies in relation to the scheme, have the same powers and duties as the other trustees.

(4) An order under Article 7 may make provision—

- (a) for restricting the powers or duties of a trustee so appointed,^{F15} . . .
- (b) for powers or duties to be exercisable by a trustee so appointed to the exclusion of other trustees.

F14 2005 NI 1

F15 1999 NI 11

Removal and appointment of trustees: property

9. Where the Authority have power under this Part to appoint or remove a trustee, they may exercise^{F16} by order] the same jurisdiction and powers as are exercisable by the High Court for vesting any property in, or transferring any property to, trustees in consequence of the appointment or of the removal.

F16 2005 NI 1

Civil penalties

10.—(1) Where the Authority are satisfied that by reason of any act or omission this Article applies to any person, they may by notice in writing require him to pay, within a prescribed period, a penalty in respect of that act or omission not exceeding the maximum amount.

(2) In this Article, “the maximum amount” means—

- (a) £5,000 in the case of an individual and £50,000 in any other case, or
- (b) such lower amount as may be prescribed in the case of an individual or in any other case,

and the Department may by order amend sub-paragraph (a) by substituting higher amounts for the amounts for the time being specified in that sub-paragraph.

(3) Regulations made by virtue of this Part may provide for any person who has contravened any provision of such regulations to pay, within a prescribed period, a penalty under this Article not exceeding an amount specified in the regulations; and the regulations must specify different amounts in the case of individuals from those specified in other cases and any amount so specified may not exceed the amount for the time being specified in the case of individuals or, as the case may be, others in paragraph (2)(a).

(4) An order made under paragraph (2) or regulations made by virtue of paragraph (3) do not affect the amount of any penalty recoverable under this Article by reason of an act or omission occurring before the order or, as the case may be, regulations are made.

(5) Where—

- (a) apart from this paragraph, a penalty under this Article is recoverable from a body corporate by reason of any act or omission of the body^{F17} . . . , and
- (b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any persons mentioned in paragraph (6),

this Article applies to each of those persons who consented to or connived in the act or omission or to whose neglect the act or omission was attributable.

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(6) The persons referred to in paragraph (5)(b) are—

- (a) any director, manager, secretary, or other similar officer of the body corporate, or a person purporting to act in any such capacity, and
- (b) where the affairs of the body corporate are managed by its members, any member in connection with his functions of management.

(7) Where the Authority requires any person to pay a penalty by virtue of paragraph (5), they may not also require the body corporate in question to pay a penalty in respect of the same act or omission.

(8) A penalty under this Article is recoverable by the Authority.

[^{F18}(8A) Any penalty recoverable under this Article shall, if a county court so orders, be enforceable as if it were payable under an order of that court.]

(9) The Authority must pay to the Department any penalty recovered under this Article.

F17 2005 NI 1

F18 1999 NI 11

Modifications etc. (not altering text)

C1 Art. 10 applied (6.4.2007) by Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), arts. 1(2), 137(8), 141(8), 210A(7); S.R. 2006/352, art. 2(5), Sch. Pt. 2

C2 Art. 10 power to apply conferred (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 59(2), 118(2)(j) (with s. 73)

C3 Art. 10 applied by S.I. 2005/255 (N.I. 1), art. 35A(7) (as inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(3)(a)(v), **Sch. 8 para. 9**)

C4 Art. 10 applied by S.I. 2005/255 (N.I. 1), art. 39A(4) (as inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(3)(a)(v), **Sch. 8 para. 10**)

C5 Art. 10 applied by 1993 c. 49, s. 20H(5) (as inserted (3.3.2009 for certain purposes otherwise 6.4.2009) by Pensions Act (Northern Ireland) 2008 (c. 1), ss. 12(3), 21(1)(a)); S.R. 2009/75, art. 2

Powers to wind up schemes

11.—(1) Subject to paragraphs (2) to (7), the Authority may by order direct or authorise an occupational pension scheme to be wound up if they are satisfied that—

- (a) the scheme, or any part of it, ought to be replaced by a different scheme,
- (b) the scheme is no longer required, or
- (c) it is necessary in order to protect the interests of the generality of the members of the scheme that it be wound up.

(2) The Authority may not make an order under this Article on either of the grounds referred to in paragraph (1)(a) or (b) unless they are satisfied that the winding up of the scheme—

- (a) cannot be achieved otherwise than by means of such an order, or
- (b) can only be achieved in accordance with a procedure which—
 - (i) is liable to be unduly complex or protracted, or
 - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

and that it is reasonable in all the circumstances to make the order.

Para. (3) rep. by 2005 NI 1

[^{F19}(3A) The Authority may, during an assessment period (within the meaning of Article 116 of the Pensions (Northern Ireland) Order 2005 (meaning of “assessment period” for the purposes of

Part III of that Order)) in relation to an occupational pension scheme, by order direct the scheme to be wound up if they are satisfied that it is necessary to do so in order—

- (a) to ensure that the scheme's protected liabilities do not exceed its assets, or
- (b) if those liabilities do exceed its assets, to keep the excess to a minimum.

(3B) In paragraph (3A)—

- (a) “protected liabilities” has the meaning given by Article 115 of the Pensions (Northern Ireland) Order 2005, and
- (b) references to the assets of the scheme are references to those assets excluding any assets representing the value of any rights in respect of money purchase benefits (within the meaning of that Order) under the scheme.]

(4) An order under this Article authorising a scheme to be wound up must include such directions with respect to the manner and timing of the winding up as the Authority think appropriate having regard to the purposes of the order.^[F19] This paragraph is subject to Articles 24, 119 and 198 of the Pensions (Northern Ireland) Order 2005 (winding up order made when freezing order has effect in relation to scheme or during assessment period under Part III of that Order).]

(5) The winding up of a scheme in pursuance of an order of the Authority under this Article is as effective in law as if it had been made under powers conferred by or under the scheme.

(6) An order under this Article may be made and complied with in relation to a scheme—

- (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up, or
- (b) except for the purpose of the Authority determining whether they are satisfied as mentioned in paragraph (2), without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the winding up.

^[F19](6A) Paragraph (6) does not have effect to authorise the Authority to make an order as mentioned in sub-paragraph (a) or (b) of that paragraph, if their doing so would be unlawful as a result of section 6(1) of the Human Rights Act 1998 (unlawful for public authority to act in contravention of a Convention right).]

(7) In the case of a public service pension scheme—

- (a) an order under paragraph (1) directing or authorising the scheme to be wound up may only be made on the grounds referred to in sub-paragraph (c), and
- (b) such an order may, as the Authority think appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

F19 2005 NI 1

Powers to wind up public service schemes

12.—(1) The appropriate authority may by order direct a public service pension scheme to be wound up if they are satisfied that—

- (a) the scheme, or any part of it, ought to be replaced by a different scheme, or
- (b) the scheme is no longer required.

(2) Paragraph (2) of Article 11 applies for the purposes of this Article as it applies for the purposes of that, but as if references to the Authority were to the appropriate authority.

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(3) In this Article, “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury or the Department of Finance and Personnel as having responsibility for the particular scheme.

(4) An order under this Article must include such directions with respect to the manner and timing of the winding up as the appropriate authority thinks appropriate.

(5) Such an order may, as the appropriate authority thinks appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

Art. 13 rep. by 2005 NI 1

Restitution

14. If, on the application of the Authority, the High Court is satisfied—

- (a) that a power to make a payment, or distribute any assets, to the employer, has been exercised in contravention of Article 37, 76 or 77, or
- (b) that any act or omission of the trustees or managers of an occupational pension scheme was in contravention of Article 40,

the Court may order the employer and any other person who appears to the Court to have been knowingly concerned in the contravention to take such steps as the Court may direct for restoring the parties to the position in which they were before the payment or distribution was made, or the act or omission occurred.

Directions

15.—(1) The Authority may, where in the case of any trust scheme the employer fails to comply with any requirement included in regulations by virtue of Article 49(5), direct the trustees to make arrangements for the payment to the members of the benefit to which the requirement relates.

(2) The Authority may—

- (a) where in the case of any trust scheme an annual report is published, direct the trustees to include a statement prepared by the Authority in the report, and
- (b) in the case of any trust scheme, direct the trustees to send to the members a copy of a statement prepared by the Authority.

(3) A direction under this Article must be given in writing.

(4) Where a direction under this Article is not complied with, [^{F20} Article 10 applies] to any trustee who has failed to take all such steps as are reasonable to secure compliance.

F20 2005 NI 1

Status:

Point in time view as at 06/04/2010.

Changes to legislation:

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