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## STATUTORY INSTRUMENTS

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# 2005 No. 255

## The Pensions (Northern Ireland) Order 2005

### PART II

#### THE PENSIONS REGULATOR

##### *Codes of practice*

##### **Codes of practice**

**85.**—(1) The Regulator may issue codes of practice—

- (a) containing practical guidance in relation to the exercise of functions under the pensions legislation, and
- (b) regarding the standards of conduct and practice expected from those who exercise such functions.

(2) The Regulator must issue one or more such codes of practice relating to the following matters—

- (a) what constitutes a “reasonable” period for the purposes of any provision of the pensions legislation (other than any statutory provision contained in or made by virtue of Part III) which requires any action to be taken within such a period;
- [<sup>F1</sup>(aa) the circumstances in which the Regulator expects to issue contribution notices under Article 34 as a result of being of the opinion that the material detriment test is met in relation to an act or failure;]
- (b) the discharge of the duty imposed by Article 64 (duty to notify Regulator of certain events);
- (c) the discharge of the duty imposed by Article 65 (duty to report breaches of the law);
- (d) the discharge of duties imposed on trustees or managers of occupational pension schemes by, or by virtue of, Part IV (scheme funding);
- (e) the discharge of the duties imposed by Articles 218 and 219 (member-nominated trustees and directors);
- (f) the obligations imposed by Articles 224 and 225 (requirements for knowledge and understanding: individual and corporate trustees);
- (g) the discharge of the duty imposed by Article 49(9)(b) of the 1995 Order (duty of trustees or managers of occupational pension schemes to report material failures by employers to pay contributions deducted from employee's earnings timeously);
- (h) the discharge of the duties imposed by Articles 67 to 67I of that Order (the subsisting rights provisions);
- (i) the discharge of the duty imposed by Article 86(1) of that Order (duty of trustees or managers of money purchase schemes to report failures to pay employer contributions etc. timeously);

**Status:** Point in time view as at 01/04/2015.

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- (j) the discharge of the duty imposed by section 107A(7A) of the Pension Schemes Act (duty of trustees or managers of personal pension schemes to report material failures to pay employer contributions timeously);
- (k) such other matters as are prescribed for the purposes of this Article.
- (3) The Regulator may from time to time revise the whole or any part of a code of practice issued under this Article and issue that revised code.
- (4) Subject to Article 9(3)(a) and (8) (power for improvement notice to direct that person complies with code of practice and civil penalties for failure to comply), a failure on the part of any person to observe any provision of a code of practice [<sup>F2</sup>issued under this Article] does not of itself render that person liable to any legal proceedings.
- (5) A code of practice issued under this Article is admissible in evidence in any legal proceedings and, if any provision of such a code appears to the court or tribunal concerned to be relevant to any question arising in the proceedings, it must be taken into account in determining that question.
- (6) <sup>F3</sup> In this Article—
- “legal proceedings” includes proceedings of the Pensions Ombudsman, proceedings of the PPF Ombudsman and proceedings of the Board under Article 189 or 190; and
- “the pensions legislation” means any statutory provision contained in or made by virtue of—
- the Pension Schemes Act,
  - Part II of the 1995 Order, other than Articles 62 to 66A of that Order (equal treatment),
  - Part II or Article 30 of the 1999 Order, or
  - this Order.
- (7) Articles 86 and 87 make provision about the procedure to be followed when a code of practice is issued or revoked [<sup>F4</sup>under this Article].
- [<sup>F5</sup>(8) The Regulator may not issue codes of practice under this Article in relation to a public service pension scheme (but see Article 85A).]

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| <b>F1</b> | Art. 85(2)(aa) inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(ii)(b), <b>Sch. 8 para. 3</b>                                 |
| <b>F2</b> | Words in art. 85(4) inserted (1.4.2015) by Public Service Pensions Act (Northern Ireland) 2014 (c. 2), s. 37(2), <b>Sch. 4 para. 13(2)</b> ; S.R. 2015/3, art. 4(1)(b) (with art. 4(2)) |
| <b>F3</b> | mod. by SR 2005/570   |
| <b>F4</b> | Words in art. 85(7) inserted (1.4.2015) by Public Service Pensions Act (Northern Ireland) 2014 (c. 2), s. 37(2), <b>Sch. 4 para. 13(3)</b> ; S.R. 2015/3, art. 4(1)(b) (with art. 4(2)) |
| <b>F5</b> | Art. 85(8) inserted (1.4.2015) by Public Service Pensions Act (Northern Ireland) 2014 (c. 2), s. 37(2), <b>Sch. 4 para. 13(4)</b> ; S.R. 2015/3, art. 4(1)(b) (with art. 4(2))          |

### Codes of practice: public service pension schemes

- [<sup>F6</sup>**85A.**—(1) The Regulator may, in relation to public service pension schemes, issue codes of practice—
- containing practical guidance in relation to the exercise of functions under relevant pensions legislation, and
  - regarding the standards of conduct and practice expected from those who exercise such functions.
- (2) The Regulator must issue one or more such codes of practice relating to the following matters—

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- (a) the discharge of the duties imposed by Articles 65 and 65A (duties to report breaches of the law and late payment of employer contributions);
  - (b) the obligations imposed by Article 225A (requirements for knowledge and understanding: pension boards of public service pension schemes);
  - (c) the discharge of the duty imposed by Article 226B (internal controls);
  - (d) the discharge of duties imposed under section 109 of the Pension Schemes Act (disclosure of information to members);
  - (e) the discharge of the duty imposed by Article 49(9)(b) of the 1995 Order (duty of trustees or managers of occupational pension schemes to report material failures by employers to pay contributions deducted from employee's earnings timeously);
  - (f) the discharge of the duty imposed by Article 50 of the 1995 Order (internal dispute resolution);
  - (g) the discharge of duties imposed under section 5(5) of the Public Service Pensions Act (Northern Ireland) 2014 (pension board: conflicts of interest and representation) and other duties relating to conflicts of interest;
  - (h) the discharge of duties imposed by virtue of section 6 (pension board: information) of that Act and other duties relating to the publication of information about governance and administration;
  - (i) the discharge of duties imposed under section 14 of that Act (information about benefits);
  - (j) the discharge of duties imposed under section 16 (records) of that Act and other duties relating to record-keeping;
  - (k) such other matters as may be prescribed for the purposes of this Article.
- (3) The Regulator may from time to time revise the whole or any part of a code of practice issued under this Article and issue that revised code.
- (4) Subject to Article 9(3)(a) and (8) (power for improvement notice to direct that person complies with code of practice and civil penalties for failure to comply), a failure on the part of any person to observe any provision of a code of practice issued under this Article does not of itself render that person liable to any legal proceedings.
- (5) A code of practice issued under this Article is admissible in evidence in any legal proceedings (within the meaning of Article 85) and, if any provision of such a code appears to the court or tribunal concerned to be relevant to any question arising in the proceedings, it must be taken into account in determining that question.
- (6) A code of practice issued under this Article may be—
- (a) combined with a code of practice issued under Article 85;
  - (b) combined with one or more other codes of practice issued under this Article.
- (7) A code of practice issued under this Article may relate to all public service pension schemes or any one or more of them.
- (8) In this Article, “ relevant pensions legislation ” means—
- (a) the statutory provisions constituting “pensions legislation” within the meaning of Article 85, and
  - (b) sections 5(5) (pension board: conflicts of interest and representation), 6 (pension board: information), 14 (information about benefits) and 16 (records) of the Public Service Pensions Act (Northern Ireland) 2014.
- (9) Articles 86 and 87 make provision about the procedure to be followed when a code of practice is issued or revoked under this Article.]

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**F6** Art. 85A inserted (28.4.2014) by [Public Service Pensions Act \(Northern Ireland\) 2014 \(c. 2\)](#), s. 37(2), [Sch. 4 para. 14](#); S.R. 2014/123, art. 4(e)

### Procedure for issue and publication of codes of practice

**86.**—(1) Where the Regulator proposes to issue a code of practice [<sup>F7</sup>under Article 85 or 85A] it must prepare and publish a draft of the code.

(2) Where the Regulator publishes a draft under paragraph (1), it must consult—

- (a) such persons as it considers appropriate, and
- (b) any other persons the Department requires it to consult.

(3) Having considered any representations made on the draft, the Regulator must make such modifications to it as it considers appropriate.

(4) Paragraphs (2) and (3) do not apply—

- (a) to a code made for the purpose only of consolidating other codes issued under Article 85 [<sup>F8</sup>or 85A], or
- (b) to a code if the Department considers consultation inexpedient by reason of urgency.

(5) If the Regulator determines to proceed with a draft, it must send it to the Department which—

- (a) if it approves of the draft, must lay it before the Assembly, and
- (b) if it does not approve of the draft, must publish details of its reasons for withholding approval.

(6) If, within the statutory period beginning with the day on which the draft code of practice is laid before the Assembly, the Assembly so resolves, no further proceedings may be taken on the draft, but without prejudice to the laying before the Assembly of a new draft.

(7) If no such resolution is passed as is referred to in paragraph (6), the Regulator must issue the code of practice in the form of the draft and the code shall come into operation on such day as the Department may by order appoint.

(8) Without prejudice to Article 287, an order under paragraph (7) may contain such transitional provisions or savings as appear to the Department to be necessary or expedient in connection with the code of practice brought into operation.

(9) The Regulator must arrange for any code issued by it under Article 85 [<sup>F9</sup>or 85A] to be published in the way appearing to it to be appropriate.

(10) The Regulator may charge a reasonable fee for providing a person with a copy of a code published under this Article.

(11) This Article applies to a revised code as it applies to the first issue of a code.

#### Subordinate Legislation Made

**P1** Art. 86(7) power partly exercised: 15.2.2006 appointed by [S.R. 2006/45](#), [art. 2\(1\)](#);  
30.5.2006 by [S.R. 2006/231](#), [art. 2](#);  
22.11.2006 by [S.R. 2006/460](#), [art. 2](#);  
24.1.2007 by [S.R. 2007/26](#), [art. 2](#);  
28.7.2008 by [S.R. 2008/305](#), [art. 2](#);  
26.11.2009 by [S.R. 2009/374](#), [art. 2](#);  
29.6.2009 by [S.R. 2009/250](#), [art. 2](#)

**F7** Words in art. 86(1) inserted (28.4.2014) by [Public Service Pensions Act \(Northern Ireland\) 2014 \(c. 2\)](#), s. 37(2), [Sch. 4 para. 15\(2\)](#); S.R. 2014/123, art. 4(e)

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**F8** Words in art. 86(4)(a) inserted (28.4.2014) by [Public Service Pensions Act \(Northern Ireland\) 2014 \(c. 2\)](#), s. 37(2), **Sch. 4 para. 15(3)**; S.R. 2014/123, art. 4(e)

**F9** Words in art. 86(9) inserted (28.4.2014) by [Public Service Pensions Act \(Northern Ireland\) 2014 \(c. 2\)](#), s. 37(2), **Sch. 4 para. 15(3)**; S.R. 2014/123, art. 4(e)

**Modifications etc. (not altering text)**

**C1** Art. 86(7): 20.9.2013 appointed for specified purposes by [S.R. 2013/222](#), art. 2

**C2** Art. 86(7): 21.11.2013 appointed for specified purposes by [S.R. 2013/263](#), art. 2

**Revocation of codes of practice**

**87.—**(1) A code of practice [<sup>F10</sup>under Article 85 or 85A] may be revoked by the Department by order.

(2) An order under this Article may be made only with the consent of the Regulator.

(3) Without prejudice to Article 287, an order under this Article may contain such savings as appear to the Department to be necessary or expedient in connection with the revocation of the code.

**F10** Words in art. 87(1) inserted (28.4.2014) by [Public Service Pensions Act \(Northern Ireland\) 2014 \(c. 2\)](#), s. 37(2), **Sch. 4 para. 16**; S.R. 2014/123, art. 4(e)

**Status:**

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