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## STATUTORY INSTRUMENTS

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# 2005 No. 255

## The Pensions (Northern Ireland) Order 2005

### PART II

#### THE PENSIONS REGULATOR

##### *Disclosure of information*

#### **Restricted information**

77.—(1) Restricted information must not be disclosed—

- (a) by the Regulator, or
- (b) by any person who receives the information directly or indirectly from the Regulator.

(2) Paragraph (1) is subject to—

- (a) paragraph (3), and
- (b) Articles 66(9) and 78 to 83 and section 235 of the Pensions Act 2004 (c. 35).

(3) Subject to Article [F183(4)(d)], restricted information may be disclosed with the consent of the person to whom it relates and (if different) the person from whom the Regulator obtained it.

(4) For the purposes of this Article and Articles 78 to 82, “restricted information” means any information obtained by the Regulator in the exercise of its functions which relates to the business or other affairs of any person, except for information—

- (a) which at the time of the disclosure is or has already been made available to the public from other sources, or
- (b) which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(5) Any person who discloses information in contravention of this Article is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum [F2, or imprisonment for a term not exceeding six months, or both];
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

**F1** Word in art. 77(3) substituted (26.1.2009) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), **ss. 61(2), 118(1)** (with s. 73); S.R. 2009/22, **art. 2(1)(a)**

**F2** Words in art. 77(5)(a) added (26.1.2009) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), **ss. 62, 118(1)** (with s. 73); S.R. 2009/22, **art. 2(1)(b)**

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

- C1** Art. 77(2) applied (with modifications) by S.R. 2005/93, reg. 5A(2) (as inserted (4.7.2007) by Register of Occupational and Personal Pension Schemes (Amendment) Regulations (Northern Ireland) 2007 (S.R. 2007/297), reg. 2)

#### Information supplied to the Regulator by corresponding overseas authorities

**78.**—(1) Subject to paragraph (2), for the purposes of Article 77, “restricted information” includes information which has been supplied to the Regulator, for the purposes of its functions, by an authority which exercises functions corresponding to the functions of the Regulator in a country or territory outside the United Kingdom.

(2) Articles 79 to 82 do not apply to such information as is mentioned in paragraph (1), and such information must not be disclosed except—

- (a) as provided in Article 77(3),
- (b) for the purpose of enabling or assisting the Regulator to discharge its functions, or
- (c) by or on behalf of—
  - (i) the Regulator, or
  - (ii) any public authority (within the meaning of section 6 of the Human Rights Act 1998 (c. 42)) which receives the information directly or indirectly from the Regulator, for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (criminal proceedings and investigations).

(3) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure authorised by paragraph (2) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.

#### Disclosure for facilitating exercise of functions by the Regulator

**79.**—(1) Article 77 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Regulator to exercise its functions.

(2) Paragraph (3) applies where, in order to enable or assist the Regulator properly to exercise any of its functions, the Regulator considers it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation or other matter requiring the exercise of professional skill.

(3) Article 77 does not preclude the disclosure by the Regulator to a person qualified to provide that advice of such information as appears to the Regulator to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.

[<sup>F3</sup>(4) Article 77 does not preclude the disclosure by the Regulator to the Personal Accounts Delivery Authority of such information as appears to the Regulator to be necessary to enable the Authority to provide assistance or advice to the Regulator under section 79(2) of the Pensions Act 2008 or section 65(2) of the Pensions (No. 2) Act (Northern Ireland) 2008.]

- F3** Art. 79(4) added (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 68, 118(1)(2)(a) (with s. 73)

#### Disclosure for facilitating exercise of functions by the Board

**80.** Article 77 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Board to exercise its functions.

## Disclosure for facilitating exercise of functions by other supervisory authorities

**81.**—(1) Article 77 does not preclude the disclosure by the Regulator of restricted information to any person specified in the first column of Schedule 3 if the Regulator considers that the disclosure would enable or assist that person to exercise the functions specified in relation to him in the second column of that Schedule.

(2) The Department may after consultation with the Regulator—

- (a) by order amend Schedule 3 by—
  - (i) adding any person exercising regulatory functions and specifying functions in relation to that person,
  - (ii) removing any person for the time being specified in the Schedule, or
  - (iii) altering the functions for the time being specified in the Schedule in relation to any person, or
- (b) by order restrict the circumstances in which, or impose conditions subject to which, disclosure may be made to any person for the time being specified in the Schedule.

### Commencement Information

- II** Art. 81 wholly in operation at 6.4.2006; art. 81 not in operation at date of making see art. 1(2); art. 81 (except (2)) in operation at 6.4.2005 by [S.R. 2005/48](#), [art. 2\(7\)](#), [Sch. Pt. 7](#); art. 81 in operation in so far as not already in operation at 6.4.2006 by [S.R. 2006/95](#), [art. 2\(c\)](#), [Sch. Pt. 3](#)

## Other permitted disclosures

**82.**—(1) Article 77 does not preclude the disclosure by the Regulator of restricted information to—

- (a) the Department,
- (b) the Commissioners of Inland Revenue or their officers, or
- (c) the Secretary of State,

if the disclosure appears to the Regulator to be desirable or expedient in the interest of members of occupational pension schemes or personal pension schemes or in the public interest.

(2) Article 77 does not preclude the disclosure of restricted information—

- (a) by or on behalf of—
  - (i) the Regulator, or
  - (ii) any public authority (within the meaning of section 6 of the Human Rights Act 1998 (c. 42)) which receives the information directly or indirectly from the Regulator, for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (criminal proceedings and investigations),
- (b) in connection with any proceedings arising out of—
  - (i) this Order,
  - (ii) the 1999 Order,
  - (iii) the 1995 Order, or
  - (iv) the Pension Schemes Act,

or any corresponding enactment in force in Great Britain, or any proceedings for breach of trust in relation to an occupational pension scheme,

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- (c) with a view to the institution of, or otherwise for the purposes of, proceedings under—
    - (i) Article 10 or 11 of the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4), or
    - (ii) section 7 or 8 of the Company Directors Disqualification Act 1986 (c. 46),
  - (d) in connection with any proceedings under—
    - (i) the Insolvency Order, or
    - (ii) the Insolvency Act 1986 (c. 45),
 which the Regulator has instituted or in which it has a right to be heard,
  - (e) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by a solicitor, an actuary, an accountant or an insolvency practitioner,
  - (f) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a public servant of his functions,
  - (g) for the purpose of enabling or assisting an authority in a country outside the United Kingdom to exercise functions corresponding to those of the Regulator under this Order, the 1999 Order, the 1995 Order or the Pension Schemes Act, or
  - (h) in pursuance of a Community obligation (within the meaning of Schedule 1 to the European Communities Act 1972 (c. 68)).
- (3) In paragraph (2)(f), “public servant” means an officer or servant of the Crown or of any prescribed authority.
- (4) Article 77 does not preclude the disclosure by the Regulator of restricted information to—
- (a) the Director of Public Prosecutions for Northern Ireland,
  - (b) the Director of Public Prosecutions,
  - (c) the Lord Advocate,
  - (d) a procurator fiscal, or
  - (e) a constable.
- (5) Article 77 does not preclude the disclosure of restricted information in any case where the disclosure is required by or by virtue of a statutory provision.
- (6) Article 77 does not preclude the disclosure of restricted information in any case where the disclosure is to a Regulator-appointed trustee of an occupational pension scheme for the purpose of enabling or assisting him to exercise his functions in relation to the scheme.
- (7) In paragraph (6), “Regulator-appointed trustee” means a trustee appointed by the Regulator under Article 7 or 23(1) of the 1995 Order or any corresponding provision in force in Great Britain.
- (8) Article 77 does not preclude the disclosure by any person mentioned in paragraph (1) or (4) of restricted information obtained by the person by virtue of that paragraph, if the disclosure is made with the consent of the Regulator.
- (9) Article 77 does not preclude the disclosure by any person specified in the first column of Schedule 3 of restricted information obtained by the person by virtue of Article 81(1), if the disclosure is made—
- (a) with the consent of the Regulator, and
  - (b) for the purpose of enabling or assisting the person to exercise any functions specified in relation to him in the second column of the Schedule.

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(10) Before deciding whether to give its consent to such a disclosure as is mentioned in paragraph (8) or (9), the Regulator must take account of any representations made to it, by the person seeking to make the disclosure, as to the desirability of the disclosure or the necessity for it.

(11) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure authorised by paragraph (2) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.

### **Tax information etc.**

[<sup>F4</sup>83.—(1) This Article applies to information held by the Revenue and Customs if it is held by them in connection with a function of the Revenue and Customs that relates to any of these matters—

- (a) tax or duty;
- (b) national insurance contributions;
- (c) the national minimum wage.

(2) An officer of Revenue and Customs may disclose to the Regulator information to which this Article applies, if the disclosure is made for the purpose of enabling or assisting the Regulator to discharge its functions.

(3) Where information to which this Article applies is disclosed to the Regulator by virtue of paragraph (2) or section 19 of the Anti-terrorism, Crime and Security Act 2001 (disclosure of information held by revenue departments), it must, subject to paragraphs (4) and (5), be treated for the purposes of Article 77 as restricted information.

(4) Information to which this Article applies which is disclosed to the Regulator as mentioned in paragraph (3) may not be disclosed by the Regulator or any person who receives the information directly or indirectly from the Regulator except—

- (a) to, or in accordance with authority given by, the Commissioners for Her Majesty's Revenue and Customs,
- (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings,
- (c) with a view to the institution of any other proceedings by the Regulator, or for the purposes of any such proceedings instituted by the Regulator,
- (d) in accordance with Article 79, otherwise than for the purposes of any proceedings, or
- (e) in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(5) Accordingly Articles 77(3), 78 and 80 to 82, and section 235 of and paragraph 4 of Schedule 10 to, the Pensions Act 2004, do not apply to such information, and Article 79 applies subject to paragraph (4)(d).

(6) In paragraph (4)(c) and (d), “ proceedings ” includes the issue of notices or any other enforcement action taken by the Regulator under Chapter 2 of Part 1 of the Pensions ( No. 2) Act (Northern Ireland) 2008 or any other provision.

(7) In this Article “the Revenue and Customs” and a “function of the Revenue and Customs” have the same meaning as in section 18 of the Commissioners for Revenue and Customs Act 2005 (confidentiality).]

**F4** Art. 83 substituted (26.1.2009) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), **ss. 61(1), 118(1)** (with s. 73); S.R. 2009/22, **art. 2(1)(a)**

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