
STATUTORY INSTRUMENTS

2005 No. 255

The Pensions (Northern Ireland) Order 2005

PART II

THE PENSIONS REGULATOR

Transactions at an undervalue

Restoration orders where transactions at an undervalue

- 48**^{F1}.—(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) The Regulator may make a restoration order in respect of a transaction involving assets of the scheme if—
- (a) a relevant event has occurred in relation to the employer in relation to the scheme, and
 - (b) the transaction is a transaction at an undervalue entered into with a person at a time which—
 - (i) is on or after 27th April 2004, but
 - (ii) is not more than two years before the occurrence of the relevant event in relation to the employer.
- (3) A restoration order in respect of a transaction involving assets of a scheme is such an order as the Regulator thinks fit for restoring the position to what it would have been if the transaction had not been entered into.
- (4) For the purposes of this Article a relevant event occurs in relation to the employer in relation to a scheme if and when on or after the appointed day—
- (a) an insolvency event occurs in relation to the employer, or
 - (b) the trustees or managers of the scheme make an application under paragraph (1) of Article 113 or receive a notice from the Board under paragraph (5)(a) of that Article (applications and notifications prior to the Board assuming responsibility for a scheme).
- (5) For the purposes of paragraph (4)—
- (a) the “appointed day” means the day appointed under Article 110(2) (no pension protection under Chapter 3 of Part III if the scheme begins winding up before the day appointed by the Department),
 - (b) Article 105 (meaning of “insolvency event”) applies for the purposes of determining if and when an insolvency event has occurred in relation to the employer, and
 - (c) the reference to an insolvency event in relation to the employer does not include an insolvency event which occurred in relation to him before he became the employer in relation to the scheme.

Status: Point in time view as at 01/01/2006.

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(6) For the purposes of this Article and Article 49, a transaction involving assets of a scheme is a transaction at an undervalue entered into with a person (“P”) if the trustees or managers of the scheme or appropriate persons in relation to the scheme—

- (a) make a gift to P or otherwise enter into a transaction with P on terms that provide for no consideration to be provided towards the scheme, or
- (b) enter into a transaction with P for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by or on behalf of the trustees or managers of the scheme.

(7) In paragraph (6) “appropriate persons” in relation to a scheme means a person who, or several persons each of whom is a person who, at the time at which the transaction in question is entered into, is—

- (a) a person of a prescribed description, and
- (b) entitled to exercise powers in relation to the scheme.

(8) For the purposes of this Article and Article 49—

“assets” includes future assets;

“transaction” includes a gift, agreement or arrangement and references to entering into a transaction are to be construed accordingly.

(9) The provisions of this Article apply without prejudice to the availability of any other remedy, even in relation to a transaction where the trustees or managers of the scheme or appropriate persons in question had no power to enter into the transaction.

F1 mod. by SR 2005/378

Restoration orders: supplementary

49^{F2}.—(1) This Article applies in relation to a restoration order under Article 48 in respect of a transaction involving assets of a scheme (“the transaction”).

(2) The restoration order may in particular—

- (a) require any assets of the scheme (whether money or other property) which were transferred as part of the transaction to be transferred back—
 - (i) to the trustees or managers of the scheme, or
 - (ii) where the Board has assumed responsibility for the scheme, to the Board;
- (b) require any property to be transferred to the trustees or managers of the scheme or, where the Board has assumed responsibility for the scheme, to the Board if it represents in any person's hands—
 - (i) any of the assets of the scheme which were transferred as part of the transaction, or
 - (ii) property derived from any such assets so transferred;
- (c) require such property as the Regulator may specify in the order, in respect of any consideration for the transaction received by the trustees or managers of the scheme, to be transferred—
 - (i) by the trustees or managers of the scheme, or
 - (ii) where the Board has assumed responsibility for the scheme, by the Board, to such persons as the Regulator may specify in the order;

- (d) require any person to pay, in respect of benefits received by him as a result of the transaction, such sums (not exceeding the value of the benefits received by him) as the Regulator may specify in the order—
- (i) to the trustees or managers of the scheme, or
 - (ii) where the Board has assumed responsibility for the scheme, to the Board.
- (3) A restoration order is of no effect to the extent that it prejudices any interest in property which was acquired in good faith and for value or any interest deriving from such an interest.
- (4) Nothing in paragraph (3) prevents a restoration order requiring a person to pay a sum of money if the person received a benefit as a result of the transaction otherwise than in good faith and for value.
- (5) Where a person has acquired an interest in property from a person or has received a benefit as a result of the transaction and—
- (a) he is one of the trustees or managers or appropriate persons who entered into the transaction as mentioned in paragraph (6) of Article 48, or
 - (b) at the time of the acquisition or receipt—
 - (i) he has notice of the fact that the transaction was a transaction at an undervalue,
 - (ii) he is a trustee or manager, or the employer, in relation to the scheme, or
 - (iii) he is connected with, or an associate of, any of the persons mentioned in subparagraph (a) or (b)(ii),
- then, unless the contrary is shown, it is to be presumed for the purposes of paragraphs (3) and (4) that the interest was acquired or the benefit was received otherwise than in good faith.
- (6) For the purposes of this Article—
- (a) Article 7 of the Insolvency Order (connected persons) applies as it applies for the purposes of any provision of Parts II to VII of that Order, and
 - (b) Article 4 of that Order (associated persons) applies as it applies for the purposes of that Order.
- (7) For the purposes of this Article “property” includes—
- (a) money, goods, things in action, land and every description of property wherever situated, and
 - (b) obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property.
- (8) References in this Article to where the Board has assumed responsibility for a scheme are to where the Board has assumed responsibility for the scheme in accordance with Chapter 3 of Part III (pension protection).

F2 mod. by SR 2005/378

Content and effect of a restoration order

50^{F3}.—(1) This Article applies where a restoration order is made under Article 48 in respect of a transaction involving assets of a scheme.

(2) Where the restoration order imposes an obligation on a person to do something, the order must specify the period within which the obligation must be complied with.

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(3) Where the restoration order imposes an obligation on a person (“A”) to transfer or pay a sum of money to a person specified in the order (“B”), the sum is to be treated as a debt due from A to B.

(4) Where the trustees or managers of the scheme are the persons to whom the debt is due, the Regulator may on their behalf, exercise such powers as the trustees or managers have to recover the debt.

(5) But during any assessment period (within the meaning of Article 116) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a restoration order are exercisable by the Board to the exclusion of the trustees or managers and the Regulator.

(6) Where, by virtue of paragraph (5), any amount is transferred or paid to the Board in respect of a debt due by virtue of a restoration order, the Board must pay the amount to the trustees or managers of the scheme.

F3 mod. by SR 2005/378

Contribution notice where failure to comply with a restoration order

51^{F4}.—(1) This Article applies where—

- (a) a restoration order is made under Article 48 in respect of a transaction involving assets of a scheme (“the transaction”), and
- (b) a person fails to comply with an obligation imposed on him by the order which is not an obligation to transfer or pay a sum of money.

(2) The Regulator may issue a notice to the person stating that the person is under a liability to pay the sum specified in the notice (a “contribution notice”)—

- (a) to the trustees or managers of the scheme, or
- (b) where the Board has assumed responsibility for the scheme in accordance with Chapter 3 of Part III (pension protection), to the Board.

(3) The sum specified by the Regulator in a contribution notice may be either the whole or a specified part of the shortfall sum in relation to the scheme.

(4) The shortfall sum in relation to the scheme is the amount which the Regulator estimates to be the amount of the decrease in the value of the assets of the scheme as a result of the transaction having been entered into.

F4 mod. by SR 2005/378

Content and effect of an Article 51 contribution notice

52^{F5}.—(1) This Article applies where a contribution notice is issued to a person under Article 51.

(2) The contribution notice must—

- (a) contain a statement of the matters which it is asserted constitute the failure to comply with the restoration order under Article 48 in respect of which the notice is issued, and
- (b) specify the sum which the person is stated to be under a liability to pay.

(3) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the trustees or managers of the scheme, the sum is to be treated as a debt due from the person to the trustees or managers of the scheme.

(4) In such a case, the Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover the debt.

(5) But during any assessment period (within the meaning of Article 116) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a contribution notice, are exercisable by the Board to the exclusion of the trustees or managers and the Regulator.

(6) Where, by virtue of paragraph (5), any amount is paid to the Board in respect of a debt due by virtue of a contribution notice, the Board must pay the amount to the trustees or managers of the scheme.

(7) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the Board, the sum is to be treated as a debt due from the person to the Board.

F5 mod. by SR 2005/378

Status:

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