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STATUTORY INSTRUMENTS

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**2005 No. 255**

**The Pensions (Northern Ireland) Order 2005**

PART III

THE BOARD OF THE PENSION PROTECTION FUND

CHAPTER 5

GATHERING INFORMATION

*Disclosure of information*

**Restricted information**

**179.**—(1) Restricted information must not be disclosed—

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

(2) Paragraph (1) is subject to—

- (a) paragraph (3), and
- (b) Articles 180 to 185 and section 235 of the Pensions Act 2004 (c. 35).

(3) Subject to Article 184(4), restricted information may be disclosed with the consent of the person to whom it relates and (if different) the person from whom the Board obtained it.

(4) For the purposes of this Article and Articles 180 to 185, “restricted information” means any information obtained by the Board 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;
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

(6) Information which—

- (a) is obtained under Article 173 by a person authorised under paragraph (2)(b) of that Article, but
- (b) if obtained by the Board, would be restricted information,

is treated for the purposes of paragraphs (1) and (3) and Articles 180 to 185 as restricted information which the person has received from the Board.

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

**180.**—(1) Article 179 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.

(2) Paragraph (3) applies where, in order to enable or assist the Board properly to exercise any of its functions, the Board 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 179 does not preclude the disclosure by the Board to a person qualified to provide that advice of such information as appears to the Board to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.

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

**181.** Article 179 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.

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

**182.**—(1) Article 179 does not preclude the disclosure by the Board of restricted information to any person specified in the first column of Schedule 7 if the Board 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 Board—

(a) by order amend Schedule 7 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 that Schedule, or

(iii) altering the functions for the time being specified in that 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 that Schedule.

### **Other permitted disclosures**

**183.**—(1) Article 179 does not preclude the disclosure by the Board 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 Board to be desirable or expedient in the interests of members of occupational pension schemes or in the public interest.

(2) Article 179 does not preclude the disclosure of restricted information—

(a) by or on behalf of—

(i) the Board, 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 Board,

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,
- (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 Board 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 purpose of, any disciplinary proceedings relating to the exercise by a public servant of his functions, or
  - (g) 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 179 does not preclude the disclosure by the Board 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 179 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 179 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 179 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 Board.
- (9) Article 179 does not preclude the disclosure by any person specified in the first column of Schedule 7 of restricted information obtained by the person by virtue of Article 182(1), if the disclosure is made—
- (a) with the consent of the Board, and

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(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.

(10) Before deciding whether to give its consent to such a disclosure as is mentioned in paragraph (8) or (9), the Board 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**

**184.**—(1) This Article applies to information held by any person in the exercise of tax functions about any matter which is relevant, for the purposes of those functions, to tax or duty in the case of an identifiable person (in this Article referred to as “tax information”).

(2) No obligation as to secrecy imposed by section 182 of the Finance Act 1989 (c. 26) or otherwise shall prevent the disclosure of tax information to the Board for the purpose of enabling or assisting the Board to discharge its functions.

(3) Where tax information is disclosed to the Board by virtue of paragraph (2) or section 19 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (disclosure of information held by revenue departments), it must, subject to paragraph (4), be treated for the purposes of Article 179 as restricted information.

(4) Articles 179(3), 180 to 183 and 185 and section 235 of the Pensions Act 2004 (c. 35) do not apply to tax information which is disclosed to the Board as mentioned in paragraph (3), and such information may not be disclosed by the Board or any person who receives the information directly or indirectly from the Board except—

(a) to, or in accordance with authority given by, the Commissioners of Inland Revenue or the Commissioners of Customs and Excise, or

(b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings.

(5) In this Article “tax functions” has the same meaning as in section 182 of the Finance Act 1989.

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