
DRAFT STATUTORY INSTRUMENTS

2005 No.

The Pensions (Northern Ireland) Order 2005

PART II

THE PENSIONS REGULATOR

Trustees of occupational pension schemes

Prohibition orders

29. For Article 3 of the 1995 Order (prohibition orders) substitute—

“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 the 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 the Tribunal’s determination, 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) In this Article “the Tribunal” means the Pensions Regulator Tribunal established under section 102 of the Pensions Act 2004.”

Suspension orders

30. In Article 4 of the 1995 Order (suspension orders)—

(a) after paragraph (1)(a) insert—

“(aa) pending consideration being given to the institution of proceedings against him for an offence involving dishonesty or deception,”

(b) in paragraph (2)—

(i) in sub-paragraph (a) after “sub-paragraph (a)” insert “or (aa)”,

(ii) after “have effect” insert “in relation to a trust scheme”, and

(iii) after “Article 3(1)” insert “in relation to that scheme”,

(c) after paragraph (5) insert—

“(5A) An application under paragraph (5) may not be made—

(a) during the period within which the determination to exercise the power to make an order under paragraph (1) may be referred to the 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 the Tribunal’s determination, has been finally disposed of.”, and

(d) after paragraph (6) add—

“(7) In this Article “the Tribunal” means the Pensions Regulator Tribunal established under section 102 of the Pensions Act 2004.”.

Appointment of trustees by the Regulator

31.—(1) In Article 7 of the 1995 Order (appointment of trustees)—

(a) omit paragraph (4), and

(b) after paragraph (5) insert—

“(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).”.

(2) In Article 8 of that Order (consequences of appointment of trustees under Article 7), for paragraphs (1) and (2) substitute—

“(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.”.

Independent trustees

32.—(1) Part II of the 1995 Order (occupational pension schemes) is amended as follows.

- (2) In Article 22 (circumstances in which provisions relating to independent trustees apply)—
- (a) in paragraph (1)(b) omit “or” at the end of head (i) and after that head insert—
 - “(ia) the interim receiver of the property of a person who is the employer in relation to the scheme, or”,
 - (b) in paragraph (2), after “a scheme” insert “by virtue of paragraph (1)”,
 - (c) after paragraph (2) insert—
 - “(2A) To the extent that it does not already apply by virtue of paragraph (1), this Article also applies in relation to a trust scheme—
 - (a) at any time during an assessment period (within the meaning of Article 116 of the Pensions (Northern Ireland) Order 2005) in relation to the scheme, and
 - (b) at any time, not within sub-paragraph (a), when the scheme is authorised under Article 137 of that Order (closed schemes) to continue as a closed scheme.”, and
 - (d) after paragraph (2A) (inserted by sub-paragraph (c)) insert—
 - “(2B) The responsible person must, as soon as reasonably practicable, give notice of an event within paragraph (2C) to—
 - (a) the Authority,
 - (b) the Board of the Pension Protection Fund, and
 - (c) the trustees of the scheme.
 - (2C) The events are—
 - (a) the practitioner beginning to act as mentioned in paragraph (1)(a), if immediately before he does so this Article does not apply in relation to the scheme;
 - (b) the practitioner ceasing to so act, if immediately after he does so this Article does not apply in relation to the scheme;
 - (c) the official receiver beginning to act in a capacity mentioned in paragraph (1)(b)(i), (ia) or (ii), if immediately before he does so this Article does not apply in relation to the scheme;
 - (d) the official receiver ceasing to act in such a capacity, if immediately after he does so this Article does not apply in relation to the scheme.
 - (2D) For the purposes of paragraph (2B) “the responsible person” means—
 - (a) in the case of an event within paragraph (2C)(a) or (b), the practitioner, and
 - (b) in the case of an event within paragraph (2C)(c) or (d), the official receiver.
 - (2E) Regulations may require prescribed persons in prescribed circumstances where this Article begins or ceases to apply in relation to a trust scheme by virtue of paragraph (2A) to give a notice to that effect to—
 - (a) the Authority,
 - (b) the Board of the Pension Protection Fund, and
 - (c) the trustees of the scheme.
 - (2F) A notice under paragraph (2B), or under regulations under paragraph (2E), must be in writing and contain such information as may be prescribed.”.
- (3) For Articles 23 and 24 (appointment of independent trustees) substitute—

“Power to appoint independent trustees

23.—(1) While Article 22 applies in relation to a trust scheme, the Authority may by order appoint as a trustee of the scheme a person who—

- (a) is an independent person in relation to the scheme, and
- (b) is registered in the register maintained by the Authority in accordance with regulations under paragraph (4).

(2) In relation to a particular trust scheme, no more than one trustee may at any time be an independent trustee appointed under paragraph (1).

(3) For the purposes of this Article a person is independent in relation to a trust scheme only if—

- (a) he has no interest in the assets of the employer or of the scheme otherwise than as trustee of the scheme,
- (b) he is neither connected with, nor an associate of—
 - (i) the employer,
 - (ii) any person for the time being acting as an insolvency practitioner in relation to the employer, or
 - (iii) the official receiver acting in any of the capacities mentioned in Article 22(1) (b) in relation to the employer, and
- (c) he satisfies any prescribed requirements;

and any reference in this Part to an independent trustee is to be construed accordingly.

(4) Regulations must provide for the Authority to compile and maintain a register of persons who satisfy the prescribed conditions for registration.

(5) Regulations under paragraph (4) may provide—

- (a) for copies of the register or of extracts from it to be provided to prescribed persons in prescribed circumstances;
- (b) for the inspection of the register by prescribed persons in prescribed circumstances.

(6) The circumstances which may be prescribed under paragraph (5)(a) or (b) include the payment by the person to whom the copy is to be provided, or by whom the register is to be inspected, of such reasonable fee as may be determined by the Authority.

(7) This Article is without prejudice to the powers conferred by Article 7.”.

(4) In Article 25 (appointment and powers of independent trustees: further provisions)—

(a) for paragraph (4)(a) substitute—

“(a) he must as soon as reasonably practicable give written notice of that fact to the Authority, and”.

(b) after paragraph (5) insert—

“(5A) Article 10 applies to any person who, without reasonable excuse, fails to comply with paragraph (4)(a).”, and

(c) for paragraph (6) substitute—

“(6) An order under Article 23(1) may provide for any fees and expenses of the trustee 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.

(7) 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 (6)(b) or (c) is to be treated for all purposes as a debt due from the employer to the trustees of the scheme.

(8) Where, by virtue of paragraph (6)(b) or (c), an order makes provision for any fees or expenses of the trustee appointed under the order to be paid out of the resources of the scheme, the trustee is entitled to be so paid in priority to all other claims falling to be met out of the scheme's resources.”.

Disqualification

33. In Article 30 of the 1995 Order (consequences of disqualification under Article 29), for paragraph (1) substitute—

“(1) Where a person who is a trustee of a trust scheme becomes disqualified under Article 29 in relation to the scheme, his becoming so disqualified has the effect of removing him as a trustee.”.