STATUTORY INSTRUMENTS

2005 No. 255

The Pensions (Northern Ireland) Order 2005

PART VI

OCCUPATIONAL AND PERSONAL PENSION SCHEMES: MISCELLANEOUS PROVISIONS

Deficiency in assets of certain occupational pension schemes

Debt due from the employer when assets insufficient

248.—(1) Article 75 of the 1995 Order (deficiencies in the assets) is amended as follows.

(2) For paragraphs (1) to (4) substitute—

"(1) This Article applies in relation to an occupational pension scheme other than a scheme which is—

(a) a money purchase scheme, or

(b) a prescribed scheme or a scheme of a prescribed description.

(2) If—

(a) at any time which falls—

(i) when a scheme is being wound up, but

(ii) before any relevant event in relation to the employer which occurs while the scheme is being wound up,

the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme, and

(b) the trustees or managers of the scheme designate that time for the purposes of this paragraph (before the occurrence of an event within sub-paragraph (a)(ii)),

an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

This is subject to paragraph (3).

(3) Paragraph (2) applies only if—

(a) either—

(i) no relevant event within paragraph (6A)(a) or (b) occurred in relation to the employer during the period beginning with (and including) the appointed day and ending with the commencement of the winding up of the scheme, or

(ii) during the period—

(a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in head (i), and

(b) ending with the commencement of the winding up of the scheme,

a cessation notice was issued in relation to the scheme and became binding, and

(b) no relevant event within paragraph (6A)(c) has occurred in relation to the employer during the period mentioned in sub-paragraph (a)(i).

(4) Where—

(a) immediately before a relevant event ("the current event") occurs in relation to the employer the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme,

(b) the current event—

(i) occurred on or after the appointed day, and

(ii) did not occur in prescribed circumstances,

(c) if the scheme was being wound up immediately before that event, paragraph (2) has not applied in relation to the scheme to treat an amount as a debt due from the employer to the trustees or managers of the scheme,

(d) if the current event is within paragraph (6A)(a) or (b), either—

(i) no relevant event within paragraph (6A)(a) or (b) occurred in relation to the employer during the period beginning with (and including) the appointed day and ending immediately before the current event, or

(ii) a cessation event has occurred in relation to the scheme in respect of a cessation notice issued during the period—

(a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in head (i), and

(b) ending immediately before the current event, and

(e) no relevant event within paragraph (6A)(c) has occurred in relation to the employer during the period mentioned in sub-paragraph (d)(i),

an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

(4A) Where the current event is within paragraph (6A)(a) or (b), the debt under paragraph (4) is to be taken, for the purposes of the law relating to insolvency as it applies to the employer, to arise immediately before the occurrence of the current event.

(4B) Paragraph (4C) applies if, in a case within paragraph (4)—

(a) the current event is within paragraph (6A)(a) or (b), and

(b) the scheme was not being wound up immediately before that event.

(4C) Where this paragraph applies, the debt due from the employer under paragraph (4) is contingent upon—

(a) a scheme failure notice being issued in relation to the scheme after the current event and the following conditions being satisfied—

(i) the scheme failure notice is binding,

(ii) no relevant event within paragraph (6A)(c) has occurred in relation to the employer before the scheme failure notice became binding, and

(iii) a cessation event has not occurred in relation to the scheme in respect of a cessation notice issued during the period—

(a) beginning with the occurrence of the current event, and

(b) ending immediately before the issuing of the scheme failure notice,

and the occurrence of such a cessation event in respect of a cessation notice issued during that period is not a possibility, or

(b) the commencement of the winding up of the scheme before—

(i) any scheme failure notice or cessation notice issued in relation to the scheme becomes binding, or

(ii) any relevant event within paragraph (6A)(c) occurs in relation to the employer.”.

(3) In paragraph (5) for “paragraph (1)” substitute “paragraphs (2) and (4)”.

(4) In paragraph (6)—

(a) after “scheme” insert “rules”, and

(b) at the end add—

“In this paragraph “scheme rules” has the same meaning as in the Pensions (Northern Ireland) Order 2005 (“the 2005 Order”) (see Article 2 of that Order).”.

(5) After paragraph (6) insert—

“(6A) For the purposes of this Article, a relevant event occurs in relation to the employer in relation to an occupational pension scheme if and when—

(a) an insolvency event occurs in relation to the employer,

(b) the trustees or managers of the scheme make an application under paragraph (1) of Article 113 of the 2005 Order or receive a notice from the Board of the Pension Protection Fund (“the Board”) under paragraph (5)(a) of that Article, or

(c) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under Article 75 of the Insolvency (Northern Ireland) Order 1989 (members' voluntary winding up).

(6B) For the purposes of this Article—

(a) a “cessation notice”, in the case of a relevant event within paragraph (6A)(a), means—

(i) a withdrawal notice issued under Article 106(2)(b) of the 2005 Order (scheme rescue has occurred);

(ii) a withdrawal notice issued under Article 132 of that Order (no insolvency event has occurred or is likely to occur);

(iii) a notice issued under Article 106(4) of that Order (inability to confirm status of scheme) in a case where the notice has become binding and Article 132 of that Order does not apply,

(b) a “cessation notice” in the case of a relevant event within paragraph (6A)(b), means a withdrawal notice issued under Article 114(3) of the 2005 Order (scheme rescue has occurred),

(c) a cessation event occurs in relation to a scheme when a cessation notice in relation to the scheme becomes binding,

(d) the occurrence of a cessation event in relation to a scheme in respect of a cessation notice issued during a particular period (“the specified period”) is a possibility until each of the following is no longer reviewable—

(i) any cessation notice which has been issued in relation to the scheme during the specified period;

(ii) any failure to issue such a cessation notice during the specified period;

(iii) any notice which has been issued by the Board under Chapter 2 or 3 of Part III of the 2005 Order which is relevant to the issue of a cessation notice in relation to the scheme during the specified period or to such a cessation notice which has been issued during that period becoming binding;

(iv) any failure to issue such a notice as is mentioned in head (iii),

(e) the issue or failure to issue a notice is to be regarded as reviewable—

(i) during the period within which it may be reviewed by virtue of Chapter 6 of Part III of the 2005 Order, and

(ii) if the matter is so reviewed, until—

(a) the review and any reconsideration,

(b) any reference to the Ombudsman for the Board of the Pension Protection Fund in respect of the matter, and

(c) any appeal against his determination or directions,

has been finally disposed of, and

(f) a "scheme failure notice" means a scheme failure notice issued under Article 106(2)(a) or 114(2) of the 2005 Order (scheme rescue not possible).

(6C) For the purposes of this Article—

(a) Article 105 of the 2005 Order applies for the purposes of determining if and when an insolvency event has occurred in relation to the employer,

(b) "appointed day" means the day appointed under Article 110(2) of the 2005 Order (no pension protection under Chapter 3 of Part III of that Order if the scheme begins winding up before the day appointed by the Department),

(c) references to a relevant event in relation to an employer do not include a relevant event which occurred in relation to him before he became the employer in relation to the scheme,

(d) references to a cessation notice becoming binding are to the notice in question mentioned in paragraph (6B)(a) or (b) and issued under Part III of the 2005 Order becoming binding within the meaning given in that Part of that Order, and

(e) references to a scheme failure notice becoming binding are to the notice in question mentioned in paragraph (6B)(f) and issued under Part III of the 2005 Order becoming binding within the meaning given in that Part of that Order.

(6D) Where—

(a) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under Article 75 of the Insolvency (Northern Ireland) Order 1989 (members' voluntary winding up), and

(b) either—

(i) the voluntary winding up of the employer is stayed other than in prescribed circumstances, or

(ii) a meeting of creditors is held in relation to the employer under Article 81 of that Order (creditors' meeting which has the effect of converting a members' voluntary winding up into a creditors' voluntary winding up),

this Article has effect as if that resolution had never been passed and any debt which arose under this Article by virtue of the passing of that resolution shall be treated as if it had never arisen.".

(6) Omit paragraph (9).