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## STATUTORY INSTRUMENTS

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# 2005 No. 255

## The Pensions (Northern Ireland) Order 2005

### PART II

#### THE PENSIONS REGULATOR

*Powers in relation to winding up of occupational pension schemes*

#### **Powers to wind up occupational pension schemes**

**18.** In Article 11 of the 1995 Order (powers to wind up occupational pension schemes)—

- (a) omit paragraph (3),
- (b) before paragraph (4) insert—

“(3A) The Authority may, during an assessment period (within the meaning of Article 116 of the Pensions (Northern Ireland) Order 2005 (meaning of “assessment period” for the purposes of Part III of that Order)) in relation to an occupational pension scheme, by order direct the scheme to be wound up if they are satisfied that it is necessary to do so in order—

- (a) to ensure that the scheme's protected liabilities do not exceed its assets, or
- (b) if those liabilities do exceed its assets, to keep the excess to a minimum.

(3B) In paragraph (3A)—

- (a) “protected liabilities” has the meaning given by Article 115 of the Pensions (Northern Ireland) Order 2005, and
- (b) references to the assets of the scheme are references to those assets excluding any assets representing the value of any rights in respect of money purchase benefits (within the meaning of that Order) under the scheme.,”

(c) at the end of paragraph (4) add—

“This paragraph is subject to Articles 24, 119 and 198 of the Pensions (Northern Ireland) Order 2005 (winding up order made when freezing order has effect in relation to scheme or during assessment period under Part III of that Order).”, and

(d) after paragraph (6) insert—

“(6A) Paragraph (6) does not have effect to authorise the Authority to make an order as mentioned in sub-paragraph (a) or (b) of that paragraph, if their doing so would be unlawful as a result of section 6(1) of the Human Rights Act 1998 (unlawful for public authority to act in contravention of a Convention right).” .

#### **Freezing orders**

**19.—**(1) This Article applies to an occupational pension scheme which is not a money purchase scheme.

(2) The Regulator may make a freezing order in relation to such a scheme if and only if—

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- (a) the order is made pending consideration being given to the making of an order in relation to the scheme under Article 11(1)(c) of the 1995 Order (power to wind up schemes where necessary to protect the generality of members), and
- (b) the Regulator is satisfied that—
  - (i) there is, or is likely to be if the order is not made, an immediate risk to the interests of members under the scheme or the assets of the scheme, and
  - (ii) it is necessary to make the freezing order to protect the interests of the generality of the members of the scheme.

But no freezing order may be made in relation to a scheme during an assessment period (within the meaning of Article 116) in relation to the scheme (see Article 119(11)).

- (3) A freezing order is an order directing that during the period for which it has effect—
  - (a) no benefits are to accrue under the scheme rules to, or in respect of, members of the scheme, and
  - (b) winding up of the scheme may not begin.
- (4) A freezing order may also contain one or more of the following directions which have effect during the period for which the order has effect—
  - (a) a direction that no new members, or no specified classes of new member, are to be admitted to the scheme;
  - (b) a direction that—
    - (i) no further contributions or payments, or
    - (ii) no further specified contributions or payments,
 are to be paid towards the scheme by or on behalf of the employer, any members or any specified members of the scheme;
  - (c) a direction that any amount or any specified amount which—
    - (i) corresponds to any contribution which would be due to be paid towards the scheme on behalf of a member but for a direction under sub-paragraph (b), and
    - (ii) has been deducted from a payment of any earnings in respect of an employment,
 is to be repaid to the member in question by the employer;
  - (d) a direction that no benefits, or no specified benefits, are to be paid to or in respect of any members or any specified members under the scheme rules;
  - (e) a direction that payments of all benefits or specified benefits under the scheme rules to or in respect of all the members or specified members may only be made from the scheme if they are reduced in a specified manner or by a specified amount;
  - (f) a direction that—
    - (i) no transfers or no specified transfers of, or no transfer payments or no specified transfer payments in respect of, any member's rights under the scheme rules are to be made from the scheme, or
    - (ii) no other steps or no specified other steps are to be taken to discharge any liability of the scheme to or in respect of a member of the scheme in respect of pensions or other benefits;
  - (g) a direction that no statements of entitlement are to be provided to members of the scheme under section 89A of the Pension Schemes Act (salary related schemes: right to statement of entitlement);
  - (h) a direction that—

- (i) no refunds of, or no specified refunds of, or in respect of, contributions paid by or in respect of a member towards the scheme are to be made from the scheme, or
  - (ii) refunds or specified refunds of, or in respect of, contributions paid by or in respect of a member towards the scheme may only be made from the scheme if they are determined in a specified manner and satisfy such other conditions as may be specified.
- (5) In paragraph (4)(b)—
- (a) the references to contributions do not include contributions due to be paid before the order takes effect, and
  - (b) the references to payments towards a scheme include payments in respect of pension credits where the person entitled to the credit is a member of the scheme.
- (6) A freezing order may not contain a direction under paragraph (4)(d) or (e) which reduces the benefits payable to or in respect of a member, for the period during which the order has effect, below the level to which the trustees or managers of the scheme would have power to reduce them if a winding up of the scheme had begun at the time when the freezing order took effect.
- (7) A direction under paragraph (4)(f) may, in particular, provide that transfers or specified transfers of, or transfer payments or specified transfer payments in respect of, any member's rights under the scheme rules may not be made from the scheme unless the amounts paid out from the scheme in respect of the transfers or transfer payments are determined in a specified manner and the transfer or transfer payments satisfy such other conditions as may be specified.
- (8) A freezing order may also require the trustees or managers of the scheme to obtain an actuarial valuation within a specified period.
- (9) A freezing order containing such a requirement must specify—
- (a) the date by reference to which the assets and liabilities are to be valued,
  - (b) the assets and liabilities which are to be taken into account,
  - (c) the manner in which the valuation must be prepared,
  - (d) the information and statements which it must contain, and
  - (e) any other requirements that the valuation must satisfy.
- (10) For the purposes of paragraph (8)—
- “an actuarial valuation” means a written valuation of the scheme's assets and liabilities prepared and signed by the actuary,
- “the actuary” means—
- (a) the actuary appointed under Article 47(1)(b) of the 1995 Order (professional advisers) in relation to the scheme, or
  - (b) if no such actuary has been appointed—
    - (i) a person with prescribed qualifications or experience, or
    - (ii) a person approved by the Department.
- (11) In this Article “specified” means specified in the freezing order.

### **Consequences of freezing order**

**20.—**(1) If a freezing order is made in relation to a scheme any action taken in contravention of the order is void except to the extent that the action is validated by an order under Article 22.

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(2) A freezing order in relation to a scheme does not prevent any increase in a benefit which is an increase which would otherwise accrue in accordance with the scheme or any statutory provision during the period for which the order has effect, unless the order contains a direction to the contrary.

(3) A freezing order in relation to a scheme does not prevent the scheme being wound up in pursuance of an order under Article 11 of the 1995 Order (power to wind up occupational pension schemes).

(4) If a freezing order contains a direction under Article 19(4)(b) that no further contributions, or no further specified contributions, are to be paid towards a scheme during the period for which the order has effect—

- (a) any contributions which are the subject of the direction and which would otherwise be due to be paid towards the scheme during that period are to be treated as if they do not fall due, and
- (b) any obligation to pay those contributions (including any obligation under Article 49(8) of the 1995 Order to pay amounts deducted corresponding to such contributions) is to be treated as if it does not arise.

(5) If a freezing order contains a direction under Article 19(4)(f) (no transfers or discharge of member's rights) it does not prevent—

- (a) giving effect to a pension sharing order or provision, or
- (b) giving effect to a pension earmarking order in a case where—
  - (i) the order requires a payment to be made if a payment in respect of any benefits under the scheme becomes due to a person, and
  - (ii) a direction under Article 19(4)(d) or (e) does not prevent the payment becoming due.

(6) For the purposes of paragraph (5)—

“pension sharing order or provision” means an order or provision falling within Article 25(1) of the 1999 Order (activation of pension sharing);

“pension earmarking order” means—

- (a) an order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978 (NI 15) (financial provision orders in connection with divorce etc.) so far as it includes provision made by virtue of Article 27B or 27C of that Order (powers to include provision about pensions),
- (aa) [<sup>F1</sup>an order under Part 1 (financial provision in connection with dissolution, nullity or separation) of Schedule 15 to the Civil Partnership Act 2004 (financial relief in the High Court or a county court etc.: Northern Ireland) so far as it includes provision made by virtue of paragraphs 20 and 21 of Part 5 of that Schedule (powers to include provisions about pensions),]
- (b) an order under section 23 of the Matrimonial Causes Act 1973 (c. 18) so far as it includes provision made by virtue of section 25B or 25C of that Act (powers in England and Wales corresponding to those mentioned in paragraph (a)),<sup>F1</sup> . . .
- (c) an order under section 12A(2) or (3) of the Family Law (Scotland) Act 1985 (c. 37) (powers in relation to pension lump sums when making a capital sum order)<sup>F1</sup>, or].
- (d) [<sup>F1</sup>an order under Part 1 (financial provision in connection with dissolution, nullity or separation) of Schedule 5 to the Civil Partnership Act 2004 (financial relief in the High Court or a county court etc.) so far as it includes provision made by virtue of paragraphs 25 and 26 of Part 6 of that Schedule (powers to include provisions about pensions).]

(7) Regulations may modify any provisions of—

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- (a) Chapter 4 of Part IV of the Pension Schemes Act (protection for early leavers: transfer values), or
- (b) Chapter 5 of that Part (protection for early leavers: cash transfer sums and contribution refunds),

in their application to an occupational pension scheme in relation to which a freezing order is made containing a direction under Article 19(4)(f), (g) or (h) (no transfers etc. in respect of, member's rights or refunds of contributions etc. from the scheme).

(8) Disregarding paragraph (1), if a freezing order made in relation to a scheme is not complied with, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.

(9) Paragraph (8) does not apply in the case of non-compliance with a direction under Article 19(4)(c) (direction that certain deducted contributions are to be repaid by the employer).

(10) In such a case, Article 10 of the 1995 Order (civil penalties) applies to an employer who, without reasonable excuse, fails to repay an amount as required by the direction.

**F1** SR 2005/434

#### **Period of effect etc. of freezing order**

- 21.**—(1) A freezing order must specify the period for which it has effect.
- (2) The period specified must not exceed three months.
  - (3) The Regulator may on one or more occasions by order extend the period for which the order has effect.
  - (4) But the total period for which the order has effect must not exceed six months.
  - (5) This Article is subject to Articles 23, 24 and 25 (effect of winding up and assessment period on freezing orders).

#### **Validation of action in contravention of freezing order**

- 22.**—(1) If a freezing order is made in relation to a scheme, the Regulator may by order validate action taken in contravention of the order.
- (2) Any of the following persons may apply to the Regulator for an order under this Article validating particular action—
- (a) the trustees or managers of the scheme;
  - (b) any person directly affected by the action.

#### **Effect of determination to wind up scheme on freezing order**

- 23.**—(1) This Article applies where—
- (a) the Regulator determines to make an order under Article 11 of the 1995 Order (power to wind up occupational schemes) in relation to a scheme (“a winding up order”),
  - (b) that determination is made during the period for which a freezing order has effect in relation to the scheme,
  - (c) the case is not one to which the special procedure in Article 93 applies (immediate exercise of powers where immediate risk to assets etc.), and
  - (d) the winding up order accordingly cannot be made until the expiry of the period specified in Article 91(5) (no exercise of powers during period of referral to the Tribunal etc.).

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- (2) In such a case the freezing order is to continue to have effect until—
  - (a) where the winding up order is made, it ceases to have effect under Article 24 from the time when that order is made, or
  - (b) the determination to make the winding up order is revoked.
- (3) Paragraph (2) is subject to the Regulator's power under Article 96 to revoke the freezing order at any time.

### **Effect of winding up order on freezing order**

- 24.**—(1) This Article applies where—
- (a) an order is made under Article 11 of the 1995 Order (power to wind up occupational pension schemes) in relation to a scheme, and
  - (b) the order is made during the period for which a freezing order has effect in relation to the scheme.
- (2) In such a case—
- (a) the winding up of the scheme in pursuance of the order under Article 11 of the 1995 Order is to be taken as beginning at the time when the freezing order took effect, and
  - (b) the freezing order ceases to have effect from the time when the order under Article 11 of the 1995 Order is made.
- (3) The Regulator may by order direct any specified person—
- (a) to take such specified steps as it considers are necessary as a result of the winding up of the scheme being deemed under paragraph (2)(a) to have begun at the time when the freezing order took effect, and
  - (b) to take those steps within a specified period.
- (4) If the trustees or managers of a scheme fail to comply with a direction to them contained in an order under this Article, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (5) That Article also applies to any other person who, without reasonable excuse, fails to comply with a direction to him contained in an order under this Article.
- (6) In this Article “specified” means specified in an order under this Article.

### **Effect of assessment period under Part III on freezing order**

**25.** Where an assessment period (within the meaning of Article 116) begins in relation to a scheme, any freezing order in relation to the scheme ceases to have effect when the assessment period begins.

### **Power to give a direction where freezing order ceases to have effect**

- 26.**—(1) This Article applies where—
- (a) the Regulator revokes a freezing order in relation to a scheme or it otherwise ceases to have effect, and
  - (b) at the time when the freezing order ceases to have effect, the Regulator has not made an order under Article 11 of the 1995 Order in relation to the scheme.
- (2) In such a case the Regulator may make an order under this Article in relation to the scheme containing a direction that, if specified conditions are met, specified benefits are to accrue under the scheme rules to, or in respect of, specified members of the scheme in respect of specified periods

of service being service in employment which but for the freezing order would have qualified the member in question for those benefits under the scheme rules.

- (3) The conditions mentioned in paragraph (2) may include—
  - (a) a requirement that specified benefits do not accrue to, or in respect of, a member or a specified member unless a contribution of a specified amount is paid by or on behalf of the member towards the scheme within a specified period;
  - (b) a requirement that a contribution of a specified amount must be paid by or on behalf of the employer within a specified period;
  - (c) a requirement that such contributions as are specified under sub-paragraph (a) or (b) are to be accepted for the period for which the freezing order had effect or any part of that period.
- (4) Where the freezing order contained a direction under Article 19(4)(d) or (e) and any amount of any benefit under the scheme rules was not paid as a result of the direction—
  - (a) the direction does not affect any entitlement to that benefit, and
  - (b) any benefit to which a member, or a person in respect of a member, remains entitled at the end of the period for which the freezing order had effect is an amount which falls due to the member or, as the case may be, the person at the end of that period.
- (5) If an order made under this Article in relation to a scheme is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or a manager of the scheme who has failed to take all reasonable steps to secure compliance.
- (6) Paragraph (7) applies if—
  - (a) an order is made under this Article in relation to a scheme,
  - (b) the order contains a requirement as described in paragraph (3)(b) that a contribution of a specified amount must be paid by or on behalf of the employer within a specified period, and
  - (c) the contribution is not paid within that period.
- (7) In such a case—
  - (a) Article 10 of the 1995 Order applies to the employer if he has failed, without reasonable excuse, to secure compliance,
  - (b) the amount which for the time being remains unpaid after the end of the specified period is to be treated as a debt due from the employer to the trustees or managers of the scheme, and
  - (c) except in prescribed circumstances, the trustees or managers must, within a prescribed period, give notice of the failure to pay to the Regulator and to the member.
- (8) If in any case paragraph (7)(c) is not complied with, Article 10 of the 1995 Order applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (9) In this Article “specified” means specified in an order under this Article.

### **Notification of trustees, managers, employers and members**

- 27.—(1) This Article applies where—
- (a) a freezing order is made in relation to a scheme,
  - (b) an order is made under Article 22 validating action taken in contravention of a freezing order made in relation to a scheme,
  - (c) an order is made under Article 24 directing specified steps to be taken following the winding up of a scheme, or
  - (d) an order is made under Article 26 in relation to a scheme where a freezing order ceases to have effect.

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- (2) The Regulator must, as soon as reasonably practicable after the order has been made, notify—
- (a) the trustees or managers of the scheme, and
  - (b) the employer in relation to the scheme,
- of the fact that the order has been made and of its effect.
- (3) The Regulator may by order direct the trustees or managers of the scheme to notify—
- (a) all the members of the scheme, or
  - (b) the members of the scheme specified in the order,
- of the fact that the order mentioned in paragraph (1) has been made and of its effect.
- (4) Notification is to be within the period and in the manner specified in the order under paragraph (3).
- (5) If the trustees or managers of a scheme fail to comply with a direction to them contained in an order made under paragraph (3), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

#### **Articles 19 to 27: supplementary**

- 28.**—(1) An order may be made in relation to a scheme under any of Articles 19, 21, 22, 24, 26 and 27—
- (a) in spite of any statutory provision or rule of law, or any rule of the scheme, which would otherwise operate to prevent the order being made, and
  - (b) without regard to any such statutory provision, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the making of the order.
- (2) Paragraph (1) does not have effect to authorise the Regulator to make an order as mentioned in that paragraph if its doing so would be unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42) (unlawful for public authority to act in contravention of a Convention right).



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