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DRAFT STATUTORY INSTRUMENTS

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**2005 No.**

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

**PART II**

**THE PENSIONS REGULATOR**

*Exercise of regulatory functions*

**The Regulator's procedure in relation to its regulatory functions**

**88.**—(1) The Regulator must determine the procedure that it proposes to follow in relation to the exercise of its regulatory functions.

(2) For the purposes of this Part the “regulatory functions” of the Regulator are—

- (a) the power to issue an improvement notice under Article 9,
- (b) the power to issue a third party notice under Article 10,
- (c) the reserved regulatory functions (see Schedule 2),
- (d) the power to issue a clearance statement under Article 38,
- (e) the power to issue a notice under Article 41(1) approving the details of arrangements,
- (f) the power to issue a clearance statement under Article 42,
- (g) the power to vary or revoke under Article 96 (to the extent that it does not fall within sub-paragraph (c)),
- (h) the power to make an order under Article 138(8),
- (i) the power to make an order under Article 198(4),
- (j) the power to grant or revoke authorisation under Article 264,
- (k) the power to grant or revoke approval under Article 265,
- (l) the power to issue a notice under Article 269(5),
- (m) the power by direction under Article 4(3)(a) of the 1999 Order to refuse to register a scheme under Article 4 of that Order,
- (n) the power to make an order under Article 7 of the 1995 Order appointing a trustee (to the extent that it does not fall within sub-paragraph (c)),
- (o) the power to make an order under Article 23 of that Order appointing an independent trustee,
- (p) the power to give directions under Article 72B of that Order (directions facilitating winding up), and
- (q) such other functions of the Regulator as may be prescribed.

(3) The Determinations Panel must determine the procedure to be followed by it in relation to any exercise by it on behalf of the Regulator of—

- (a) the power to determine whether to exercise a regulatory function, and
  - (b) where the Panel so determines to exercise a regulatory function, the power to exercise the function in question.
- (4) The procedure determined under this Article—
- (a) must provide for the procedure required under—
    - (i) Article 91 (standard procedure), and
    - (ii) Article 93 (special procedure), and
  - (b) may include such other procedural requirements as the Regulator or, as the case may be, the Panel considers appropriate.
- (5) This Article is subject to—
- (a) Articles 94 to 98 (the remaining provisions concerning the procedure in relation to the regulatory functions), and
  - (b) any regulations made by the Secretary of State under paragraph 19 of Schedule 1 to the Pensions Act 2004 (c. 35).

#### **Publication of procedure in relation to regulatory functions**

- 89.**—(1) The Regulator must issue a statement of the procedure determined under Article 88.
- (2) The Regulator must arrange for the statement to be published in the way appearing to it to be appropriate.
- (3) The Regulator may charge a reasonable fee for providing a person with a copy of the statement.
- (4) If the procedure determined under Article 88 is changed in a material way, the Regulator must publish a revised statement.
- (5) The Regulator must, without delay, give the Department a copy of any statement which it issues under this Article.

#### **Application of standard and special procedure**

- 90.**—(1) The Regulator must comply with the standard procedure (see Article 91) or, where Article 92 applies, the special procedure (see Article 93) in a case where—
- (a) the Regulator considers that the exercise of one or more of the regulatory functions may be appropriate, or
  - (b) an application is made under or by virtue of—
    - (i) any of the provisions listed in Article 7(6), or
    - (ii) any prescribed provision of this or any other statutory provision, for the Regulator to exercise a regulatory function.
- (2) For the purposes of Article 91, references to the regulatory action under consideration in a particular case are—
- (a) in a case falling within paragraph (1)(a), references to the exercise of the one or more regulatory functions which the Regulator considers that it may be appropriate to exercise, and
  - (b) in a case falling within paragraph (1)(b), references to the exercise of the regulatory function which is the subject-matter of the application.
- (3) Neither Article 91 (standard procedure) nor Article 93 (special procedure) applies in relation to a determination whether to exercise a regulatory function on a review under Article 94 (compulsory review of regulatory action).

## Standard procedure

91.—(1) The procedure determined under Article 88 must make provision for the standard procedure.

(2) The “standard procedure” is a procedure which provides for—

- (a) the giving of notice to such persons as it appears to the Regulator would be directly affected by the regulatory action under consideration (a “warning notice”),
- (b) those persons to have an opportunity to make representations,
- (c) the consideration of any such representations and the determination whether to take the regulatory action under consideration,
- (d) the giving of notice of the determination to such persons as appear to the Regulator to be directly affected by it (a “determination notice”),
- (e) the determination notice to contain details of the right of referral to the Tribunal under paragraph (3),s
- (f) the form and further content of warning notices and determination notices and the manner in which they are to be given, and
- (g) the time limits to be applied at any stage of the procedure.

(3) Where the standard procedure applies, the determination which is the subject-matter of the determination notice may be referred to the Tribunal by—

- (a) any person to whom the determination notice is given as required under paragraph (2) (d), and
- (b) any other person who appears to the Tribunal to be directly affected by the determination.

(4) Paragraph (3) does not apply where the determination which is the subject-matter of the determination notice is a determination to issue a clearance statement under Article 38 or 42.

(5) Where the determination which is the subject-matter of the determination notice is a determination to exercise a regulatory function and paragraph (3) applies, the Regulator must not exercise the function—

- (a) during the period within which the determination may be referred to the Tribunal (see Article 97(1)), and
- (b) if the determination is so referred, until the reference, and any appeal against the Tribunal’s determination, has been finally disposed of.

(6) Paragraph (5) does not apply where the determination is a determination to exercise any of the following functions—

- (a) the power to make a direction under Article 71(8) extending the retention period for documents taken into possession under Article 70;
- (b) the power to make a direction under Article 73(10) extending the retention period for documents taken into possession under that Article;
- (c) the power to make an order under Article 138(8);
- (d) the power to make an order under Article 198(4);
- (e) the power to grant or revoke authorisation under Article 264;
- (f) the power to grant or revoke approval under Article 265;
- (g) the power to issue a notice under Article 269(5);
- (h) the power to make an order under Article 3(1) of the 1995 Order prohibiting a person from being a trustee;
- (i) the power to make an order under Article 3(3) of that Order revoking such an order;

- (j) the power to make an order under Article 4(1) of that Order suspending a trustee;
- (k) the power to make an order under Article 4(2) of that Order extending the period for which an order under Article 4(1) of that Order has effect;
- (l) the power to make an order under Article 4(5) of that Order revoking an order under Article 4(1) of that Order suspending a trustee;
- (m) the power to make an order under Article 7 of that Order appointing a trustee;
- (n) the power under Article 9 of that Order to exercise by order the same jurisdiction and powers as the High Court for vesting property in, or transferring property to, trustees in consequence of the appointment or removal of a trustee;
- (o) the power to make an order under Article 23 of that Order appointing an independent trustee;
- (p) the power under Article 29(5) of that Order to give a notice waiving a disqualification under Article 29 of that Order;
- (q) the power under Article 30(2) of that Order to exercise by order the same jurisdiction and powers as the High Court for vesting property in, or transferring property to, the trustees where a trustee becomes disqualified under Article 29 of that Order;
- (r) the power to give directions under Article 72B of that Order facilitating a winding up;
- (s) the power by direction under section 95(4) of the Pension Schemes Act to grant an extension of the period within which the trustees or managers of a scheme are to carry out certain duties;
- (t) the power by direction under section 97J(2) of that Act to extend the period for compliance with a transfer notice;
- (u) such other regulatory functions as may be prescribed;
- (v) the power under Article 96(1)(b) to vary or revoke in relation to the exercise of any of the regulatory functions mentioned in sub-paragraphs (a) to (u) other than that mentioned in sub-paragraph (i) or (l).

**Special procedure: applicable cases**

- 92.**—(1) The special procedure in Article 93 (and not the standard procedure) applies to—
- (a) a case falling within paragraph (2),
  - (b) a case falling within paragraph (3), and
  - (c) a case falling within paragraph (4).
- (2) A case falls within this paragraph if—
- (a) the Regulator considers that it may be necessary to exercise a regulatory function listed in paragraph (5) immediately because there is, or the Regulator considers it likely that if a warning notice were to be given there would be, an immediate risk to—
    - (i) the interests of members under an occupational or personal pension scheme, or
    - (ii) the assets of such a scheme,
  - (b) the Regulator accordingly dispenses with the giving of a warning notice and an opportunity to make representations as described in Article 91(2)(a) and (b), and
  - (c) the Regulator determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—
    - (i) the interests of members under an occupational or personal pension scheme, or

- (ii) the assets of such a scheme.
- (3) A case falls within this paragraph if—
  - (a) the Regulator gives a warning notice as described in Article 91(2)(a) in relation to a determination whether to exercise a regulatory function listed in paragraph (5), and
  - (b) before it has considered the representations of those persons to whom the warning notice is given, the Regulator determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—
    - (i) the interests of members under an occupational or personal pension scheme, or
    - (ii) the assets of such a scheme.
- (4) A case falls within this paragraph if the Regulator—
  - (a) gives a warning notice as described in Article 91(2)(a) in relation to a determination whether to exercise a regulatory function which—
    - (i) is listed in paragraph (5), and
    - (ii) is not a function listed in Article 91(6) (functions which may be exercised immediately under the standard procedure),
  - (b) considers the representations of those persons to whom the warning notice is given, and
  - (c) determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—
    - (i) the interests of members under an occupational or personal pension scheme, or
    - (ii) the assets of such a scheme.
- (5) The regulatory functions referred to in paragraphs (2), (3) and (4) are—
  - (a) the power to make or extend a restraining order under Article 16;
  - (b) the power to make a freezing order under Article 19;
  - (c) the power to make an order under Article 21(3) extending the period for which a freezing order has effect;
  - (d) the power to make an order under Article 22 validating action taken in contravention of a freezing order;
  - (e) the power to make an order under Article 24 directing that specified steps are taken;
  - (f) the power to make an order under Article 26 giving a direction where a freezing order ceases to have effect;
  - (g) the power to make an order under Article 27(3) directing the notification of members;
  - (h) the power to make an order under Article 210 modifying a scheme, giving directions or imposing a schedule of contributions;
  - (i) the power to make an order under Article 3(1) of the 1995 Order prohibiting a person from being a trustee;
  - (j) the power to make an order under Article 3(3) of that Order revoking such an order;
  - (k) the power to make an order under Article 4(1) of that Order suspending a trustee;
  - (l) the power to make an order under Article 4(5) of that Order revoking such an order;
  - (m) the power to make an order under Article 7 of that Order appointing a trustee;

- (n) the power under Article 9 of that Order to exercise by order the same jurisdiction and powers as the High Court for vesting property in, or transferring property to, trustees in consequence of the appointment or removal of a trustee;
- (o) the power to make an order under Article 11 of that Order directing or authorising an occupational pension scheme to be wound up;
- (p) the power to make an order under Article 23 of that Order appointing an independent trustee;
- (q) the power under Article 29(5) of that Order to give a notice waiving a disqualification under Article 29 of that Order;
- (r) the power under Article 30(2) of that Order to exercise by order the same jurisdiction and powers as the High Court for vesting property in, or transferring property to, the trustees where a trustee becomes disqualified under Article 29 of that Order;
- (s) the power to make an order under Article 67G(2) of that Order by virtue of which any modification of, or grant of rights under, an occupational pension scheme is void to any extent;
- (t) the power to make an order under Article 67H(2) of that Order prohibiting, or specifying steps to be taken in relation to, the exercise of a power to modify an occupational pension scheme;
- (u) such other regulatory functions as may be prescribed;
- (v) the power under Article 96(1)(b) to vary or revoke in relation to the exercise of any of the regulatory functions mentioned in sub-paragraphs (a) to (u) other than that mentioned in sub-paragraph (j) or (l).

### **Special procedure**

**93.**—(1) The procedure determined under Article 88 must make provision for the special procedure.

- (2) The “special procedure” is a procedure which provides for—
  - (a) the giving of notice of the determination to exercise the regulatory function to such persons as appear to the Regulator to be directly affected by it (a “determination notice”),
  - (b) the determination notice to contain details of the requirement for the Regulator to review the determination under Article 94(1) and of any subsequent right of referral to the Tribunal under Article 94(7),
  - (c) the persons to whom the determination notice was given (as required under sub-paragraph (a)) to have an opportunity to make representations in relation to the determination before it is reviewed under Article 94(1),
  - (d) the consideration of any such representations before the determination on the review,
  - (e) the giving of a notice in accordance with Article 94(4) of the determination on the review (a “final notice”),
  - (f) the final notice to contain details of the right of referral to the Tribunal under Article 94(7),
  - (g) the form and further content of determination notices and final notices and the manner in which they are to be given, and
  - (h) the time limits to be applied at any stage of the procedure.

## Compulsory review

94.—(1) In a case where the special procedure applies, the Regulator must review the determination to exercise the regulatory function.

(2) The review must be determined as soon as reasonably practicable.

(3) The Regulator's powers on a review under this Article include power to—

- (a) confirm, vary or revoke the determination,
- (b) confirm, vary or revoke any order, notice or direction made, issued or given as a result of the determination,
- (c) substitute a different determination, order, notice or direction,
- (d) deal with the matters arising on the review as if they had arisen on the original determination, and
- (e) make savings and transitional provision.

(4) When the Regulator has completed a review under this Article a notice of its determination on the review must be given to such persons as appear to it to be directly affected by its determination on the review.

(5) If the final notice contains a determination to exercise a different regulatory function to the function which was the subject-matter of the determination notice, then the final notice may not be given unless—

- (a) such persons as appear to the Regulator to be directly affected by the exercise of the regulatory function have been given an opportunity to make representations, and
- (b) the Regulator has considered any such representations before it makes its determination on the review.

(6) Paragraph (5) does not apply if the regulatory function is listed in Article 92(5) and the Regulator determines to exercise it immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—

- (a) the interests of members under an occupational or personal pension scheme, or
- (b) the assets of such a scheme.

(7) The determination which is the subject-matter of a final notice may be referred to the Tribunal by—

- (a) any person to whom the final notice is given as required under paragraph (4), and
- (b) any other person who appears to the Tribunal to be directly affected by the determination.

(8) Where that determination is a determination to exercise a different regulatory function to the function which was the subject-matter of the determination notice, the Regulator must not exercise the regulatory function—

- (a) during the period within which the determination may be referred to the Tribunal (see Article 97(1)), and
- (b) if the determination is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.

(9) Paragraph (8) does not apply where—

- (a) the regulatory function in question is a function listed in Article 91(6) (functions which may be exercised immediately under the standard procedure), or
- (b) the regulatory function in question is a function listed in Article 92(5) (functions which may be exercised immediately under the special procedure) and the Regulator determines to exercise it immediately on the basis described in paragraph (6).

(10) The functions of the Regulator under this Article are exercisable on behalf of the Regulator by the Determinations Panel (and are not otherwise exercisable by or on behalf of the Regulator).

(11) The Panel must determine the procedure that it proposes to follow in relation to the exercise of those functions.

(12) Article 89 (publication of Regulator's procedure) applies in relation to the procedure determined under paragraph (11) as it applies to the procedure determined under Article 88 (procedure in relation to the regulatory functions).

#### **Duty to have regard to the interests of members etc.**

**95.**—(1) The Regulator must have regard to the matters mentioned in paragraph (2)—

- (a) when determining whether to exercise a regulatory function—
  - (i) in a case where the requirements of the standard or special procedure apply, or
  - (ii) on a review under Article 94, and
- (b) when exercising the regulatory function in question.

(2) Those matters are—

- (a) the interests of the generality of the members of the scheme to which the exercise of the function relates, and
- (b) the interests of such persons as appear to the Regulator to be directly affected by the exercise.

#### **Powers to vary or revoke orders, notices or directions etc.**

**96.**—(1) The Regulator may vary or revoke—

- (a) any determination by the Regulator whether to exercise a regulatory function, or
- (b) any order, notice or direction made, issued or given by the Regulator in the exercise of a regulatory function.

(2) Paragraph (1)(b) does not apply to—

- (a) an order under Article 3(3) of the 1995 Order revoking a prohibition order under that Article,
- (b) an order under Article 4(5) of that Order revoking a suspension order under that Article,
- (c) a direction under Article 4(3) of the 1999 Order refusing to register a scheme under that Article or removing a scheme from the register of stakeholder pension schemes, or
- (d) such other orders, notices or directions made, issued or given by the Regulator, in the exercise of a regulatory function, as may be prescribed.

(3) A variation or revocation of an order, a notice or a direction must be made by an order, notice or direction (as the case may be).

(4) A variation or revocation made under this Article must take effect from a specified time which must not be a time earlier than the time when the variation or revocation is made.

(5) The power to vary or revoke under this Article—

- (a) is not to be treated for the purposes of paragraph (1) as a regulatory function, and
- (b) is in addition to any such power which is conferred on the Regulator by, or by virtue of, this or any other statutory provision.