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DRAFT STATUTORY INSTRUMENTS

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**2005 No.**

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

**PART II**

**THE PENSIONS REGULATOR**

*Gathering information*

**Provision of information**

**67.**—(1) The Regulator may, by notice in writing, require any person to whom paragraph (2) applies to produce any document, or provide any other information, which is—

- (a) of a description specified in the notice, and
- (b) relevant to the exercise of the Regulator’s functions.

(2) This paragraph applies to—

- (a) a trustee or manager of an occupational or personal pension scheme,
- (b) a professional adviser in relation to an occupational pension scheme,
- (c) the employer in relation to—
  - (i) an occupational pension scheme, or
  - (ii) a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, and
- (d) any other person appearing to the Regulator to be a person who holds, or is likely to hold, information relevant to the exercise of the Regulator’s functions.

(3) Where the production of a document, or the provision of information, is required by a notice given under paragraph (1), the document must be produced, or information must be provided, in such a manner, at such a place and within such a period as may be specified in the notice.

**Inspection of premises**

**68.**—(1) An inspector may, for the purposes of investigating whether, in the case of any occupational pension scheme, the occupational scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.

(2) In paragraph (1), the “occupational scheme provisions” means provisions contained in or made by virtue of—

- (a) any of the following provisions of this Order—
  - Part I (introductory);
  - this Part;
  - Part IV (scheme funding);
  - Articles 218 to 220 (member-nominated trustees and directors);

- Articles 224 to 226 (requirement for knowledge and understanding);
- Article 229 (UK-based scheme to be trust with effective rules);
- Article 230 (non-European scheme to be trust with UK resident trustee);
- Article 232 (activities of occupational pension schemes);
- Article 233 (no indemnification for fines or civil penalties);
- Articles 236 and 238 (consultation by employers);
- Part VII (cross-border activities within European Union);
- Part IX (miscellaneous and supplementary);
- (b) either of the following provisions of the 1999 Order—
  - Article 30 (time for discharge of pension credit liability);
  - Article 42 (information);
- (c) any of the provisions of Part II of the 1995 Order (occupational pension schemes), other than—
  - (i) Articles 51 to 54 (indexation), and
  - (ii) Articles 62 to 65 (equal treatment);
- (d) any of the following provisions of the Pension Schemes Act—
  - Chapter 4 of Part IV (transfer values);
  - Chapter 5 of Part IV (early leavers: cash transfer sums and contribution refunds);
  - Chapter 2 of Part IVA (pension credit transfer values);
  - section 109 (information);
  - section 170 (levy);
- (e) any provisions in force in Great Britain corresponding to any provisions within subparagraphs (a) to (d).
- (3) An inspector may, for the purposes of investigating whether, in the case of a stakeholder scheme—
  - (a) Articles 3 and 4(4) of the 1999 Order (stakeholder pension schemes: registration etc.), or
  - (b) any corresponding provisions in force in Great Britain,
 are being, or have been, complied with, at any reasonable time enter premises liable to inspection.
- (4) An inspector may, for the purposes of investigating whether, in the case of any trust-based personal stakeholder scheme, the trust-based scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.
- (5) In paragraph (4)—
  - “trust-based personal stakeholder scheme” means a personal pension scheme which—
    - (a) is a stakeholder scheme, and
    - (b) is established under a trust;
  - the “trust-based scheme provisions” means any provisions contained in or made by virtue of—
    - (a) any provision which applies in relation to trust-based personal stakeholder schemes by virtue of paragraph 1 of Schedule 1 to the 1999 Order, as the provision applies by virtue of that paragraph, or
    - (b) any corresponding provision in force in Great Britain.

(6) Premises are liable to inspection for the purposes of this Article if the inspector has reasonable grounds to believe that—

- (a) members of the scheme are employed there,
- (b) documents relevant to the administration of the scheme are being kept there, or
- (c) the administration of the scheme, or work connected with that administration, is being carried out there.

(7) In this Article, “stakeholder scheme” means an occupational pension scheme or a personal pension scheme which is or has been registered under—

- (a) Article 4 of the 1999 Order (register of stakeholder schemes), or
- (b) any corresponding provision in force in Great Britain.

### **Inspection of premises in respect of employers' obligations**

**69.**—(1) An inspector may, for the purposes of investigating whether an employer is complying, or has complied, with the requirements under—

- (a) Article 5 of the 1999 Order (duty of employers to facilitate access to stakeholder pension schemes), or
- (b) any corresponding provision in force in Great Britain,

at any reasonable time enter premises liable to inspection.

(2) Premises are liable to inspection for the purposes of paragraph (1) if the inspector has reasonable grounds to believe that—

- (a) employees of the employer are employed there,
- (b) documents relevant to the administration of the employer’s business are being kept there, or
- (c) the administration of the employer’s business, or work connected with that administration, is being carried out there.

(3) In paragraphs (1) and (2), “employer” has the meaning given in Article 5(9) of the 1999 Order (or, where paragraph (1)(b) applies, in any corresponding provision in force in Great Britain).

(4) An inspector may, for the purposes of investigating whether, in the case of any direct payment arrangements relating to a personal pension scheme, any of the following provisions—

- (a) regulations made by virtue of Articles 237 and 238 (consultation by employers),
- (b) section 107A of the Pension Schemes Act (monitoring of employers' payments to personal pension schemes), or
- (c) any corresponding provision in force in Great Britain,

is being, or has been, complied with, at any reasonable time enter premises liable to inspection.

(5) Premises are liable to inspection for the purposes of paragraph (4) if the inspector has reasonable grounds to believe that—

- (a) employees of the employer are employed there,
- (b) documents relevant to the administration of—
  - (i) the employer’s business,
  - (ii) the direct payment arrangements, or
  - (iii) the scheme to which those arrangements relate,are being kept there, or
- (c) either of the following is being carried out there—

- (i) the administration of the employer's business, the arrangements or the scheme;
- (ii) work connected with that administration.

(6) In the application of paragraphs (4) and (5) in relation to any provision mentioned in paragraph (4)(c) (a "corresponding Great Britain provision"), references in those paragraphs to—  
direct payment arrangements,  
a personal pension scheme,  
the employer, or  
employees of the employer,  
are to be read as having the meanings that they have for the purposes of the corresponding Great Britain provision.

### **Inspection of premises: powers of inspectors**

**70.**—(1) Paragraph (2) applies where, for a purpose mentioned in paragraph (1), (3) or (4) of Article 68 or paragraph (1) or (4) of Article 69, an inspector enters premises which are liable to inspection for the purposes of that provision.

- (2) While there, the inspector—
- (a) may make such examination and inquiry as may be necessary for the purpose for which he entered the premises,
  - (b) may require any person on the premises to produce, or secure the production of, any document relevant to compliance with the regulatory provisions for his inspection,
  - (c) may take copies of any such document,
  - (d) may take possession of any document appearing to be a document relevant to compliance with the regulatory provisions or take in relation to any such document any other steps which appear necessary for preserving it or preventing interference with it,
  - (e) may, in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, require the information to be produced in a form—
    - (i) in which it can be taken away, and
    - (ii) in which it is legible or from which it can readily be produced in a legible form, and
  - (f) may, as to any matter relevant to compliance with the regulatory provisions, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter.

### **Inspection of premises: supplementary**

**71.**—(1) This Article applies for the purposes of Articles 68 to 70.

(2) Premises which are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business are not liable to inspection.

- (3) Any question whether—
- (a) anything is being or has been done or omitted which might by virtue of any of the regulatory provisions give rise to a liability for a civil penalty under or by virtue of Article 10 of the 1995 Order or section 164(4) of the Pension Schemes Act (or under or by virtue of any provision in force in Great Britain corresponding to either of them), or
  - (b) an offence is being or has been committed under any of the regulatory provisions,

is to be treated as a question whether the regulatory provision is being, or has been, complied with.

(4) An inspector applying for admission to any premises for the purposes of Article 68 or 69 must, if so required, produce his certificate of appointment.

(5) When exercising a power under Article 68, 69 or 70 an inspector may be accompanied by such persons as he considers appropriate.

(6) Any document of which possession is taken under Article 70 may be retained—

(a) if the document is relevant to proceedings against any person for any offence which are commenced before the end of the retention period, until the conclusion of those proceedings, and

(b) otherwise, until the end of the retention period.

(7) In paragraph (6), “the retention period” means the period comprising—

(a) the period of 12 months beginning with the date on which possession was taken of the document, and

(b) any extension of that period under paragraph (8).

(8) The Regulator may, by a direction made before the end of the retention period (including any extension of it under this paragraph), extend it by such period not exceeding 12 months as the Regulator considers appropriate.

(9) “The regulatory provisions”, in relation to an inspection under paragraph (1), (3) or (4) of Article 68 or paragraph (1) or (4) of Article 69, means any provision referred to in that paragraph.

### **Penalties relating to Articles 67 to 70**

**72.**—(1) A person who, without reasonable excuse, neglects or refuses to provide information or produce a document when required to do so under Article 67 is guilty of an offence.

(2) A person who without reasonable excuse—

(a) intentionally delays or obstructs an inspector exercising any power under Article 68, 69 or 70,

(b) neglects or refuses to produce, or secure the production of, any document when required to do so under Article 70, or

(c) neglects or refuses to answer a question or to provide information when so required,

is guilty of an offence.

(3) A person guilty of an offence under paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) An offence under paragraph (1) or (2)(b) or (c) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction of the offence.

(5) Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which he is or is liable to be required to produce under Article 67 or 70 is guilty of an offence.

(6) Any person guilty of an offence under paragraph (5) is 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.

## Warrants

73.—(1) A justice of the peace may issue a warrant under this Article if satisfied on complaint on oath given by or on behalf of the Regulator that there are reasonable grounds for believing—

- (a) that there is on, or accessible from, any premises any document—
  - (i) whose production has been required under Article 67 or 70, or any corresponding provision in force in Great Britain, and
  - (ii) which has not been produced in compliance with that requirement,
- (b) that there is on, or accessible from, any premises any document whose production could be so required and, if its production were so required, the document—
  - (i) would not be produced, but
  - (ii) would be removed, or made inaccessible, from the premises, hidden, tampered with or destroyed, or
- (c) that—
  - (i) an offence has been committed,
  - (ii) a person will do any act which constitutes a misuse or misappropriation of the assets of an occupational pension scheme or a personal pension scheme,
  - (iii) a person is liable to pay a penalty under or by virtue of Article 10 of the 1995 Order (civil penalties) or section 164(4) of the Pension Schemes Act (civil penalties for breach of regulations), or under or by virtue of any provision in force in Great Britain corresponding to either of them, or
  - (iv) a person is liable to be prohibited from being a trustee of an occupational or personal pension scheme under Article 3 of the 1995 Order (prohibition orders), including that Article as it applies by virtue of paragraph 1 of Schedule 1 to the 1999 Order (stakeholder schemes), or under or by virtue of any corresponding provisions in force in Great Britain,

and that there is on, or accessible from, any premises any document which relates to whether the offence has been committed, whether the act will be done or whether the person is so liable, and whose production could be required under Article 67 or 70 or any corresponding provision in force in Great Britain.

- (2) A warrant under this Article shall authorise an inspector—
  - (a) to enter the premises specified in the complaint, using such force as is reasonably necessary for the purpose,
  - (b) to search the premises and—
    - (i) take possession of any document appearing to be such a document as is mentioned in paragraph (1), or
    - (ii) take in relation to such a document any other steps which appear necessary for preserving it or preventing interference with it,
  - (c) to take copies of any such document,
  - (d) to require any person named in the warrant to provide an explanation of any such document or to state where it may be found or how access to it may be obtained, and
  - (e) in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, to require the information to be produced in a form—
    - (i) in which it can be taken away, and
    - (ii) in which it is legible or from which it can readily be produced in a legible form.

(3) In paragraph (1), any reference in sub-paragraph (a) or (b) to a document does not include any document which is relevant to whether a person has complied with—

- (a) paragraph (3) of Article 215 (information and advice to employees) or regulations under paragraph (4) of that Article, or
- (b) any provision in force in Great Britain which corresponds to that paragraph (3) or is made under provision corresponding to that paragraph (4),

and is not relevant to the exercise of the Regulator’s functions for any other reason.

(4) For the purposes of paragraph (1)(c)(iii), any liability to pay a penalty under—

- (a) Article 10 of the 1995 Order, or
- (b) any corresponding provision in force in Great Britain,

which might arise out of a failure to comply with any provision within paragraph (3)(a) or (b) is to be disregarded.

(5) References in paragraph (2) to such a document as is mentioned in paragraph (1) are to be read in accordance with paragraphs (3) and (4).

(6) When executing a warrant under this Article, an inspector may be accompanied by such persons as he considers appropriate.

(7) A warrant under this Article continues in force until the end of the period of one month beginning with the day on which it is issued.

(8) Any document of which possession is taken under this Article may be retained—

- (a) if the document is relevant to proceedings against any person for any offence which are commenced before the end of the retention period, until the conclusion of those proceedings, and
- (b) otherwise, until the end of the retention period.

(9) In paragraph (8), “the retention period” means the period comprising—

- (a) the period of 12 months beginning with the date on which possession was taken of the document, and
- (b) any extension of that period under paragraph (10).

(10) The Regulator may, by a direction made before the end of the retention period (including any extension of it under this paragraph), extend it by such period not exceeding 12 months as the Regulator considers appropriate.

### **Articles 67 to 73: interpretation**

74.—(1) This Article applies for the purposes of Articles 67 to 73.

(2) “Document” includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in a legible form, is to producing a copy of the information—

- (a) in a legible form, or
- (b) in a form from which it can readily be produced in a legible form.

(3) “Inspector” means a person appointed by the Regulator as an inspector.