
DRAFT STATUTORY INSTRUMENTS

2005 No.

The Pensions (Northern Ireland) Order 2005

PART II

THE PENSIONS REGULATOR

New powers in respect of occupational and personal pension schemes

Improvement notices

9.—(1) If the Regulator is of the opinion that a person—

- (a) is contravening one or more provisions of the pensions legislation, or
- (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,

it may issue a notice (an “improvement notice”) to that person directing him to take, or refrain from taking, such steps as are specified in the notice in order to remedy or prevent a recurrence of the contravention.

(2) An improvement notice must—

- (a) state that the Regulator is of that opinion and specify the provision or provisions of the pensions legislation in question,
- (b) contain a statement of the matters which it is asserted constitute the contravention and of the evidence on which that opinion is based, and
- (c) in respect of each step specified in the notice, state the period (being a period of not less than 21 days beginning with the date of the notice) within which it must be complied with.

(3) Directions in an improvement notice—

- (a) may be framed to any extent by reference to a code of practice issued by the Regulator under Article 85, and
- (b) may be framed so as to afford the person to whom the notice is issued a choice between different ways of remedying or preventing the recurrence of the contravention.

(4) Directions in an improvement notice may be expressed to be conditional on compliance by a third party with a specified direction, or specified directions, contained in a notice under Article 10 (third party notices).

(5) An improvement notice may direct the person to whom it is issued to inform the Regulator, within such period as may be specified in the notice, of how he has complied, or is complying, with the notice.

(6) Where a contravention of a provision of the pensions legislation consists of a failure to take action within a time limit, for the purposes of this Article the contravention continues until such time as the action is taken.

(7) In this Article “pensions legislation” means any statutory provision contained in or made by virtue of—

- (a) the Pension Schemes Act,
- (b) Part II of the 1995 Order, other than Articles 62 to 66A of that Order (equal treatment),
- (c) Part II or Article 30 of the 1999 Order, or
- (d) this Order.

(8) If the trustees or managers of an occupational or personal pension scheme fail to comply with an improvement notice issued to them, 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.

(9) That Article also applies to any other person who, without reasonable excuse, fails to comply with an improvement notice issued to him.

Third party notices

10.—(1) Where the Regulator is of the opinion that—

- (a) a person—
 - (i) is contravening one or more provisions of the pensions legislation, or
 - (ii) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,
- (b) the contravention is or was, wholly or partly, a result of a failure of another person (“the third party”) to do any thing, and
- (c) that failure is not itself a contravention of the pensions legislation,

the Regulator may issue a notice (a “third party notice”) directing the third party to take, or refrain from taking, such steps as are specified in the notice in order to remedy or prevent a recurrence of his failure.

(2) A third party notice must—

- (a) state that the Regulator is of that opinion and specify the provision or provisions of the pensions legislation in question,
- (b) contain a statement of—
 - (i) the matters which it is asserted constitute the contravention of the provision or provisions, and
 - (ii) the matters which it is asserted constitute the failure by the third party, and the evidence on which that opinion is based, and
- (c) in respect of each step specified in the notice, state the period (being a period of not less than 21 days beginning with the date of the notice) within which it must be complied with.

(3) Directions in a third party notice may be framed so as to afford the third party a choice between different ways of remedying or preventing the recurrence of his failure.

(4) A third party notice may direct the third party to inform the Regulator, within such period as may be specified in the notice, of how he has complied, or is complying, with the notice.

(5) Where a contravention of a provision of the pensions legislation consists of a failure to take action within a time limit, for the purposes of this Article the contravention continues until such time as the action is taken.

(6) Article 10 of the 1995 Order (civil penalties) applies to a person who, without reasonable excuse, fails to comply with a third party notice issued to him.

(7) Subject to Article 283 (protected items), no duty to which a person is subject is to be regarded as contravened merely because of anything required to be done in compliance with a third party notice.

(8) In this Article “pensions legislation” has the same meaning as in Article 9.

Injunctions

11. If, on the application of the Regulator, the High Court is satisfied that—

- (a) there is a reasonable likelihood that a particular person will do any act which constitutes a misuse or misappropriation of any of the assets of an occupational or personal pension scheme, or
- (b) a particular person has done any such act and there is a reasonable likelihood that he will continue or repeat the act in question or do a similar act,

the Court may grant an injunction restraining him from doing so.

Restitution

12.—(1) If, on the application of the Regulator, the High Court is satisfied that there has been a misuse or misappropriation of any of the assets of an occupational or personal pension scheme, it may order any person involved to take such steps as the Court may direct for restoring the parties to the position in which they were before the misuse or misappropriation occurred.

(2) For this purpose a person is “involved” if he appears to the High Court to have been knowingly concerned in the misuse or misappropriation of the assets.

Power of the Regulator to recover unpaid contributions

13.—(1) Where any employer contribution payable towards an occupational or personal pension scheme is not paid on or before its due date, the Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover that contribution.

(2) For the purposes of paragraph (1), any employer contribution payable towards a personal pension scheme which is not paid on or before its due date is, if not a debt due from the employer to the trustees or managers apart from this paragraph, to be treated as if it were such a debt.

(3) In this Article—

“due date”—

- (a) in relation to employer contributions payable towards an occupational pension scheme in accordance with a schedule of contributions under Article 206, has the same meaning as in Article 207,
- (b) in relation to employer contributions payable in accordance with a payment schedule under Article 85 of the 1995 Order (schedules of payments to money purchase schemes), has the meaning given in paragraph (2)(c) of that Article, and
- (c) in relation to employer contributions payable towards a personal pension scheme, has the same meaning as in section 107A of the Pension Schemes Act (monitoring of employer payments to personal pension schemes);

“employer contribution”—

- (a) in relation to an occupational pension scheme, means any contribution payable by or on behalf of the employer towards the scheme in accordance with a schedule of contributions under Article 206 or a payment schedule under Article 85 of the 1995 Order (schedules of payments to money purchase schemes) whether—

- (i) on the employer's own account (but in respect of one or more employees), or
- (ii) on behalf of an employee out of deductions from the employee's earnings, and
- (b) in relation to a personal pension scheme, means any contribution payable towards the scheme under direct payment arrangements.

Pension liberation: interpretation

14.—(1) In this Article and Articles 15 to 17—

- (a) “pension scheme” means an occupational pension scheme or a personal pension scheme,
 - (b) “deposit-taker” has the meaning given by paragraphs (8A) and (8B) of Article 49 of the 1995 Order, except that, for the purposes of this definition, paragraph (8A)(c) of that Article has effect with the omission of the words from “or” to the end,
 - (c) references to money liberated from a pension scheme are to be read in accordance with paragraph (2),
 - (d) “liberated member”, in relation to money liberated from a pension scheme, means the member of the pension scheme who is referred to in paragraph (2)(a), and
 - (e) “restraining order” means a restraining order under Article 16.
- (2) Money is to be taken to have been liberated from a pension scheme if—
- (a) the money directly or indirectly represents an amount that, in respect of accrued rights of a member of a pension scheme, has been transferred out of the scheme in pursuance of—
 - (i) a relevant statutory provision, or
 - (ii) a provision of the applicable rules, other than a relevant statutory provision,
 - (b) the trustees or managers of the scheme transferred the amount out of the scheme on the basis that a third party (“the liberator”) would secure that the amount was used in an authorised way,
 - (c) the amount has not been used in an authorised way, and
 - (d) the liberator has not secured, and is not likely to secure, that the amount will be used in an authorised way.
- (3) The following are “relevant statutory provisions” for the purposes of paragraph (2)—
- (a) section 90(1)(a), (aa) or (b) of the Pension Schemes Act (right to cash equivalent under Chapter 4 of Part IV of that Act);
 - (b) section 97AB(1)(a) of that Act (right to cash transfer sum under Chapter 5 of Part IV of that Act);
 - (c) section 97F(1) of that Act (right to cash equivalent of pension credit benefit).
- (4) In paragraph (2) “authorised way” means—
- (a) where the amount concerned is transferred out of the scheme in pursuance of a provision mentioned in paragraph (3)(a), a way specified in subsection (2) or, as the case may be, subsection (3) of section 91 of the Pension Schemes Act;
 - (b) where that amount is transferred out in pursuance of the provision mentioned in paragraph (3)(b), a way specified in section 97AE(2) of that Act;
 - (c) where that amount is transferred out in pursuance of the provision mentioned in paragraph (3)(c), a way specified in subsection (2) or, as the case may be, subsection (3) of section 97F of that Act;

(d) where that amount is transferred out in pursuance of a provision of the kind mentioned in paragraph (2)(a)(ii), a way that is authorised by the applicable rules for amounts transferred out in pursuance of that provision.

(5) In this Article “the applicable rules” has the same meaning as, in the case of the pension scheme concerned, that expression has in section 90 of the Pension Schemes Act.

Pension liberation: Court’s power to order restitution

15.—(1) This Article applies where money has been liberated from a pension scheme.

(2) In this Article “recoverable property” means (subject to paragraph (3))—

(a) the money or any of it, or

(b) property (of any kind and wherever situated) that, directly or indirectly, represents any of the money.

(3) Where a person acquires the beneficial interest in recoverable property in good faith, for value and without notice that the property is, or (as the case may be) represents, money liberated from a pension scheme—

(a) the property ceases to be recoverable property, and

(b) no property that subsequently represents it is recoverable property.

(4) The High Court, on the application of the Regulator, may make such order as the Court thinks just and convenient for the purpose of securing that recoverable property, or money representing its value or proceeds of its sale, is transferred—

(a) towards a pension scheme,

(b) towards an annuity or insurance policy, or

(c) to the liberated member.

(5) An order under paragraph (4) may (in particular) direct a person who holds recoverable property, or has any degree of control over recoverable property, to take steps for the purpose mentioned in that paragraph.

(6) Where the High Court makes an order under sub-paragraph (a) of paragraph (4), it may by order direct the trustees or managers of the scheme referred to in that sub-paragraph—

(a) to take steps for the purpose mentioned in that paragraph;

(b) to apply the property or money transferred, in such manner as the Court may direct, for the purpose of providing benefits under that scheme to or in respect of the liberated member.

(7) Regulations may modify any of the provisions of the Pension Schemes Act as it applies in relation to cases where an order is made under paragraph (6).

(8) The generality of the jurisdiction conferred by Article 12 is not to be taken to be prejudiced by this Article.

(9) The generality of the jurisdiction conferred by this Article is not to be taken to be prejudiced by Article 17.

Pension liberation: restraining orders

16.—(1) The Regulator may make a restraining order in relation to an account with a deposit-taker if—

(a) it is satisfied that the account contains money which has been liberated from a pension scheme,

(b) it is satisfied that the account is held by or on behalf of—

- (i) the liberator, or
 - (ii) a person who has to, or in practice is likely to, ensure that the account is operated in accordance with the liberator's directions, and
- (c) the order is made pending consideration being given to the making of one or more repatriation orders in relation to the account under Article 17.
- (2) A restraining order is an order directing that no credit or debit of any amount may be made to the account concerned ("the restrained account") during the period for which the order has effect.
- (3) A restraining order must—
 - (a) specify the name of the deposit-taker in respect of which it is made,
 - (b) identify the account in respect of which it is made, and
 - (c) contain such other information as may be prescribed.
- (4) A restraining order—
 - (a) takes effect when the deposit-taker concerned is notified by the Regulator of the making of the order, and
 - (b) (subject to paragraph (7)) ceases to have effect through expiry of time at the end of the six months beginning with the day when it is made.
- (5) The Regulator may, at a time when a restraining order has effect, make an order extending (or further extending) the restraining order.
- (6) An order under paragraph (5) (an "extension order") takes effect—
 - (a) when the deposit-taker concerned is notified by the Regulator of the making of the order, but
 - (b) only if notification under sub-paragraph (a) occurs at a time when the restraining order concerned has effect.
- (7) Where an extension order takes effect—
 - (a) the restraining order concerned does not cease to have effect through expiry of time until the end of the six months beginning with the time when it would have ceased to have effect through expiry of time had it not been extended, but
 - (b) for so long as the extension order has effect, no further extension order can take effect before that time in relation to the restraining order.
- (8) A restraining order does not prevent the crediting to the restrained account of an amount representing interest payable by the deposit-taker on any amount which is, or has been, in the account.
- (9) Where a restraining order has effect, the deposit-taker must return to the payer any money credited to the restrained account in breach of the order.
- (10) Where a restraining order has effect, the Regulator may, on an application made by or with the consent of the person by whom the restrained account is held, by order permit a payment specified in the order to be made out of the account if the Regulator is satisfied—
 - (a) that the payment will be made for the purpose of enabling—
 - (i) any individual to meet his reasonable living expenses, or
 - (ii) any person to carry on a trade, business, profession or occupation,
 - (b) that the beneficial interest in the money out of which the payment will be made belongs—
 - (i) to the individual, or person, concerned, or
 - (ii) to a person who consents to the making of the payment, and

(c) that the money out of which the payment will be made is not money liberated from a pension scheme.

(11) Article 10 of the 1995 Order (civil penalties) applies to a deposit-taker who, without reasonable excuse, fails to comply with any obligation imposed by a restraining order or by this Article.

Pension liberation: repatriation orders

17.—(1) Paragraphs (2) and (3) apply where—

- (a) a restraining order has effect, and
- (b) the Regulator is satisfied that the restrained account contains an amount of money liberated from a pension scheme.

(2) The Regulator may by order—

- (a) direct the deposit-taker concerned to pay from the account a sum not exceeding that amount—
 - (i) towards a pension scheme,
 - (ii) towards an annuity or insurance policy, or
 - (iii) to the liberated member, and
- (b) where it makes an order under sub-paragraph (a)(i), direct the trustees or managers of the scheme to apply the sum, in such manner as the Regulator may direct, for the purpose of providing benefits under the scheme to or in respect of the liberated member.

(3) If it appears to the Regulator, on taking an overall view of transactions taking place before the restraining order was made, that there are two or more individuals each of whom is a person who is or may be the liberated member in relation to some of the money, the Regulator may determine the sums to be paid from the restrained account under paragraph (2) on any basis that appears to the Regulator to be just and reasonable.

(4) Regulations may modify any of the provisions of the Pension Schemes Act as it applies in relation to cases where an order is made under paragraph (2)(b).

(5) Article 10 of the 1995 Order (civil penalties) applies to a deposit-taker who, without reasonable excuse, fails to comply with a direction given to him under paragraph (2)(a).

(6) If the trustees or managers of a pension scheme fail to comply with a direction given to them under paragraph (2)(b), that Article applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(7) In this Article “the restrained account” has the meaning given by Article 16.