
DRAFT STATUTORY INSTRUMENTS

2005 No.

The Pensions (Northern Ireland) Order 2005

PART III

THE BOARD OF THE PENSION PROTECTION FUND

CHAPTER 2

INFORMATION RELATING TO EMPLOYER'S INSOLVENCY ETC.

Insolvency events

Duty to notify insolvency events in respect of employers

104.—(1) This Article applies where, in the case of an occupational pension scheme, an insolvency event occurs in relation to the employer.

(2) The insolvency practitioner in relation to the employer must give a notice to that effect within the notification period to—

- (a) the Board,
- (b) the Regulator, and
- (c) the trustees or managers of the scheme.

(3) For the purposes of paragraph (2) the “notification period” is the prescribed period beginning with the later of—

- (a) the insolvency date, and
- (b) the date the insolvency practitioner becomes aware of the existence of the scheme.

(4) A notice under this Article must be in such form and contain such information as may be prescribed.

Insolvency event, insolvency date and insolvency practitioner

105.—(1) In this Part each of the following expressions has the meaning given to it by this Article—

- “insolvency event”,
- “insolvency date”,
- “insolvency practitioner”.

(2) An insolvency event occurs in relation to an individual where—

- (a) he is adjudged bankrupt;
- (b) the nominee in relation to a proposal for a voluntary arrangement under Chapter 2 of Part VIII of the Insolvency Order submits a report to the Court under Article 230(1) or 230A(3)

- of that Order which states that in his opinion a meeting of the individual's creditors should be summoned to consider the debtor's proposal;
- (c) a deed of arrangement made by, for, or in respect of the affairs of the individual is registered under Chapter 1 of Part VIII of that Order;
 - (d) he executes a trust deed for his creditors or enters into a composition contract;
 - (e) he has died and an insolvency administration order is made in respect of his estate in accordance with an order under Article 365 of that Order.
- (3) An insolvency event occurs in relation to a company where—
- (a) the nominee in relation to a proposal for a voluntary arrangement under Part II of the Insolvency Order submits a report to the Court under Article 15 of that Order (procedure where nominee is not the liquidator or administrator) which states that in his opinion meetings of the company and its creditors should be summoned to consider the proposal;
 - (b) the directors of the company file with the Court documents and statements in accordance with paragraph 18(1) of Schedule A1 to that Order (moratorium where directors propose voluntary arrangement);
 - (c) an administrative receiver within the meaning of Article 5 of that Order is appointed in relation to the company;
 - (d) the company enters administration within the meaning of paragraph 2(2)(b) of Schedule B1 to that Order;
 - (e) a resolution is passed for a voluntary winding up of the company without a declaration of solvency under Article 75 of that Order;
 - (f) a meeting of creditors is held in relation to the company 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);
 - (g) an order for the winding up of the company is made by the Court under Part V or VI of that Order.
- (4) An insolvency event occurs in relation to a partnership where—
- (a) an order for the winding up of the partnership is made by the Court under any provision of the Insolvency Order (as applied by an order under Article 364 of that Order (insolvent partnerships));
 - (b) the nominee in relation to a proposal for a voluntary arrangement under Part II of that Order (as applied by an order under Article 364 of that Order) submits a report to the Court under Article 15 of that Order (procedure where nominee is not the liquidator or administrator) which states that in his opinion meetings of the members of the partnership and the partnership's creditors should be summoned to consider the proposal;
 - (c) the members of the partnership file with the Court documents and statements in accordance with paragraph 18(1) of Schedule A1 to that Order (moratorium where directors propose voluntary arrangement) (as applied by an order under Article 364 of that Order);
 - (d) an administration order under Part III of that Order (as applied by Article 364 of that Order) is made in relation to the partnership.
- (5) An insolvency event also occurs in relation to a person where an event occurs which is a prescribed event in relation to such a person.
- (6) Except as provided by paragraphs (2) to (5), for the purposes of this Part an event is not to be regarded as an insolvency event in relation to a person.
- (7) The Department may by order amend paragraph (4)(d) to make provision consequential upon any order under Article 364 of the Insolvency Order (insolvent partnerships) applying the provisions

of Part III of that Order (administration) as amended by the Insolvency (Northern Ireland) Order 2005.

(8) “Insolvency date”, in relation to an insolvency event, means the date on which the event occurs.

(9) “Insolvency practitioner”, in relation to a person, means—

(a) a person acting as an insolvency practitioner, in relation to that person, in accordance with Article 3 of the Insolvency Order,

(b) in such circumstances as may be prescribed, a person of a prescribed description.

(10) In this Article—

“company” means a company within the meaning given by Article 3(1) of the Companies Order or a company which may be wound up under Part VI of the Insolvency Order (unregistered companies);

“person acting as an insolvency practitioner”, in relation to a person, includes the official receiver acting as receiver or manager of any property of that person.

(11) In applying Article 3 of the Insolvency Order under paragraph (9), Article 3(5) of that Order (which includes provision that nothing in the Article applies to anything done by the official receiver) must be ignored.

(12) In relation to any time before the coming into operation of Article 3 of the Insolvency (Northern Ireland) Order 2005, paragraph (3) shall have effect as if for sub-paragraph (d) there were substituted—

“(d) an administration order is made by the Court under Article 21 of that Order;”.

Status of scheme

Insolvency practitioner’s duty to issue notices confirming status of scheme

106.—(1) This Article applies where an insolvency event has occurred in relation to the employer in relation to an occupational pension scheme.

(2) An insolvency practitioner in relation to the employer must—

(a) if he is able to confirm that a scheme rescue is not possible, issue a notice to that effect (a “scheme failure notice”), or

(b) if he is able to confirm that a scheme rescue has occurred, issue a notice to that effect (a “withdrawal notice”).

(3) Paragraph (4) applies where—

(a) in prescribed circumstances, insolvency proceedings in relation to the employer are stayed or come to an end, or

(b) a prescribed event occurs.

(4) If a person who was acting as an insolvency practitioner in relation to the employer immediately before this paragraph applies has not been able to confirm in relation to the scheme—

(a) that a scheme rescue is not possible, or

(b) that a scheme rescue has occurred,

he must issue a notice to that effect.

(5) For the purposes of this Article—

- (a) a person is able to confirm that a scheme rescue has occurred in relation to an occupational pension scheme if, and only if, he is able to confirm such matters as are prescribed for the purposes of this sub-paragraph, and
 - (b) a person is able to confirm that a scheme rescue is not possible, in relation to such a scheme if, and only if, he is able to confirm such matters as are prescribed for the purposes of this sub-paragraph.
- (6) Where an insolvency practitioner or former insolvency practitioner in relation to the employer issues a notice under this Article, he must give a copy of that notice to—
- (a) the Board,
 - (b) the Regulator, and
 - (c) the trustees or managers of the scheme.
- (7) A person must comply with an obligation imposed on him by paragraph (2), (4) or (6) as soon as reasonably practicable.
- (8) Regulations may require notices issued under this Article—
- (a) to be in a prescribed form;
 - (b) to contain prescribed information.

Approval of notices issued under Article 106

- 107.**—(1) This Article applies where the Board receives a notice under Article 106(6) (“the Article 106 notice”).
- (2) The Board must determine whether to approve the Article 106 notice.
 - (3) The Board must approve the Article 106 notice if, and only if, it is satisfied—
 - (a) that the insolvency practitioner or former insolvency practitioner who issued the notice was required to issue it under that Article, and
 - (b) that the notice complies with any requirements imposed by virtue of paragraph (8) of that Article.
 - (4) Where the Board makes a determination for the purposes of paragraph (2), it must issue a determination notice and give a copy of that notice to—
 - (a) the Regulator,
 - (b) the trustees or managers of the scheme,
 - (c) the insolvency practitioner or the former insolvency practitioner who issued the Article 106 notice,
 - (d) any insolvency practitioner in relation to the employer (who does not fall within sub-paragraph (c)), and
 - (e) if there is no insolvency practitioner in relation to the employer, the employer.
 - (5) In paragraph (4) “determination notice” means a notice which is in the prescribed form and contains such information about the determination as may be prescribed.

Board’s duties

Board’s duty where there is a failure to comply with Article 106

- 108.**—(1) This Article applies where, in relation to an occupational pension scheme—
- (a) the Board determines under Article 107 not to approve a notice issued under Article 106 by an insolvency practitioner or former insolvency practitioner in relation to the employer, or

- (b) an insolvency practitioner or former insolvency practitioner in relation to the employer fails to issue a notice under Article 106 and the Board is satisfied that such a notice ought to have been issued under that Article.

(2) The obligations on the insolvency practitioner or former insolvency practitioner imposed by paragraphs (2) and (4) of Article 106 are to be treated as obligations imposed on the Board and the Board must accordingly issue a notice as required under that Article.

(3) Subject to paragraphs (4) and (5), where a notice is issued under Article 106 by the Board by virtue of this Article, it has effect as if it were a notice issued under Article 106 by an insolvency practitioner or, as the case may be, former insolvency practitioner in relation to the employer.

(4) Where a notice is issued under Article 106 by virtue of this Article, Article 106(6) does not apply and the Board must, as soon as reasonably practicable, give a copy of the notice to—

- (a) the Regulator,
- (b) the trustees or managers of the scheme,
- (c) the insolvency practitioner or former insolvency practitioner mentioned in paragraph (1),
- (d) any insolvency practitioner in relation to the employer (who does not fall within sub-paragraph (c)), and
- (e) if there is no insolvency practitioner in relation to the employer, the employer.

(5) Where the Board—

- (a) is required to issue a notice under Article 106 by virtue of this Article, and
- (b) is satisfied that the notice ought to have been issued at an earlier time,

it must specify that time in the notice and the notice is to have effect as if it had been issued at that time.

Binding notices confirming status of scheme

109.—(1) Subject to paragraph (2), for the purposes of this Part, a notice issued under Article 106 is not binding until—

- (a) the Board issues a determination notice under Article 107 approving the notice,
- (b) the period within which the issue of the determination notice under that Article may be reviewed by virtue of Chapter 6 has expired, and
- (c) if the issue of the determination notice is so reviewed—
 - (i) the review and any reconsideration,
 - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
 - (iii) any appeal against his determination or directions,has been finally disposed of and the determination notice has not been revoked, varied or substituted.

(2) Where a notice is issued under Article 106 by the Board by virtue of Article 108, the notice is not binding until—

- (a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
- (b) if the issue of the notice is so reviewed—
 - (i) the review and any reconsideration,
 - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
 - (iii) any appeal against his determination or directions,

has been finally disposed of and the notice has not been revoked, varied or substituted.

(3) Where a notice issued under Article 106 becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—

- (a) the Regulator,
 - (b) the trustees or managers of the scheme,
 - (c) the insolvency practitioner or former insolvency practitioner who issued the notice under Article 106 or, where that notice was issued by the Board by virtue of Article 108, the insolvency practitioner or former insolvency practitioner mentioned in paragraph (1) of that Article,
 - (d) any insolvency practitioner in relation to the employer (who does not fall within subparagraph (c)), and
 - (e) if there is no insolvency practitioner in relation to the employer, the employer.
- (4) A notice under paragraph (3)—
- (a) must be in the prescribed form and contain such information as may be prescribed, and
 - (b) where it is given in relation to a withdrawal notice issued under Article 106(2)(b) which has become binding, must state the time from which the Board ceases to be involved with the scheme (see Article 133).