
DRAFT STATUTORY INSTRUMENTS

2005 No.

The Pensions (Northern Ireland) Order 2005

PART III

THE BOARD OF THE PENSION PROTECTION FUND

CHAPTER 5

GATHERING INFORMATION

Information to be provided to the Board etc.

172.—(1) Regulations may require such persons as may be prescribed to provide—

- (a) to the Board, or
- (b) to a person—
 - (i) with whom the Board has made arrangements under paragraph 2 of Schedule 4, and
 - (ii) who is authorised by the Board for the purposes of the regulations,information of a prescribed description at such times, or in such circumstances, as may be prescribed.

(2) Regulations under paragraph (1) may in particular make provision for requiring such persons as may be prescribed to provide any information or evidence needed for a determination of entitlement to compensation under Chapter 3.

(3) Regulations made by virtue of sub-paragraph (b) of that paragraph must make provision regarding the manner in which the persons required to provide information are to be notified of the identity of the person authorised as mentioned in head (ii) of that sub-paragraph.

Notices requiring provision of information

173.—(1) Any person to whom paragraph (3) applies may be required by a notice in writing 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 Board's functions in relation to an occupational pension scheme.

(2) A notice under paragraph (1) may be given by—

- (a) the Board, or
- (b) a person authorised by the Board for the purposes of this Article in relation to the scheme.

(3) This paragraph applies to—

- (a) a trustee or manager of the scheme,
- (b) a professional adviser in relation to the scheme,
- (c) the employer in relation to the scheme,

- (d) an insolvency practitioner in relation to the employer, and
- (e) any other person appearing to the Board, or person giving the notice, to be a person who holds, or is likely to hold, information relevant to the discharge of the Board's functions in relation to the scheme.

(4) 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.

Entry of premises

174.—(1) An appointed person may, for the purpose of enabling or facilitating the performance of any function of the Board in relation to an occupational pension scheme, at any reasonable time enter scheme premises and, while there—

- (a) may make such examination and inquiry as may be necessary for such purpose,
- (b) may require any person on the premises to produce, or secure the production of, any document relevant to that purpose for inspection by the appointed person,
- (c) may take copies of any such document,
- (d) may take possession of any document appearing to be such a document 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 the exercise of the Board's functions in relation to the scheme, 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.

(2) Premises are scheme premises for the purposes of paragraph (1) if the appointed person has reasonable grounds to believe that—

- (a) they are being used for the business of the employer,
- (b) an insolvency practitioner in relation to the employer is acting there in that capacity,
- (c) documents relevant to—
 - (i) the administration of the scheme, or
 - (ii) the employer,are being kept there, or
- (d) the administration of the scheme, or work connected with the administration of the scheme, is being carried out there,

unless the premises are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business.

(3) An appointed person applying for admission to any premises for the purposes of this Article must, if so required, produce his certificate of appointment.

(4) When exercising a power under this Article an appointed person may be accompanied by such persons as he considers appropriate.

(5) Any document of which possession is taken under this Article may be retained until the end of 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 (6).

(6) The Board may before the end of the period mentioned in paragraph (5) (including any extension of it under this paragraph) extend it by such period not exceeding 12 months as the Board considers appropriate.

(7) In this Article “appointed person” means a person appointed by the Board for the purposes of this Article in relation to the scheme.

Penalties relating to Articles 173 and 174

175.—(1) A person who, without reasonable excuse, neglects or refuses to provide information or produce a document when required to do so under Article 173 is guilty of an offence.

(2) A person who without reasonable excuse—

- (a) intentionally delays or obstructs an appointed person exercising any power under Article 174,
- (b) neglects or refuses to produce, or secure the production of, any document when required to do so under that Article, or
- (c) neglects or refuses to answer a question or to provide information when so required,

is guilty of an offence.

(3) In paragraph (2)(a) “appointed person” has the same meaning as it has in Article 174.

(4) 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.

(5) 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.

(6) 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 173 or 174 is guilty of an offence.

(7) Any person guilty of an offence under paragraph (6) 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

176.—(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 Board 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 173 or 174, 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 relevant to the exercise of the Board’s functions in relation to an occupational pension scheme 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 a person will do any act which constitutes a misuse or misappropriation of the assets of an occupational pension scheme and that there is on, or accessible from, any premises any document—
 - (i) which relates to whether the act will be done, and
 - (ii) whose production could be required under Article 173 or 174 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) When executing a warrant under this Article, an inspector may be accompanied by such persons as he considers appropriate.
- (4) 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.
- (5) Any document of which possession is taken under this Article may be retained until the end of 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 (6).
- (6) The Board may before the end of the period mentioned in paragraph (5) (including any extension of it under this paragraph) extend it by such period not exceeding 12 months as the Board considers appropriate.
- (7) In this Article “inspector” means a person appointed by the Board as an inspector.

Provision of false or misleading information

Offence of providing false or misleading information to the Board

177.—(1) Any person who knowingly or recklessly provides information which is false or misleading in a material particular is guilty of an offence if the information—

(a) is provided in purported compliance with a requirement under—

(i) Article 172 (information to be provided to the Board etc.),

(ii) Article 173 (notices requiring provision of information), or

(iii) Article 174 (entry of premises), or

(b) is provided otherwise than as mentioned in sub-paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Board for the purposes of exercising its functions under this Order.

(2) Any person guilty of an offence under paragraph (1) 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.

Use of information

Use of information

178. Information held by the Board in the exercise of any of its functions may be used by the Board for the purposes of, or for any purpose connected with or incidental to, the exercise of its functions.

Disclosure of information

Restricted information

179.—(1) Restricted information must not be disclosed—

(a) by the Board, or

(b) by any person who receives the information directly or indirectly from the Board.

(2) Paragraph (1) is subject to—

(a) paragraph (3), and

(b) Articles 180 to 185 and section 235 of the Pensions Act 2004 (c. 35).

(3) Subject to Article 184(4), restricted information may be disclosed with the consent of the person to whom it relates and (if different) the person from whom the Board obtained it.

(4) For the purposes of this Article and Articles 180 to 185, “restricted information” means any information obtained by the Board in the exercise of its functions which relates to the business or other affairs of any person, except for information—

(a) which at the time of the disclosure is or has already been made available to the public from other sources, or

(b) which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(5) Any person who discloses information in contravention of this Article is guilty of an offence and 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.

(6) Information which—

- (a) is obtained under Article 173 by a person authorised under paragraph (2)(b) of that Article, but
- (b) if obtained by the Board, would be restricted information,

is treated for the purposes of paragraphs (1) and (3) and Articles 180 to 185 as restricted information which the person has received from the Board.

Disclosure for facilitating exercise of functions by the Board

180.—(1) Article 179 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Board to exercise its functions.

(2) Paragraph (3) applies where, in order to enable or assist the Board properly to exercise any of its functions, the Board considers it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation or other matter requiring the exercise of professional skill.

(3) Article 179 does not preclude the disclosure by the Board to a person qualified to provide that advice of such information as appears to the Board to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.

Disclosure for facilitating exercise of functions by the Regulator

181. Article 179 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Regulator to exercise its functions.

Disclosure for facilitating exercise of functions by other supervisory authorities

182.—(1) Article 179 does not preclude the disclosure by the Board of restricted information to any person specified in the first column of Schedule 7 if the Board considers that the disclosure would enable or assist that person to exercise the functions specified in relation to him in the second column of that Schedule.

(2) The Department may after consultation with the Board—

- (a) by order amend Schedule 7 by—
 - (i) adding any person exercising regulatory functions and specifying functions in relation to that person,
 - (ii) removing any person for the time being specified in that Schedule, or
 - (iii) altering the functions for the time being specified in that Schedule in relation to any person, or
- (b) by order restrict the circumstances in which, or impose conditions subject to which, disclosure may be made to any person for the time being specified in that Schedule.

Other permitted disclosures

183.—(1) Article 179 does not preclude the disclosure by the Board of restricted information to—

- (a) the Department,

- (b) the Commissioners of Inland Revenue or their officers, or
- (c) the Secretary of State,

if the disclosure appears to the Board to be desirable or expedient in the interests of members of occupational pension schemes or in the public interest.

(2) Article 179 does not preclude the disclosure of restricted information—

(a) by or on behalf of—

- (i) the Board, or
- (ii) any public authority (within the meaning of section 6 of the Human Rights Act 1998 (c. 42)) which receives the information directly or indirectly from the Board, for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (criminal proceedings and investigations),

(b) in connection with any proceedings arising out of—

- (i) this Order,
- (ii) the 1999 Order,
- (iii) the 1995 Order, or
- (iv) the Pension Schemes Act,

or any corresponding enactment in force in Great Britain, or any proceedings for breach of trust in relation to an occupational pension scheme,

(c) with a view to the institution of, or otherwise for the purposes of, proceedings under—

- (i) Article 10 or 11 of the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4), or
- (ii) section 7 or 8 of the Company Directors Disqualification Act 1986 (c. 46),

(d) in connection with any proceedings under—

- (i) the Insolvency Order, or
- (ii) the Insolvency Act 1986 (c. 45),

which the Board has instituted or in which it has a right to be heard,

(e) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by a solicitor, an actuary, an accountant or an insolvency practitioner,

(f) with a view to the institution of, or otherwise for the purpose of, any disciplinary proceedings relating to the exercise by a public servant of his functions, or

(g) in pursuance of a Community obligation (within the meaning of Schedule 1 to the European Communities Act 1972 (c. 68)).

(3) In paragraph (2)(f), “public servant” means an officer or servant of the Crown or of any prescribed authority.

(4) Article 179 does not preclude the disclosure by the Board of restricted information to—

- (a) the Director of Public Prosecutions for Northern Ireland,
- (b) the Director of Public Prosecutions,
- (c) the Lord Advocate,
- (d) a procurator fiscal, or
- (e) a constable.

(5) Article 179 does not preclude the disclosure of restricted information in any case where the disclosure is required by or by virtue of a statutory provision.

(6) Article 179 does not preclude the disclosure of restricted information in any case where the disclosure is to a Regulator-appointed trustee of an occupational pension scheme for the purpose of enabling or assisting him to exercise his functions in relation to the scheme.

(7) In paragraph (6), “Regulator-appointed trustee” means a trustee appointed by the Regulator under Article 7 or 23(1) of the 1995 Order or any corresponding provision in force in Great Britain.

(8) Article 179 does not preclude the disclosure by any person mentioned in paragraph (1) or (4) of restricted information obtained by the person by virtue of that paragraph, if the disclosure is made with the consent of the Board.

(9) Article 179 does not preclude the disclosure by any person specified in the first column of Schedule 7 of restricted information obtained by the person by virtue of Article 182(1), if the disclosure is made—

(a) with the consent of the Board, and

(b) for the purpose of enabling or assisting the person to exercise any functions specified in relation to him in the second column of the Schedule.

(10) Before deciding whether to give its consent to such a disclosure as is mentioned in paragraph (8) or (9), the Board must take account of any representations made to it, by the person seeking to make the disclosure, as to the desirability of the disclosure or the necessity for it.

(11) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure authorised by paragraph (2) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.

Tax information

184.—(1) This Article applies to information held by any person in the exercise of tax functions about any matter which is relevant, for the purposes of those functions, to tax or duty in the case of an identifiable person (in this Article referred to as “tax information”).

(2) No obligation as to secrecy imposed by section 182 of the Finance Act 1989 (c. 26) or otherwise shall prevent the disclosure of tax information to the Board for the purpose of enabling or assisting the Board to discharge its functions.

(3) Where tax information is disclosed to the Board by virtue of paragraph (2) or section 19 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (disclosure of information held by revenue departments), it must, subject to paragraph (4), be treated for the purposes of Article 179 as restricted information.

(4) Articles 179(3), 180 to 183 and 185 and section 235 of the Pensions Act 2004 (c. 35) do not apply to tax information which is disclosed to the Board as mentioned in paragraph (3), and such information may not be disclosed by the Board or any person who receives the information directly or indirectly from the Board except—

(a) to, or in accordance with authority given by, the Commissioners of Inland Revenue or the Commissioners of Customs and Excise, or

(b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings.

(5) In this Article “tax functions” has the same meaning as in section 182 of the Finance Act 1989.

Provision of information to members of schemes etc.

Provision of information to members of schemes etc.

185.—(1) Regulations may—

- (a) require the Board to provide information of prescribed descriptions to such persons as may be prescribed at prescribed times, or
- (b) require trustees or managers of occupational pension schemes to provide such information—
 - (i) relating to the exercise of the Board’s functions in relation to any scheme of which they are trustees or managers,
 - (ii) relating to any notice issued or application or determination made under Chapter 2, 3 or 4 which relates to any such scheme, or
 - (iii) otherwise relating to the Board’s involvement with any such scheme,as may be prescribed to prescribed persons at prescribed times or in prescribed circumstances.

(2) Article 179 does not preclude the disclosure of restricted information by the Board which relates to the entitlement of a particular individual to compensation under Chapter 3 if the disclosure is made to that individual or to a person authorised by him.

(3) Article 179 does not preclude the disclosure of restricted information by the Board if—

- (a) the information relates to the exercise of the Board’s functions in relation to an occupational pension scheme,
- (b) the disclosure is made to—
 - (i) all affected persons, or
 - (ii) all affected persons of a particular description, and
- (c) the Board is satisfied that, in all the circumstances, it is reasonable to make the disclosure.

(4) In paragraph (3) “affected person”, in relation to an occupational pension scheme, means a person—

- (a) who is a member of the scheme, or
- (b) who is for the time being nominated by a member of the scheme for the purposes of that paragraph.

(5) A nomination by a member of the scheme under paragraph (4)(b)—

- (a) may be made by notice in writing given by the member,
- (b) becomes effective when the notice is received by the Board, and
- (c) ceases to be effective when the Board receives a further notice from the member withdrawing the nomination.

(6) In the case of an occupational pension scheme, Article 179 does not preclude the disclosure of restricted information by the Board if—

- (a) the disclosure is made to any of the following in relation to the scheme—
 - (i) a trustee or manager,
 - (ii) any professional adviser,
 - (iii) the employer,
 - (iv) the insolvency practitioner in relation to the employer,

- (b) the information is relevant to the exercise of that person's functions in relation to the scheme, and
- (c) the Board considers that it is reasonable in all the circumstances to make the disclosure for the purpose of facilitating the exercise of those functions.

Interpretation

Articles 172 to 185: interpretation

186.—(1) This Article applies for the purposes of Articles 172 to 185.

(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) Where the Board has assumed responsibility for a scheme—

- (a) any reference to the Board's functions in relation to the scheme includes a reference to the functions which it has by virtue of having assumed responsibility for the scheme, and
- (b) any reference to a trustee, manager, professional adviser or employer in relation to the scheme is to be read as a reference to a person who held that position in relation to the scheme before the Board assumed responsibility for it.

Reports

Publishing reports etc.

187.—(1) The Board may, if it considers it appropriate to do so in any particular case, publish a report of the exercise of, or any matter arising out of or connected with the exercise of, any of its functions in that case.

(2) The publication of a report under paragraph (1) may be in such form and manner as the Board considers appropriate.

(3) For the purposes of the law of defamation, the publication of any matter by the Board is privileged unless the publication is shown to be made with malice.