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DRAFT STATUTORY INSTRUMENTS

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**2005 No.**

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

PART IX

MISCELLANEOUS AND SUPPLEMENTARY

*General*

**Overriding requirements**

**279.**—(1) Where any provision mentioned in paragraph (2) conflicts with the provisions of an occupational or personal pension scheme—

- (a) the provision mentioned in paragraph (2), to the extent that it conflicts, overrides the provisions of the scheme, and
- (b) the scheme has effect with such modifications as may be required in consequence of sub-paragraph (a).

(2) The provisions referred to in paragraph (1) are those of—

- (a) any order made by the Regulator under Part II;
- (b) any regulations made under Article 15(7);
- (c) any regulations made under Article 17(4);
- (d) any regulations made under Article 20(7);
- (e) any direction issued by the Regulator under Article 37(4);
- (f) any direction issued by the Regulator under Article 46(4);
- (g) Part III (other than Chapter 1), any orders or regulations made under that Part and any direction given under Article 118 or 138;
- (h) Part IV and any orders or regulations made under that Part;
- (i) any regulations made under Article 214;
- (j) Articles 218 and 219, any regulations made under Articles 218 to 220 and any arrangements under Articles 218 and 219;
- (k) Articles 224 and 225 and any regulations made under Articles 224 to 226;
- (l) Articles 233 and 235;
- (m) any ring-fencing notice issued by the Regulator under Article 268;
- (n) any regulations made under Article 2(5) or (6), 280, 281 or 287(4) and any order made under Article 1(6).

(3) Paragraph (1) is without prejudice to Article 28(1) (overriding effect of freezing orders made by the Regulator) and Article 138(12) (overriding effect of requirement to wind up pension scheme under Part III).

(4) In the case of a company to which Article 219 (requirement for member-nominated directors of corporate trustees) applies, where any provision mentioned in paragraph (5) conflicts with the provisions of the company’s memorandum or articles of association—

- (a) the provision mentioned in paragraph (5), to the extent that it conflicts, overrides the provisions of the memorandum or articles, and
- (b) the memorandum or articles have effect with such modifications as may be required in consequence of sub-paragraph (a).

(5) The provisions referred to in paragraph (4) are those of—

- (a) Article 219;
- (b) any regulations made under Article 219 or 220;
- (c) any arrangements under Article 219.

### **Modification of this Order in relation to certain categories of schemes**

**280.**—(1) Regulations may modify any of the provisions mentioned in paragraph (2) as it applies in relation to—

- (a) hybrid schemes;
- (b) multi-employer schemes;
- (c) any case where a partnership is the employer, or one of the employers, in relation to an occupational pension scheme.

(2) The provisions referred to in paragraph (1) are those of—

- (a) Part II (the Pensions Regulator),
- (b) Part III (the Board of the Pension Protection Fund), other than Chapter 1,
- (c) Articles 234 and 235 (pension protection),
- (d) Articles 236 and 238 (consultation by employers), and
- (e) Part VII (cross-border activities within European Union).

(3) Regulations may also modify any of the provisions of Part III as it applies in relation to an eligible scheme in respect of which a relevant public authority has—

- (a) given a guarantee in relation to any part of the scheme, any benefits payable under the scheme rules or any member of the scheme, or
- (b) made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet any part of its liabilities.

(4) In this Article—

“eligible scheme” has the meaning given in Article 110;

“hybrid scheme” means an occupational pension scheme—

- (a) which is not a money purchase scheme, but
- (b) where some of the benefits that may be provided are—
  - (i) money purchase benefits attributable to voluntary contributions of the members, or
  - (ii) other money purchase benefits;

“multi-employer scheme” means an occupational pension scheme in relation to which there is more than one employer;

“relevant public authority” means—

- (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975 (c. 26)); or

- (b) a government department (including any body or authority exercising statutory functions on behalf of the Crown).

### **Modification of pensions legislation that refers to employers**

**281.**—(1) Regulations may modify any provision of pensions legislation for the purpose of ensuring that it, or another provision of pensions legislation, does not purport to refer to the employer of a self-employed person.

(2) Where a provision of pensions legislation contains a reference to an employer in connection with an occupational pension scheme, regulations may modify the provision, or another provision of pensions legislation, for the purpose of excluding from the reference an employer who is a person—

- (a) who does not participate in the scheme as regards people employed by him, or
- (b) who, as regards people employed by him, participates in the scheme only to a limited extent.

(3) For the purposes of this Article—

- (a) “pensions legislation” means any statutory provision contained in or made by virtue of—
  - (i) the Pension Schemes Act,
  - (ii) Part II of the 1995 Order other than Articles 62 to 66A of that Order (equal treatment),
  - (iii) Part II of the 1999 Order, or
  - (iv) this Order;
- (b) a person is “self-employed” if he is in an employment but is not employed in it by someone else;
- (c) a person who holds an office (including an elective office), and is entitled to remuneration for holding it, shall be taken to be employed by the person responsible for paying the remuneration.

(4) In paragraph (3)(b) “employment” includes any trade, business, profession, office or vocation.

### **Admissibility of statements**

**282.**—(1) A statement made by a person in compliance with an information requirement is admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

(2) But in proceedings to which this paragraph applies—

- (a) no evidence relating to the statement may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution or (as the case may be) the Regulator, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(3) Paragraph (2) applies to—

- (a) criminal proceedings in which that person is charged with a relevant offence, or
- (b) proceedings as a result of which that person may be required to pay a financial penalty under or by virtue of—
  - (i) section 164 of the Pension Schemes Act (breach of regulations) or Article 10 of the 1995 Order (civil penalties), or
  - (ii) any provision in force in Great Britain corresponding to a provision mentioned in head (i).

## (4) In this Article—

“information requirement” means any statement made in compliance with any duty imposed by or by virtue of—

- (a) Article 59 (duty of trustees or managers to provide scheme return);
- (b) Article 65 (duty to report breaches of the law);
- (c) Article 67 (requirement to provide information to the Regulator);
- (d) Article 70 (inspection of premises: powers of inspectors to examine etc.);
- (e) Article 73(2)(d) (power of inspector entering under warrant to require a person to provide an explanation of a document);
- (f) Article 172 (information to be provided to the Board);
- (g) Article 173 (notices requiring provision of information to the Board);
- (h) Article 174 (entry of premises: powers of appointed persons to examine etc.);
- (i) Article 176(2)(d) (power of inspector entering under warrant to require a person to provide an explanation of a document);
- (j) Article 191 (power to make order enabling PPF Ombudsman to obtain information, documents etc.);
- (k) Article 192 or 193 (disclosure of information on references made to PPF Ombudsman);
- (l) Article 207 (failure to make payments in accordance with schedule of contributions);
- (m) paragraph 19 of Schedule 1 to the Pensions Act 2004 (power to make regulations enabling Regulator to summon persons to give evidence before it);
- (n) paragraph 11 of Schedule 4 to that Act (the Pensions Regulator Tribunal: evidence);

“relevant offence” means any offence other than one under—

- (a) Article 72 (neglect or refusal to provide information etc. to the Regulator);
- (b) Article 75 (providing false or misleading information to the Regulator);
- (c) Article 175 (neglect or refusal to provide information etc. to the Board);
- (d) Article 177 (providing false or misleading information to the Board);
- (e) any provision in force in Great Britain corresponding to a provision mentioned in paragraphs (a) to (d);
- (f) Article 10 of the [Perjury \(Northern Ireland\) Order 1979 \(NI 19\)](#) (false statements made otherwise than on oath);
- (g) section 5 of the [Perjury Act 1911 \(c. 6\)](#) (false statements made otherwise than on oath);
- (h) section 44(2) of the [Criminal Law \(Consolidation\) \(Scotland\) Act 1995 \(c. 39\)](#) (false statements made otherwise than on oath).

**Protected items**

**283.**—(1) A person may not be required under or by virtue of this Order to produce, disclose or permit the inspection of protected items.

## (2) For this purpose “protected items” means—

- (a) communications between a professional legal adviser and his client or any person representing his client which fall within paragraph (3);
- (b) communications between a professional legal adviser, his client or any person representing his client and any other person which fall within paragraph (3) (as a result of subparagraph (b) of that paragraph);

- (c) items which—
  - (i) are enclosed with, or referred to in, such communications,
  - (ii) fall within paragraph (3), and
  - (iii) are in the possession of a person entitled to possession of them.
- (3) A communication or item falls within this paragraph if it is made—
  - (a) in connection with the giving of legal advice to the client, or
  - (b) in connection with, or in contemplation of, legal proceedings and for the purpose of those proceedings.
- (4) A communication or item is not a protected item if it is held with the intention of furthering a criminal purpose.

### **Liens**

**284.** If a person claims a lien on a document, its production under any provision made by or by virtue of this Order does not affect the lien.

### **Crown application**

- 285.**—(1) In this Article “the relevant provisions” means—
- (a) Parts II to VI,
  - (b) Articles 1(6), 2(5) and (6), 279, 280, 282, 283, 284, 286 and 287.
- (2) The relevant provisions apply to a pension scheme managed by or on behalf of the Crown as they apply to other pension schemes; and, accordingly, references in those provisions to a person in his capacity as a trustee or manager of, or person prescribed in relation to, a pension scheme include the Crown, or a person acting on behalf of the Crown, in that capacity.
- (3) The relevant provisions apply to persons employed by or under the Crown in like manner as if such persons were employed by a private person; and references in those provisions to a person in his capacity as an employer include the Crown, or a person acting on behalf of the Crown in that capacity.
- (4) This Article does not apply to any of the relevant provisions under or by virtue of which a person may be prosecuted for an offence; but such a provision applies to persons in the public service of the Crown as it applies to other persons.
- (5) Nothing in the relevant provisions applies to Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947 (c. 44)).