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DRAFT STATUTORY INSTRUMENTS

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**2005 No.**

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

**PART IX**

**MISCELLANEOUS AND SUPPLEMENTARY**

*Dissolution of existing bodies – information*

**Information obtained by the Regulator**

**275.**—(1) Subject to paragraph (2), information obtained by the Regulator by virtue of section 300(2) of the Pensions Act 2004 (c. 35) is to be treated for the purposes of Articles 77 to 82 (disclosure of information) as having been obtained by the Regulator in the exercise of its functions from the person from whom the Occupational Pensions Regulatory Authority (“OPRA”) obtained it.

(2) Information obtained by the Regulator by virtue of section 300(2) of the Pensions Act 2004 which was supplied to OPRA for the purposes of its functions by an authority exercising functions corresponding to the functions of OPRA in a country or territory outside the United Kingdom (the “overseas authority”) is to be treated for the purposes mentioned in paragraph (1) as having been supplied to the Regulator for the purposes of its functions by the overseas authority.

(3) Where tax information disclosed to OPRA is obtained by the Regulator by virtue of section 300(2) of the Pensions Act 2004, paragraph (1) does not apply and paragraphs (3) and (4) of Article 83 apply as if that information had been disclosed to the Regulator by virtue of paragraph (2) of that Article.

For this purpose “tax information” has the same meaning as in that Article.

**Information obtained by the Board**

**276.**—(1) Information obtained by the Board by virtue of section 302(2) of the Pensions Act 2004 (c. 35) is to be treated for the purposes of Articles 179 to 183 and 185 (disclosure of information) as having been obtained by the Board in the exercise of its functions from the person from whom the Pensions Compensation Board obtained it.

(2) Where tax information disclosed to the Pensions Compensation Board is obtained by the Board by virtue of section 302(2) of the Pensions Act 2004, paragraph (1) does not apply and paragraphs (3) and (4) of Article 184 apply as if that information had been disclosed to the Board by virtue of paragraph (2) of that Article.

For this purpose, “tax information” has the same meaning as in that Article.

(3) Where the Pensions Compensation Board’s disclosure under Article 112(3) of the 1995 Order of information to which paragraph (1) applies was subject to any express restriction, the Board’s powers of disclosure under Articles 180 to 183 and 185, in relation to that information, are subject to the same restriction.

*Electronic working*

**Notification and documents in electronic form**

277.—(1) This Article applies where —

- (a) section 24 of the Interpretation Act (Northern Ireland) 1954 (c. 33) authorises the giving or sending of a notification or other document by its delivery to a particular person (“the recipient”), and
- (b) the notification or other document is transmitted to the recipient—
  - (i) by means of an electronic communications network, or
  - (ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.

(2) The transmission has effect for the purposes of this Order as a delivery of the notification or other document to the recipient, but only if the requirements imposed by or under this Article are complied with.

(3) Where the recipient is a relevant authority—

- (a) it must have indicated its willingness to receive the notification or other document in a manner mentioned in paragraph (1)(b),
- (b) the transmission must be made in such manner, and satisfy such other conditions, as it may require, and
- (c) the notification or other document must take such form as it may require.

(4) Where the person making the transmission is a relevant authority, it may (subject to paragraph (5)) determine—

- (a) the manner in which the transmission is made, and
- (b) the form in which the notification or other document is transmitted.

(5) Where the recipient is a person other than a relevant authority—

- (a) the recipient, or
- (b) the person on whose behalf the recipient receives the notification or other document,

must have indicated to the person making the transmission the recipient’s willingness to receive notifications or documents transmitted in the form and manner used.

(6) An indication given to any person for the purposes of paragraph (5)—

- (a) must be given to that person in such manner as he may require,
- (b) may be a general indication or one that is limited to notifications or documents of a particular description,
- (c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission, and
- (d) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require.

(7) An indication, requirement or determination given, imposed or made by a relevant authority for the purposes of this Article is to be given, imposed or made by being published in such manner as it considers appropriate for bringing it to the attention of the persons who, in its opinion, are likely to be affected by it.

(8) Where both the recipient and the person making the transmission are relevant authorities—

- (a) paragraphs (3) and (4) do not apply, and

- (b) the recipient must have indicated to the person making the transmission the recipient's willingness to receive notifications or documents transmitted in the form and manner used.
- (9) In this Article "notification" includes notice; and references in this Article to sending a document to a person include references to making an application to him.
- (10) In this Article, "relevant authority" means the Regulator, the Board or the Department.
- (11) In this Article and Article 278, "electronic communications network" has the same meaning as in the Communications Act 2003 (c. 21).

### **Timing and location of things done electronically**

- 278.**—(1) The Department may by order make provision specifying, for the purposes of any statutory provision contained in, or made under, this Order, the manner of determining—
- (a) the times at which things done under that statutory provision by means of electronic communications networks are done, and
  - (b) the places at which such things are so done, and at which things transmitted by means of such networks are received.
- (2) The provision made under paragraph (1) may include provision as to the country or territory in which an electronic address is to be treated as located.
- (3) An order made by the Department may also make provision about the manner of proving in any legal proceedings—
- (a) that something done by means of an electronic communications network satisfies the requirements of a statutory provision contained in, or made under, this Order for the doing of that thing, and
  - (b) the matters mentioned in paragraph (1)(a) and (b).
- (4) An order under this Article may provide for such presumptions to apply (whether conclusive or not) as the Department considers appropriate.

### *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)).

### *Regulations and orders*

#### **Breach of regulations**

**286.** The following provisions of the 1995 Order apply to regulations under this Order as if they were regulations made by virtue of Part II of that Order—

- (a) Article 10(3) to (9) (power to impose civil penalties for contravention of regulations under Part II of that Order);
- (b) Article 113 (power to provide for contravention of regulations under that Part to be criminal offence).

#### **Orders and regulations (general provisions)**

**287.**—(1) Any power conferred by this Order to make regulations or an order—

- (a) if it is expressed to be exercisable for alternative purposes, may be exercised in relation to the same case for any or all of those purposes, and
- (b) if it is conferred for the purposes of any one provision of this Order, is without prejudice to any power to make regulations or an order for the purposes of any other provision.

(2) A power conferred by this Order to make regulations or an order includes power to provide for a person to exercise a discretion in dealing with any matter.

(3) Any power conferred by this Order to make regulations or an order also includes power to make such incidental, supplementary, consequential or transitional provision as appears to the authority making the regulations or order to be expedient.

(4) Regulations may, for the purposes of or in connection with the coming into operation of any provisions of this Order, make any such provision as could be made by virtue of Article 1(6) by an order bringing those provisions into operation.

#### **Assembly etc. control of orders and regulations**

**288.**—(1) Subject to the following provisions of this Article—

- (a) any orders made under this Order by a Northern Ireland department, and
- (b) any regulations made under this Order,

are subject to negative resolution.

(2) Orders and regulations to which this paragraph applies—

- (a) must be laid before the Assembly after being made; and
- (b) take effect on such date as may be specified in the order or regulations, but (without prejudice to the validity of anything done thereunder or to the making of a new order or new regulations) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the order or regulations are approved by a resolution of the Assembly.

(3) Paragraph (2) applies to—



- (a) regulations under Article 2(5)(b) (power to extend meaning of employer);
  - (b) regulations under Article 103(1) or (3) (administration levy in respect of expenditure relating to the Board);
  - (c) regulations under Article 151 (modification of Chapter 3 of Part III where liabilities discharged during the assessment period);
  - (d) regulations under Article 157 (the initial levy);
  - (e) regulations under Article 158 (pension protection levies);
  - (f) an order or regulations under Article 191 (the PPF Ombudsman);
  - (g) regulations under Article 192 (reference of reviewable matter to the PPF Ombudsman);
  - (h) regulations under Article 193 (investigation by PPF Ombudsman of complaints of maladministration);
  - (i) regulations under Article 214 (combined pension forecasts);
  - (j) regulations under Article 215 (information and advice to employees);
  - (k) an order under Article 220(1) (power to provide for minimum fraction of member-nominated trustees or directors to be one-half);
  - (l) regulations which make provision by virtue of Article 238(2)(f) (power to make amendments etc. to certain statutory provisions);
  - (m) regulations which make provision by virtue of Article 286(b) (power to provide for contravention of regulations to be criminal offence);
  - (n) an order under Article 290(2) (power to make consequential amendments to statutory provisions);
  - (o) an order under paragraph 24(8) of Schedule 6 (power to vary percentage of periodic compensation that can be commuted); or
  - (p) an order under paragraph 30(1) of that Schedule (power to vary percentage paid as compensation from the Pension Protection Fund).
- (4) Paragraph (1) does not apply to—
- (a) an order under Article 1 (title and commencement);
  - (b) an order under Article 86(7) (commencement of code of practice);
  - (c) an order under Article 110(2) (schemes winding up before day appointed by order not eligible schemes for purposes of Part III); or
  - (d) an order under Article 165(10) (order appointing day after which losses of non-trust schemes are relevant for fraud compensation purposes).
- (5) This paragraph applies to any regulations or orders made under this Order which—
- (a) but for paragraph (6), would be subject to negative resolution, and
  - (b) are contained in a statutory rule which includes any regulations or order subject to the confirmatory procedure.
- (6) Any regulations or orders to which paragraph (5) applies shall not be subject to negative resolution, but shall be subject to the confirmatory procedure.
- (7) Orders made under this Order by a Minister of the Crown are subject to annulment in pursuance of a resolution of either House of Parliament and section 5 of the Statutory Instruments Act 1946 (c. 36) applies accordingly.
- (8) In this Article “the confirmatory procedure” means the procedure described in paragraph (2).

### Consultations about regulations

**289.**—(1) Before the Department makes any regulations by virtue of this Order (other than Part VIII), the Department must consult such persons as it considers appropriate.

(2) Paragraph (1) does not apply—

- (a) to regulations made for the purpose only of consolidating other regulations revoked by those regulations,
- (b) in a case where it appears to the Department that by reason of urgency consultation is inexpedient,
- (c) to regulations made before the end of the period of six months beginning with the coming into operation of the provision of this Order by virtue of which the regulations are made,
- (d) to regulations which—
  - (i) state that they only make provision consequential upon a specified statutory provision, and
  - (ii) are made before the end of the period of six months beginning with the coming into operation of that statutory provision, or
- (e) to regulations making only provision corresponding to provision contained in regulations made by the Secretary of State in relation to Great Britain.

### *Miscellaneous and supplementary*

#### Minor and consequential amendments

**290.**—(1) Schedule 10 (which makes minor and consequential amendments) has effect.

(2) The Department may by order make provision consequential on this Order or the Pensions Act 2004 (c. 35) amending, repealing or revoking (with or without savings) any statutory provision.

#### Repeals

**291.** The statutory provisions specified in Schedule 11 are hereby repealed to the extent specified in the second column of that Schedule.

#### Transitional adaptations etc.: section 322(1) of the Pensions Act 2004

**292.** The Department may by order—

- (a) make transitional adaptations or modifications, in connection with any provisions brought into force by an order under section 322(1) of the Pensions Act 2004 (c. 35), of any provision of Parts II to VII of this Order, the Pension Schemes Act, the 1995 Order, Parts II, III or V of the 1999 Order or Chapter 2 of Part II of the 2000 Act; or
- (b) save the effect of any of the repealed provisions of any of those statutory provisions, or those provisions as adapted or modified by the order,

as it appears to the Department expedient, including different adaptations or modifications for different periods.

#### Power to make further provision in connection with civil partnership

**293.** An order under section 259 of the Civil Partnership Act 2004 (c. 33) may amend or repeal any provision contained in this Order notwithstanding anything in subsection (3)(b) of that section.

**Pre-consolidation amendments**

**294.** The Department may by order make such modifications of—

- (a) this Order,
- (b) the Pension Schemes Act,
- (c) the 1995 Order,
- (d) Parts II to V of the 1999 Order, and
- (e) Chapter 2 of Part II of the 2000 Act,

as in its opinion facilitate, or are otherwise desirable in connection with, the consolidation of those statutory provisions or any of them.