
DRAFT STATUTORY INSTRUMENTS

2005 No.

The Pensions (Northern Ireland) Order 2005

PART VI

**OCCUPATIONAL AND PERSONAL PENSION
SCHEMES: MISCELLANEOUS PROVISIONS**

Deficiency in assets of certain occupational pension schemes

Debt due from the employer when assets insufficient

248.—(1) Article 75 of the 1995 Order (deficiencies in the assets) is amended as follows.

(2) For paragraphs (1) to (4) substitute—

“(1) This Article applies in relation to an occupational pension scheme other than a scheme which is—

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(2) If—

- (a) at any time which falls—
 - (i) when a scheme is being wound up, but
 - (ii) before any relevant event in relation to the employer which occurs while the scheme is being wound up,the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme, and
- (b) the trustees or managers of the scheme designate that time for the purposes of this paragraph (before the occurrence of an event within sub-paragraph (a)(ii)),

an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

This is subject to paragraph (3).

(3) Paragraph (2) applies only if—

- (a) either—
 - (i) no relevant event within paragraph (6A)(a) or (b) occurred in relation to the employer during the period beginning with (and including) the appointed day and ending with the commencement of the winding up of the scheme, or
 - (ii) during the period—
 - (a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in head (i), and
 - (b) ending with the commencement of the winding up of the scheme,

- a cessation notice was issued in relation to the scheme and became binding, and
- (b) no relevant event within paragraph (6A)(c) has occurred in relation to the employer during the period mentioned in sub-paragraph (a)(i).
- (4) Where—
- (a) immediately before a relevant event (“the current event”) occurs in relation to the employer the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme,
- (b) the current event—
- (i) occurred on or after the appointed day, and
- (ii) did not occur in prescribed circumstances,
- (c) if the scheme was being wound up immediately before that event, paragraph (2) has not applied in relation to the scheme to treat an amount as a debt due from the employer to the trustees or managers of the scheme,
- (d) if the current event is within paragraph (6A)(a) or (b), either—
- (i) no relevant event within paragraph (6A)(a) or (b) occurred in relation to the employer during the period beginning with (and including) the appointed day and ending immediately before the current event, or
- (ii) a cessation event has occurred in relation to the scheme in respect of a cessation notice issued during the period—
- (a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in head (i), and
- (b) ending immediately before the current event, and
- (e) no relevant event within paragraph (6A)(c) has occurred in relation to the employer during the period mentioned in sub-paragraph (d)(i),
- an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.
- (4A) Where the current event is within paragraph (6A)(a) or (b), the debt under paragraph (4) is to be taken, for the purposes of the law relating to insolvency as it applies to the employer, to arise immediately before the occurrence of the current event.
- (4B) Paragraph (4C) applies if, in a case within paragraph (4)—
- (a) the current event is within paragraph (6A)(a) or (b), and
- (b) the scheme was not being wound up immediately before that event.
- (4C) Where this paragraph applies, the debt due from the employer under paragraph (4) is contingent upon—
- (a) a scheme failure notice being issued in relation to the scheme after the current event and the following conditions being satisfied—
- (i) the scheme failure notice is binding,
- (ii) no relevant event within paragraph (6A)(c) has occurred in relation to the employer before the scheme failure notice became binding, and
- (iii) a cessation event has not occurred in relation to the scheme in respect of a cessation notice issued during the period—
- (a) beginning with the occurrence of the current event, and
- (b) ending immediately before the issuing of the scheme failure notice,

- and the occurrence of such a cessation event in respect of a cessation notice issued during that period is not a possibility, or
- (b) the commencement of the winding up of the scheme before—
- (i) any scheme failure notice or cessation notice issued in relation to the scheme becomes binding, or
 - (ii) any relevant event within paragraph (6A)(c) occurs in relation to the employer.”.
- (3) In paragraph (5) for “paragraph (1)” substitute “paragraphs (2) and (4)”.
- (4) In paragraph (6)—
- (a) after “scheme” insert “rules”, and
 - (b) at the end add—
“In this paragraph “scheme rules” has the same meaning as in the Pensions (Northern Ireland) Order 2005 (“the 2005 Order”) (see Article 2 of that Order).”.
- (5) After paragraph (6) insert—
- “(6A) For the purposes of this Article, a relevant event occurs in relation to the employer in relation to an occupational pension scheme if and when—
- (a) an insolvency event occurs in relation to the employer,
 - (b) the trustees or managers of the scheme make an application under paragraph (1) of Article 113 of the 2005 Order or receive a notice from the Board of the Pension Protection Fund (“the Board”) under paragraph (5)(a) of that Article, or
 - (c) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under Article 75 of the Insolvency (Northern Ireland) Order 1989 (members' voluntary winding up).
- (6B) For the purposes of this Article—
- (a) a “cessation notice”, in the case of a relevant event within paragraph (6A)(a), means—
 - (i) a withdrawal notice issued under Article 106(2)(b) of the 2005 Order (scheme rescue has occurred);
 - (ii) a withdrawal notice issued under Article 132 of that Order (no insolvency event has occurred or is likely to occur);
 - (iii) a notice issued under Article 106(4) of that Order (inability to confirm status of scheme) in a case where the notice has become binding and Article 132 of that Order does not apply,
 - (b) a “cessation notice” in the case of a relevant event within paragraph (6A)(b), means a withdrawal notice issued under Article 114(3) of the 2005 Order (scheme rescue has occurred),
 - (c) a cessation event occurs in relation to a scheme when a cessation notice in relation to the scheme becomes binding,
 - (d) the occurrence of a cessation event in relation to a scheme in respect of a cessation notice issued during a particular period (“the specified period”) is a possibility until each of the following is no longer reviewable—
 - (i) any cessation notice which has been issued in relation to the scheme during the specified period;
 - (ii) any failure to issue such a cessation notice during the specified period;

- (iii) any notice which has been issued by the Board under Chapter 2 or 3 of Part III of the 2005 Order which is relevant to the issue of a cessation notice in relation to the scheme during the specified period or to such a cessation notice which has been issued during that period becoming binding;
 - (iv) any failure to issue such a notice as is mentioned in head (iii),
 - (e) the issue or failure to issue a notice is to be regarded as reviewable—
 - (i) during the period within which it may be reviewed by virtue of Chapter 6 of Part III of the 2005 Order, and
 - (ii) if the matter is so reviewed, until—
 - (a) the review and any reconsideration,
 - (b) any reference to the Ombudsman for the Board of the Pension Protection Fund in respect of the matter, and
 - (c) any appeal against his determination or directions,
 has been finally disposed of, and
 - (f) a “scheme failure notice” means a scheme failure notice issued under Article 106(2)(a) or 114(2) of the 2005 Order (scheme rescue not possible).
- (6C) For the purposes of this Article—
- (a) Article 105 of the 2005 Order applies for the purposes of determining if and when an insolvency event has occurred in relation to the employer,
 - (b) “appointed day” means the day appointed under Article 110(2) of the 2005 Order (no pension protection under Chapter 3 of Part III of that Order if the scheme begins winding up before the day appointed by the Department),
 - (c) references to a relevant event in relation to an employer do not include a relevant event which occurred in relation to him before he became the employer in relation to the scheme,
 - (d) references to a cessation notice becoming binding are to the notice in question mentioned in paragraph (6B)(a) or (b) and issued under Part III of the 2005 Order becoming binding within the meaning given in that Part of that Order, and
 - (e) references to a scheme failure notice becoming binding are to the notice in question mentioned in paragraph (6B)(f) and issued under Part III of the 2005 Order becoming binding within the meaning given in that Part of that Order.
- (6D) Where—
- (a) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under Article 75 of the Insolvency (Northern Ireland) Order 1989 (members' voluntary winding up), and
 - (b) either—
 - (i) the voluntary winding up of the employer is stayed other than in prescribed circumstances, or
 - (ii) a meeting of creditors is held in relation to the employer 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),
 this Article has effect as if that resolution had never been passed and any debt which arose under this Article by virtue of the passing of that resolution shall be treated as if it had never arisen.”.
- (6) Omit paragraph (9).

Debt due from the employer in the case of multi-employer schemes

249. After Article 75 of the 1995 Order (deficiencies in the assets) insert—

“Deficiencies in the assets: multi-employer schemes

75A.—(1) Regulations may modify Article 75 (deficiencies in the assets) as it applies in relation to multi-employer schemes.

(2) The regulations may in particular provide for the circumstances in which a debt is to be treated as due under Article 75 from an employer in relation to a multi-employer scheme (a “multi-employer debt”).

(3) Those circumstances may include circumstances other than those in which the scheme is being wound up or a relevant event occurs (within the meaning of Article 75).

(4) For the purposes of regulations under this Article, regulations under Article 75(5) may prescribe alternative manners for determining, calculating and verifying—

- (a) the liabilities and assets of the scheme to be taken into account, and
- (b) their amount or value.

(5) The regulations under this Article may in particular—

- (a) provide for the application of each of the prescribed alternative manners under Article 75(5) to depend upon whether prescribed requirements are met,
- (b) provide that, where in a particular case a prescribed alternative manner under Article 75(5) is applied, the Authority may in prescribed circumstances issue a direction—
 - (i) that any resulting multi-employer debt is to be unenforceable for such a period as the Authority may specify, and
 - (ii) that the amount of the debt is to be re-calculated applying a different prescribed manner under Article 75(5) if prescribed requirements are met within that period.

(6) The prescribed requirements mentioned in paragraph (5) may include a requirement that a prescribed arrangement, the details of which are approved in a notice issued by the Authority, is in place.

(7) The regulations may provide that the Authority may not approve the details of such an arrangement unless prescribed conditions are met.

(8) Those prescribed conditions may include a requirement that—

- (a) the arrangement identifies one or more persons to whom the Authority may issue a contribution notice under the regulations, and
- (b) the Authority are satisfied of prescribed matters in respect of each of those persons.

(9) For the purposes of paragraph (8) a “contribution notice” is a notice stating that the person to whom it is issued is under a liability to pay the sum specified in the notice—

- (a) to the trustees of the multi-employer scheme in question, or
- (b) where the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part III of the Pensions (Northern Ireland) Order 2005 (pension protection), to the Board.

(10) The regulations may provide for the Authority to have power to issue a contribution notice to a person identified in an arrangement as mentioned in paragraph (8) if—

- (a) the arrangement ceases to be in place or the Authority consider that the arrangement is no longer appropriate, and
- (b) the Authority are of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice.

(11) Where a contribution notice is issued to a person under the regulations as mentioned in paragraph (8), the sum specified in the notice is to be treated as a debt due from that person to the person to whom it is to be paid as specified in the notice.

(12) Where the regulations provide for the issuing of a contribution notice by the Authority as mentioned in paragraph (8)—

- (a) the regulations must—
 - (i) provide for how the sum specified by the Authority in a contribution notice is to be determined,
 - (ii) provide for the circumstances (if any) in which a person to whom a contribution notice is issued is jointly and severally liable for the debt,
 - (iii) provide for the matters which the notice must contain, and
 - (iv) provide for who may exercise the powers to recover the debt due by virtue of the contribution notice, and
- (b) the regulations may apply with or without modifications some or all of the provisions of Articles 43 to 47 of the Pensions (Northern Ireland) Order 2005 (contribution notices where non-compliance with financial support direction) in relation to contribution notices issued under the regulations.

(13) In this Article “multi-employer scheme” means a trust scheme which applies to earners in employments under different employers.

(14) This Article is without prejudice to the powers conferred by—

Article 75(5) (power to prescribe the manner of determining, calculating and verifying assets and liabilities etc.),

Article 75(10) (power to modify Article 75 as it applies in prescribed circumstances),
Article 115(1)(a) (power to modify any provisions of this Part in their application to multi-employer trust schemes), and

Article 122(3) (power to extend for the purposes of this Part the meaning of “employer”).”.