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## STATUTORY INSTRUMENTS

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# 2005 No. 255

## The Pensions (Northern Ireland) Order 2005

### PART II

#### THE PENSIONS REGULATOR

##### *Contribution notices where avoidance of employer debt*

##### **Contribution notices where avoidance of employer debt**

- <sup>F1</sup>34.—(1) This Article applies in relation to an occupational pension scheme other than—
- (a) a money purchase scheme, or
  - (b) a prescribed scheme or a scheme of a prescribed description.
- (2) The Regulator may issue a notice to a person stating that the person is under a liability to pay the sum specified in the notice (a “contribution notice”)—
- (a) to the trustees or managers of the scheme, or
  - (b) where the Board has assumed responsibility for the scheme in accordance with Chapter 3 of Part III (pension protection), to the Board.
- (3) The Regulator may issue a contribution notice to a person only if—
- (a) the Regulator is of the opinion that the person was a party to an act or a deliberate failure to act which falls within paragraph (5),
  - (b) the person was at any time in the relevant period—
    - (i) the employer in relation to the scheme, or
    - (ii) a person connected with, or an associate of, the employer,
  - (c) the Regulator is of the opinion that the person, in being a party to the act or failure, was not acting in accordance with his functions as an insolvency practitioner in relation to another person, and
- <sup>F2</sup>(d) the Regulator is of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice, having regard to—
- (i) the extent to which, in all the circumstances of the case, it was reasonable for the person to act, or fail to act, in the way that the person did, and
  - (ii) such other matters as the Regulator considers relevant, including (where relevant) the matters falling within paragraph (7).]
- (4) But the Regulator may not issue a contribution notice, in such circumstances as may be prescribed, to a person of a prescribed description.
- (5) An act or a failure to act falls within this paragraph if—
- (a) the Regulator is of the opinion that [<sup>F3</sup>the material detriment test]<sup>F4</sup>, the employer insolvency test or the employer resources test] is met in relation to the act or failure (see

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- [<sup>F5</sup>Articles 34A, 34C and 34E)] or that] the main purpose or one of the main purposes of the act or failure was—
- (i) to prevent the recovery of the whole or any part of a debt which was, or might become, due from the employer in relation to the scheme under Article 75 of the 1995 Order (deficiencies in the scheme assets), or
  - (ii) <sup>F6</sup> . . . to prevent such a debt becoming due, to compromise or otherwise settle such a debt, or to reduce the amount of such a debt which would otherwise become due,
- (b) it is an act which occurred or a failure to act which first occurred—
- (i) on or after 27th April 2004, and
  - (ii) before any assumption of responsibility for the scheme by the Board in accordance with Chapter 3 of Part III, and
- (c) it is either—
- (i) an act which occurred during the period of six years ending with the [<sup>F7</sup>giving of a warning notice in respect of] the contribution notice in question, or
  - (ii) a failure which first occurred during, or continued for the whole or part of, that period.
- (6) For the purposes of paragraph (3)—
- (a) the parties to an act or a deliberate failure include those persons who knowingly assist in the act or failure, and
  - (b) “the relevant period” means the period which—
    - (i) begins with the time when the act falling within paragraph (5) occurs or the failure to act falling within that paragraph first occurs, and
    - (ii) ends with the [<sup>F8</sup>giving of a warning notice in respect of] the contribution notice in question.
- (7) [<sup>F9</sup>The matters within this paragraph are—]
- (a) the degree of involvement of the person in the act or failure to act which falls within paragraph (5),
  - (b) the relationship which the person has or has had with the employer (including, where the employer is a company within the meaning of paragraph (11) of Article 4 of the Insolvency Order, whether the person has or has had control of the employer within the meaning of paragraph (10) of that Article),
  - (c) any connection or involvement which the person has or has had with the scheme,
  - (d) if the act or failure to act was a notifiable event for the purposes of Article 64 (duty to notify the Regulator of certain events), any failure by the person to comply with any obligation imposed on the person by paragraph (1) of that Article to give the Regulator notice of the event,
  - (e) all the purposes of the act or failure to act (including whether a purpose of the act or failure was to prevent or limit loss of employment),
- [<sup>F10</sup>(ea) the value of any benefits which directly or indirectly the person receives, or is entitled to receive, from the employer or under the scheme;
- (eb) the likelihood of relevant creditors being paid and the extent to which they are likely to be paid;]
- [<sup>F11</sup>(ec) the effect of the act or failure to act on the value of the assets or liabilities of the scheme or any relevant transferee scheme,]

- (f) the financial circumstances of the person, and
- (g) such other matters as may be prescribed.

[<sup>F12</sup>(7A) In paragraph (7)(eb) “ relevant creditors ” means—

- (a) creditors of the employer, and
- (b) creditors of any other person who has incurred a liability or other obligation (including one that is contingent or otherwise might fall due) to make a payment, or transfer an asset, to the scheme.]

[<sup>F13</sup>(7B) In paragraph (7)(ec) “relevant transferee scheme” and the reference to the assets or liabilities of any relevant transferee scheme have the same meaning as in Article 34A.]

(8) For the purposes of this Article references to a debt due under Article 75 of the 1995 Order include a contingent debt under that Article.

(9) Accordingly, in the case of such a contingent debt, the reference in paragraph (5)(a)(ii) to preventing a debt becoming due is to be read as including a reference to preventing the occurrence of any of the events specified in Article 75(4C)(a) or (b) of that Order upon which the debt is contingent.

(10) For the purposes of this Article—

- (a) Article 7 of the Insolvency Order (connected persons) applies as it applies for the purposes of any provision of Parts II to VII of that Order, and
- (b) Article 4 of that Order (associated persons) applies as it applies for the purposes of that Order.

(11) For the purposes of this Article “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, or
- (b) an insolvency practitioner within the meaning of Article 105(9)(b) (persons of a prescribed description).

[<sup>F14</sup>(12) Paragraph (13) applies if the Regulator is of the opinion that—

- (a) a person was a party to a series of acts or failures to act,
- (b) each of the acts or failures in the series falls within paragraph (5)(b) and (c), and
- (c) the material detriment test [<sup>F15</sup>, the employer insolvency test or the employer resources test] is met in relation to the series, or the main purpose or one of the main purposes of the series was as mentioned in paragraph (5)(a)(i) or (ii).

(13) The series of acts or failures to act is to be regarded as an act or failure to act falling within paragraph (5) (and, accordingly, the reference in paragraph (6)(b)(i) to the act or failure to act falling with paragraph (5) is to the first of the acts or failures to act in the series).]

[<sup>F16</sup>(14) In this Article “ a warning notice ” means a notice given as mentioned in Article 91(2) (a). ]

**F1** mod. by SR 2005/378

**F2** Art. 34(3)(d) substituted (15.12.2008) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), ss. 103, 118(1)(2)(h)(3)(a)(iii)(vi)(b), [Sch. 8 para. 7\(2\)](#) (with [Sch. 8 para. 15\(1\)](#))

**F3** Words in art. 34(5)(a) inserted (15.12.2008 for certain purposes, otherwise 29.6.2009) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), ss. 103, 118(1)(2)(h)(3)(a)(ii)(vi)(b), [Sch. 8 para. 2\(1\)](#) (with [Sch. 8 para. 15\(1\)](#)); S.R. 2009/249, [art. 2\(a\)\(b\)\(ii\)](#)

**F4** Words in art. 34(5)(a) inserted (1.10.2021) by [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(2)(b), [Sch. 8 para. 2\(1\)\(a\)\(i\)](#); S.R. 2021/271, [art. 2\(5\)\(a\)](#) (with [art. 3\(1\)\(2\)](#))

**F5** Words in art. 34(5)(a) substituted (1.10.2021) by [Pension Schemes Act 2021 \(c. 1\)](#), s. 131(2)(b), [Sch. 8 para. 2\(1\)\(a\)\(ii\)](#); S.R. 2021/271, [art. 2\(5\)\(a\)](#) (with [art. 3\(1\)\(2\)](#))

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- F6** Words in art. 34(5)(a)(ii) repealed (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 116, 118(1)(2)(h)(3)(a)(iii)(vi)(b)(c), Sch. 8 para. 6, **Sch. 10 Pt. 5** (with Sch. 8 para. 15(1))
- F7** Words in art. 34(5)(c)(i) substituted (7.6.2012) by Pensions Act (Northern Ireland) 2012 (c. 3), **ss. 24(2), 34(3)**; S.R. 2012/233, art. 2(2)(g)
- F8** Words in art. 34(6)(b)(ii) substituted (7.6.2012) by Pensions Act (Northern Ireland) 2012 (c. 3), **ss. 24(2), 34(3)**; S.R. 2012/233, art. 2(2)(g)
- F9** Words in art. 34(7) substituted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(iii)(vi)(b), **Sch. 8 para. 7(3)(a)** (with Sch. 8 para. 15(1))
- F10** Art. 34(7)(ea)(eb) inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(iii)(vi)(b), **Sch. 8 para. 7(3)(b)** (with Sch. 8 para. 15(1))
- F11** Art. 34(7)(ec) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(2)(b), **Sch. 8 para. 3(3)**; S.R. 2021/271, art. 2(3)(a) (with art. 3(1)(2))
- F12** Art. 34(7A) inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(iii)(vi)(b), **Sch. 8 para. 7(4)** (with Sch. 8 para. 15(1))
- F13** Art. 34(7B) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(2)(b), **Sch. 8 para. 3(4)**; S.R. 2021/271, art. 2(3)(a) (with art. 3(1)(2))
- F14** Art. 34(12)(13) added (15.12.2008 for certain purposes, otherwise 29.6.2009) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(iv)(vi)(b), **Sch. 8 para. 8(1)** (with Sch. 8 para. 15(2)); S.R. 2009/249, **art. 2(a)(b)(ii)**
- F15** Words in art. 34(12)(c) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(2)(b), **Sch. 8 para. 2(1)(b)**; S.R. 2021/271, art. 2(5)(a) (with art. 3(1)(2))
- F16** Art. 34(14) added (7.6.2012) by Pensions Act (Northern Ireland) 2012 (c. 3), **ss. 24(3), 34(3)**; S.R. 2012/233, art. 2(2)(g)

**Modifications etc. (not altering text)**

- C1** Art. 34 modified (1.8.2022) by The Occupational Pension Schemes (Collective Money Purchase Schemes) (Modifications and Consequential and Miscellaneous Amendments) Regulations (Northern Ireland) 2022 (S.R. 2022/192), regs. 1(1), **14(2)**

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 6 para. 21(2)(c)-(cc) substituted for (b)(c) by [2008 c. 13 \(N.I.\) Sch. 6 para. 11](#)
- art. 2(4)(b)(viii)-(x) inserted by [2016 c. 1 \(N.I.\) Sch. 2 para. 21\(3\)\(b\)](#)
- art. 19(1A) inserted by [2016 c. 1 \(N.I.\) Sch. 2 para. 24\(3\)](#)
- art. 19(10A) inserted by [2016 c. 1 \(N.I.\) Sch. 2 para. 24\(5\)](#)
- art. 34(1)-(1B) substituted for art. 34(1) by [2016 c. 1 \(N.I.\) Sch. 2 para. 25](#)
- art. 34(7)(da) inserted by [2021 c. 1 Sch. 8 para. 3\(2\)](#)
- art. 39(1)-(1B) substituted for art. 39(1) by [2016 c. 1 \(N.I.\) Sch. 2 para. 26\(2\)](#)
- art. 48(1)-(1B) substituted for art. 48(1) by [2016 c. 1 \(N.I.\) Sch. 2 para. 27](#)
- art. 75(1)(a)(iib) inserted by [2021 c. 1 Sch. 8 para. 8\(2\)](#)
- art. 110(1)-(1B) substituted for art. 110(1) by [2016 c. 1 \(N.I.\) Sch. 2 para. 29](#)
- art. 191(5) added by [2008 c. 13 \(N.I.\) Sch. 9 para. 6](#)
- art. 267(4)(f) and word inserted by [2021 c. 1 Sch. 6 para. 20\(b\)](#)