STATUTORY INSTRUMENTS

2005 No. 255

The Pensions (Northern Ireland) Order 2005

PART III

THE BOARD OF THE PENSION PROTECTION FUND

CHAPTER 3

PENSION PROTECTION

Restrictions on schemes during the assessment period

Assessment periods

116.—(1) In this Part references to an assessment period are to be construed in accordance with this Article.

(2 [F1] Where, in relation to an eligible scheme, a qualifying insolvency event occurs in relation to the employer, an assessment period—

(a) begins with the occurrence of that event, and

(b) ends when—

(i) the Board ceases to be involved with the scheme (see Article 133),

(ii) the trustees or managers of the scheme receive a transfer notice under Article 144, or

(iii) the conditions in Article 138(2) (no scheme rescue but sufficient assets to meet protected liabilities etc.) are satisfied in relation to the scheme,

whichever first occurs.

(3) In paragraph (2) "qualifying insolvency event" has the meaning given by Article 111(3).

(4 [F1] Where, in relation to an eligible scheme, an application is made under Article 113(1) or a notification is received under Article 113(5)(a), an assessment period—

(a) begins when the application is made or the notification is received, and

(b) ends when—

(i) the Board ceases to be involved with the scheme (see Article 133),

(ii) the trustees or managers of the scheme receive a transfer notice under Article 144, or

(iii) the conditions in Article 138(2) (no scheme rescue but sufficient assets to meet protected liabilities etc.) are satisfied in relation to the scheme,

whichever first occurs.

(5) For the purposes of paragraph (4) an application under Article 113(1) or notification under Article 113(5)(a) is to be disregarded if it is made or given during an assessment period in relation to the scheme which began before the application was made or notification was given.

(6) This Article is subject to Article 143 (which provides for further assessment periods to begin in certain circumstances where schemes are required to wind up or continue winding up under Article 138).

F1 mod. by SR 2005/91

Commencement Information

I1 Art. 116 wholly in operation at 6.4.2007; art. 116 not in operation at date of making see art. 1(2); art. 116 (except (6)) in operation at 6.4.2005 by S.R. 2005/48, art. 2(7), Sch. Pt. 7; art. 116 in operation at 6.4.2007 in so far as it is not already in operation by S.R. 2006/352, **art. 2(5)**, Sch. Pt. 2

Admission of new members, payment of contributions etc.

117.—(1) This Article applies where there is an assessment period in relation to an eligible scheme.

(2) No new members of any class may be admitted to the scheme during the assessment period.

(3) Except in prescribed circumstances and subject to prescribed conditions, no further contributions (other than those due to be paid before the beginning of the assessment period) may be paid towards the scheme during the assessment period.

(4) Any obligation to pay contributions towards the scheme during the assessment period (including any obligation under Article 49(8) of the 1995 Order to pay amounts deducted corresponding to such contributions) is to be read subject to paragraph (3) and Article 134 (obligation to pay contributions when assessment period ends).

(5) No benefits may accrue under the scheme rules to, or in respect of, members of the scheme during the assessment period.

(6) Paragraph (5) does not prevent any increase, in a benefit, which would otherwise accrue in accordance with the scheme or any statutory provision.
This paragraph is subject to Article 122 (which limits the scheme benefits payable during an assessment period).

(7) Paragraph (5) does not prevent the accrual of money purchase benefits to the extent that they are derived from income or capital gains arising from the investment of payments which are made by, or in respect of, a member of the scheme.

(8) Where a person is entitled to a pension credit derived from another person's shareable rights under the scheme, nothing in this Article prevents the trustees or managers of the scheme discharging their liability in respect of the credit under Chapter 1 of Part V of the 1999 Order (sharing of rights under pension arrangements) by conferring appropriate rights under the scheme on that person.

(9) In paragraph (8)—

"appropriate rights" has the same meaning as in paragraph 5 of Schedule 5 to that Order (pension credits: mode of discharge);

"shareable rights" has the same meaning as in Chapter 1 of Part V of that Order (sharing of rights under pension arrangements).

(10) Any action taken in contravention of this Article is void.

(11) Disregarding paragraph (10), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with this Article.

Directions

118.—(1) This Article applies where there is an assessment period in relation to an eligible scheme.

(2 [F2] [F3]With a view to ensuring that the scheme's protected liabilities do not exceed its assets or, if they do exceed its assets, that the excess is kept to a minimum, the Board may give a relevant person in relation to the scheme directions regarding the exercise during that period of his powers in respect of—

(a [F3] the investment of the scheme's assets,

(b) the incurring of expenditure,

(c) the instigation or conduct of legal proceedings, and

(d) such other matters as may be prescribed.

[F4](3) In paragraph (2)—

(a) "relevant person" in relation to a scheme means—

(i [F3] the trustees or managers of the scheme,

(ii) the employer in relation to the scheme, or

(iii) such other persons as may be prescribed, and

(b) the reference to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

(4) The Board may revoke or vary any direction under this Article.

(5) Where a direction under this Article given to the trustees or managers of a scheme is not complied with, Article 10 of the 1995 Order (civil penalties) applies to any such trustee or manager who has failed to take all reasonable steps to secure compliance with the direction.

(6) That Article also applies to any other person who, without reasonable excuse, fails to comply with a direction given to him under this Article.

F2 mod. by SR 2005/55
F3 mod. by SR 2005/91
F4 mod. by SR 2005/84

Commencement Information

I2 Art. 118 wholly in operation at 21.7.2009; art. 118 not in operation at date of making see art. 1(2); art. 118(3) in so far as it relates to paragraph (iii) of the definition of "relevant person" in sub-paragraph (a) in operation for certain purposes at 25.2.2005 and for all other purposes at 6.4.2005 by S.R. 2005/48, **art. 2(4)**, Sch. Pt. 4; art. 118 except paragraph 2(d) in operation at 6.4.2005 by S.R. 2005/48, **art. 2(7)**, Sch. Pt. 7; art. 118(2)(d) in operation for certain purposes at 23.6.2009 and for all other purposes at 21.7.2009 by S.R. 2009/242, **art. 2**

Restrictions on winding up, discharge of liabilities etc.

119.—(1) This Article applies where there is an assessment period in relation to an eligible scheme.

(2 [F5] Subject to paragraph (3), the winding up of the scheme must not begin during the assessment period.

[F5](3) Paragraph (2) does not apply to the winding up of the scheme in pursuance of an order by the Regulator under Article 11(3A) of the 1995 Order (Regulator's powers to wind up occupational pension schemes to protect Pension Protection Fund) directing the scheme to be wound up (and Article 198 makes provision for the backdating of the winding up).

(4) During the assessment period, except in prescribed circumstances and subject to prescribed conditions—

[[F6](za) no right or entitlement of any member, or of any other person in respect of a member, to a benefit that is not a money purchase benefit is to be converted into, or replaced with, a right or entitlement to a money purchase benefit under the scheme rules,**]**

(a) no transfers of, or transfer payments in respect of, any member's rights under the scheme rules are to be made from the scheme, and

(b) no other steps may be taken to discharge any liability of the scheme to or in respect of a member of the scheme in respect of—

(i) pensions or other benefits, or

(ii) such other liabilities as may be prescribed.

[F5](5) Paragraph (4)—

(a) is subject to Article 122, and

(b) applies whether or not the scheme was being wound up immediately before the assessment period or began winding up by virtue of paragraph (3).

(6) Paragraph (7) applies where, on the commencement of the assessment period—

(a) a member's pensionable service terminates, and

(b) he becomes a person to whom **[**[F7]Chapter 2 of Part 4ZA**]** of the Pension Schemes Act (early leavers: cash transfer sums and contribution refunds) applies.

Article 134(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within sub-paragraph (a) or (b).

(7) Where this paragraph applies, during the assessment period—

(a) no right or power conferred by that Chapter may be exercised, and

(b) no duty imposed by that Chapter may be discharged.

(8) Where a person is entitled to a pension credit derived from another person's shareable rights (within the meaning of Chapter 1 of Part V of the 1999 Order (sharing of rights under pension arrangements)) under the scheme, nothing in paragraph (4) prevents the trustees or managers of the scheme discharging their liability in respect of the credit in accordance with that Chapter.

(9) Any action taken in contravention of this Article is void, except to the extent that the Board validates the action (see Article 120).

(10) Disregarding paragraph (9), where there is a contravention of this Article, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance with this Article.

(11) The Regulator may not make a freezing order (see Article 19) in relation to the scheme during the assessment period.

F5 mod. by SR 2005/91

F6 Art. 119(4)(za) inserted (6.4.2015) by Pension Schemes Act 2015 (c. 8), **ss. 64(3)**, 89(3)(b) (with s. 87)

F7 Words in art. 119(6)(b) substituted (6.4.2015) by Pension Schemes Act 2015 (c. 8), s. 89(3)(b), **Sch. 4 para. 85** (with s. 87)

Power to validate contraventions of Article 119

120.—(1 [F8] The Board may validate an action for the purposes of Article 119(9) only if it is satisfied that to do so is consistent with the objective of ensuring that the scheme's protected liabilities do not exceed its assets or, if they do exceed its assets, that the excess is kept to a minimum.

(2) Where the Board determines to validate, or not to validate, any action of the trustees or managers for those purposes, it must issue a notice to that effect and give a copy of that notice to—

(a) the Regulator,

(b) the trustees or managers of the scheme,

(c [F9] any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer, and

(d) any other person who appears to the Board to be directly affected by the determination.

[F9](3) A notice under paragraph (2) must contain a statement of the Board's reasons for the determination.

(4) The validation of an action does not take effect—

(a) until—

(i) the Board has issued a notice under paragraph (2) relating to the determination, and

(ii) the period within which the issue of that notice may be reviewed by virtue of Chapter 6 has expired, and

(b) if the issue of the notice is so reviewed, until—

(i) the review and any reconsideration,

(ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and

(iii) any appeal against his determination or directions,

has been finally disposed of.

(5 [F8] In paragraph (1) the reference to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

F8 mod. by SR 2005/55
F9 mod. by SR 2005/91

Board to act as creditor of the employer

121.—(1) Paragraph (2) applies where there is an assessment period in relation to an eligible scheme.

(2 [F10] During the assessment period, the rights and powers of the trustees or managers of the scheme in relation to any debt (including any contingent debt) due to them by the employer, whether by virtue of Article 75 of the 1995 Order (deficiencies in the scheme assets) or otherwise, are exercisable by the Board to the exclusion of the trustees or managers.

(3) Where, by virtue of paragraph (2), any amount is paid to the Board in respect of such a debt, the Board must pay that amount to the trustees or managers of the scheme.[F10]

F10 mod. by SR 2005/91

Payment of scheme benefits

122.—(1) Paragraphs (2)**[**[F11], (2A)**]** and (3) apply where there is an assessment period in relation to an eligible scheme.

(2) The benefits payable to or in respect of any member under the scheme rules during the assessment period must be reduced to the extent necessary to ensure that they do not exceed the compensation which would be payable to or in respect of the member in accordance with this Chapter if—

(a [F12] the Board assumed responsibility for the scheme in accordance with this Chapter, and

(b) the assessment date referred to in Schedule 6 were the date on which the assessment period began.

[[F13](2A) Benefits in the form of a lump sum may be paid to or in respect of a member under the scheme rules during the assessment period only in the circumstances in which, and to the extent to which, lump sum compensation would be payable to or in respect of the member in accordance with this Chapter if—

(a) the Board assumed responsibility for the scheme in accordance with this Chapter, and

(b) the assessment date referred to in Schedule 6 were the date on which the assessment period began.**]**

(3 [F12] [F14]... Where, on the commencement of the assessment period—

(a) a member's pensionable service terminates, and

(b) he becomes a person to whom **[**[F15]Chapter 2 of Part 4ZA**]** of the Pension Schemes Act (early leavers: cash transfer sums and contribution refunds) applies,

no benefits are payable to or in respect of him under the scheme during the assessment period.

(4) Article 134(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within sub-paragraph (a) or (b) of paragraph (3).

(5) Nothing in paragraph (3) prevents the payment of benefits attributable (directly or indirectly) to a pension credit during the assessment period in accordance with **[**[F16]paragraphs (2) and (2A)**]**.

(6) Where at any time during the assessment period the scheme is being wound up, subject to any reduction required under paragraph (2) and to **[**[F17]paragraphs (2A) and (3)**]**, the benefits payable to or in respect of any member under the scheme rules during that period are the benefits that would have been so payable in the absence of the winding up of the scheme.

(7) Paragraphs (2), **[**[F18](2A),**]** (3) and (6) are subject to Articles 134(1) to (3) and 138(13) (which provide for the adjustment of amounts paid during an assessment period when that period ends other than as a result of the Board assuming responsibility for the scheme).

(8) For the purposes of paragraphs (2) **[**[F19], (2A)**]** and (3) the trustees or managers of the scheme may take such steps as they consider appropriate (including steps adjusting future payments under the scheme rules) to recover any overpayment or pay any shortfall.

(9) Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with **[**[F20]paragraphs (2) to (3)**]**.

[[F21](9A) Regulations may make provision as to circumstances in which benefits in the form of a lump sum are to be treated for the purposes of paragraph (2A) as being paid in the circumstances in which lump sum compensation would be payable in accordance with this Chapter.

(9B) Regulations may create exceptions to paragraph (2A).**]**

(10) Regulations may provide that, where there is an assessment period in relation to an eligible scheme—

(a) in such circumstances as may be prescribed paragraph (2) does not operate to require the reduction of benefits payable to or in respect of any member;

(b) the commencement of a member's pension or payment of a member's lump sum or other benefits is, in such circumstances and on such terms and conditions as may be prescribed, to be postponed for the whole or any part of the assessment period for which he continues in employment after attaining normal pension age.

(11) For the purposes of paragraph (10)—

(a) "normal pension age", in relation to an eligible scheme and any pension or other benefit under it, means the age specified in the scheme rules as the earliest age at which the pension or other benefit becomes payable without actuarial adjustment (disregarding any scheme rule making special provision as to early payment on the grounds of ill health), and

(b) where different ages are so specified in relation to different parts of a pension or other benefit—

(i) paragraph (10) has effect as if those parts were separate pensions or, as the case may be, benefits, and

(ii) in relation to a part of a pension or other benefit, the reference in that paragraph to normal pension age is to be read as a reference to the age specified in the scheme rules as the earliest age at which that part becomes so payable.

(12) Regulations may provide that, in prescribed circumstances, where—

(a [F12] a member of the scheme died before the commencement of the assessment period, and

(b) during the assessment period, a person becomes entitled under the scheme rules to a benefit of a prescribed description in respect of the member,

the benefit, or any part of it, is, for the purposes of **[**[F22]paragraphs (2) and (2A)**]**, to be treated as having become payable before the commencement of the assessment period.

(13) Nothing in paragraph (2)**[**[F23], (2A)**]** or (3) applies to money purchase benefits.

F11 Word in art. 122(1) inserted (6.4.2015) by Pension Schemes Act 2015 (c. 8), **ss. 65(2)**, 89(3)(b) (with s. 87)

F12 mod. by SR 2005/55

F13 Art. 122(2A) inserted (6.4.2015) by Pension Schemes Act 2015 (c. 8), **ss. 65(3)**, 89(3)(b) (with s. 87)

F14 Word in art. 122(3) omitted (6.4.2015) by virtue of Pension Schemes Act 2015 (c. 8), **ss. 65(4)**, 89(3)(b) (with s. 87)

F15 Words in art. 122(3)(b) substituted (6.4.2015) by Pension Schemes Act 2015 (c. 8), s. 89(3)(b), **Sch. 4 para. 86** (with s. 87)

F16 Words in art. 122(5) substituted (6.4.2015) by Pension Schemes Act 2015 (c. 8), **ss. 65(5)**, 89(3)(b) (with s. 87)

F17 Words in art. 122(6) substituted (6.4.2015) by Pension Schemes Act 2015 (c. 8), **ss. 65(6)**, 89(3)(b) (with s. 87)

F18 Word in art. 122(7) inserted (6.4.2015) by Pension Schemes Act 2015 (c. 8), **ss. 65(7)**, 89(3)(b) (with s. 87)

F19 Word in art. 122(8) inserted (6.4.2015) by Pension Schemes Act 2015 (c. 8), **ss. 65(8)**, 89(3)(b) (with s. 87)

F20 Words in art. 122(9) substituted (6.4.2015) by Pension Schemes Act 2015 (c. 8), **ss. 65(9)**, 89(3)(b) (with s. 87)

F21 Art. 122(9A)(9B) inserted (3.3.2015 for specified purposes, 6.4.2015 in so far as not already in operation) by Pension Schemes Act 2015 (c. 8), **ss. 65(10)**, 89(1)(b), (3)(b) (with s. 87)

F22 Words in art. 122(12) substituted (6.4.2015) by Pension Schemes Act 2015 (c. 8), **ss. 65(11)**, 89(3)(b) (with s. 87)

F23 Word in art. 122(13) inserted (6.4.2015) by Pension Schemes Act 2015 (c. 8), **ss. 65(12)**, 89(3)(b) (with s. 87)

Modifications etc. (not altering text)

C1 Art. 122(2) modified (6.4.2017) by Pensions Act (Northern Ireland) 2015 (c. 5), s. 53(1), **Sch. 20 para. 14(3)** (with Sch. 20 paras. 9, 11); S.R. 2017/44, art. 5(b)

Commencement Information

I3 Art. 122(10)(a) in operation at 25.6.2014 by S.R. 2014/183, **art. 2**

Loans to pay scheme benefits

123.—(1) Paragraph (2) applies where Article 122(2) applies in relation to an eligible scheme.

(2 [F24] Where the Board is satisfied that the trustees or managers of the scheme are not able to pay benefits under the scheme rules (reduced in accordance with Article 122(2)) as they fall due, it may, on an application by the trustees or managers, lend to them such amounts as the Board considers appropriate for the purpose of enabling them to pay those benefits.

(3) Where an amount lent to the trustees or managers of a scheme under paragraph (2) is outstanding at—

(a) the time the Board ceases to be involved with the scheme, or

(b) if earlier—

(i) the time during the assessment period when an order is made under Article 11(3A) of the 1995 Order directing the winding up of the scheme, or

(ii) where no such order is made during that period, the time when the assessment period ends because the conditions in Article 138(2) or (5) are satisfied,

that amount, together with the appropriate interest on it, falls to be repaid by the trustees or managers of the scheme to the Board at that time.

(4) No loan may be made under paragraph (2) after the time mentioned in paragraph (3)(b)(i).

(5) In paragraph (2) the reference to "benefits" does not include money purchase benefits.

(6) In paragraph (3) "the appropriate interest" on an amount lent under paragraph (2) means interest at the prescribed rate from the time the amount was so lent until repayment.

(7) Subject to this Article, the Board may make a loan under paragraph (2) on such terms as it thinks fit.

F24 mod. by SR 2005/55

Changes to legislation:
The Pensions (Northern Ireland) Order 2005, Cross Heading: Restrictions on schemes during the assessment period is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

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)