
STATUTORY INSTRUMENTS

2005 No. 255

The Pensions (Northern Ireland) Order 2005

PART VI

OCCUPATIONAL AND PERSONAL PENSION
SCHEMES: MISCELLANEOUS PROVISIONS

Payment of surplus to employer

Payment of surplus to employer: transitional power to amend scheme

228.—(1) This Article applies to a scheme

[^{F1}(a) which is one to which Article 37 of the 1995 Order applies, and

(b)] which immediately before the coming into operation of Article 227 was one to which Article 37 of the 1995 Order applied (see paragraph (1) of that Article, as it then had effect).

(2) No payment to the employer may be made out of funds held for the purposes of the scheme except by virtue of a resolution of the trustees under this Article.

This applies even if the payment is one proposed to be made in fulfilment of an agreement or arrangement entered into before the coming into operation of this Article.

[^{F2}(2A) But paragraph (2) does not apply in the case of any of the payments listed in paragraphs (c) to (f) of section 175 of the Finance Act 2004 (authorised employer payments other than public service scheme payments or authorised surplus payments).]

(3) Where the scheme was so expressed as (apart from the said Article 37, as it [^{F3}applied immediately before the coming into operation of Article 227]) to confer power to make payments to the employer out of funds held for the purposes of the scheme otherwise than in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Income and Corporation Taxes Act 1988 (c. 1), the trustees may resolve that the power—

(a) shall become exercisable according to its terms, or

(b) shall become so exercisable, but only in such circumstances and subject to such conditions as may be specified in the resolution.

(4) Where the scheme was so expressed as to confer power to make payments to the employer out of funds held for the purposes of the scheme only in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Income and Corporation Taxes Act 1988 (c. 1), the trustees may resolve that the power shall instead be exercisable in such circumstances and subject to such conditions as may be specified in the resolution.

(5) In either case the trustees must be satisfied that it is in the interests of the members of the scheme that the power is exercised in the manner proposed.

(6) The power conferred by paragraph (3) or (4)—

Status: Point in time view as at 23/07/2012.

Changes to legislation: The Pensions (Northern Ireland) Order 2005, Section 228 is up to date with all changes known to be in force on or before 03 June 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. (See end of Document for details)

- (a) may not be exercised unless notice of the proposal to exercise it has been given, in accordance with prescribed requirements, to the employer and to the members of the scheme,
- [^{F4}(aa) may be exercised even if the payments to which it relates are, to any extent, payments to which paragraph (2) does not apply,]
- (b) may [^{F5}be exercised, after the coming into operation of section 23 of the Pensions Act (Northern Ireland) 2012, only once (whether or not also exercised before 6 April 2011)], and
- (c) ceases to be exercisable [^{F6}on 6 April 2016].

[^{F7}(6A) A resolution passed under this Article after the coming into operation of section 23 of the Pensions Act (Northern Ireland) 2012 may amend or revoke a resolution passed under this Article before 6 April 2011.]

(7) The exercise of any power to make payments to the employer by virtue of a resolution under this Article is subject to Article 37 of the 1995 Order as substituted by Article 227.

- F1** Art. 228(1)(a)(b) inserted (2.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 23(2)**, 34(2) (with s. 23(7))
- F2** [Art. 228\(2A\)](#) inserted (2.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 23(3)**, 34(2) (with s. 23(7))
- F3** Words in [art. 228\(3\)](#) substituted (2.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 23(4)**, 34(2) (with s. 23(7))
- F4** [Art. 228\(6\)\(aa\)](#) inserted (2.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 23(5)(a)**, 34(2) (with s. 23(7))
- F5** Words in [art. 228\(6\)\(b\)](#) substituted (2.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 23(5)(b)**, 34(2) (with s. 23(7))
- F6** Words in [art. 228\(6\)\(c\)](#) substituted (2.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 23(5)(c)**, 34(2) (with s. 23(7))
- F7** [Art. 228\(6A\)](#) inserted (2.6.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), **ss. 23(6)**, 34(2) (with s. 23(7))

Commencement Information

- I1** Art. 228 wholly in operation at 6.4.2006; art. 228 not in operation at date of making see art. 1(2); art. 228 in operation for certain purposes at 9.3.2006 and wholly in operation at 6.4.2006 by [S.R. 2006/95](#), **art. 2(a)**, Sch. Pt. 1

Status:

Point in time view as at 23/07/2012.

Changes to legislation:

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