
STATUTORY INSTRUMENTS

2005 No. 255

The Pensions (Northern Ireland) Order 2005

PART VI

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

Pension protection on transfer of employment

Conditions for pension protection

234.—(1) This Article applies in relation to a person (“the employee”) where—

- [^{F1}(a) there is a transfer of an undertaking, business or part of an undertaking or business for the purposes of regulation 3(1)(a) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or there is a service provision change within the meaning of the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006,]
- (b) by virtue of the transfer [^{F2}or service provision change] the employee ceases to be employed by the transferor and becomes employed by the transferee, and
- (c) at the time immediately before the employee becomes employed by the transferee—
 - (i) there is an occupational pension scheme (“the scheme”) in relation to which the transferor is the employer, and
 - (ii) one of paragraphs (2), (3) and (4) applies.

(2) This paragraph applies where—

- (a) the employee is an active member of the scheme, and
- (b) if any of the benefits that may be provided under the scheme are money purchase benefits—
 - (i) the transferor is required to make contributions to the scheme in respect of the employee, or
 - (ii) the transferor is not so required but has made one or more such contributions.

(3) This paragraph applies where—

- (a) the employee is not an active member of the scheme but is eligible to be such a member, and
- (b) if any of the benefits that may be provided under the scheme are money purchase benefits, the transferor would have been required to make

contributions to the scheme in respect of the employee if the employee had been an active member of it.

(4) This paragraph applies where—

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- (a) the employee is not an active member of the scheme, nor eligible to be such a member, but would have been an active member of the scheme or eligible to be such a member if, after the date on which he became employed by the transferor, he had been employed by the transferor for a longer period, and
- (b) if any of the benefits that may be provided under the scheme are money purchase benefits, the transferor would have been required to make contributions to the scheme in respect of the employee if the employee had been an active member of it.

(5) For the purposes of this Article, the condition in paragraph (1)(c) is to be regarded as satisfied in any case where it would have been satisfied but for any action taken by the transferor by reason of the transfer.

(6) ^{F3}

(7) ^{F4}

[^{F5}(8) In this Article references to the transferor include any associate of the transferor, and Article 4 of the Insolvency Order applies for the purposes of this Article as it applies for the purposes of that Order.]

F1	Art. 234(1)(a) substituted (30.12.2007) by Transfer of Undertakings and Service Provision Change (Protection of Employment) (Consequential Amendments etc.) Regulations (Northern Ireland) 2007 (S.R. 2007/494) , regs. 2(2) , 6
F2	Words in art. 234(1)(b) inserted (30.12.2007) by Transfer of Undertakings and Service Provision Change (Protection of Employment) (Consequential Amendments etc.) Regulations (Northern Ireland) 2007 (S.R. 2007/494) , regs. 2(3) , 6
F3	Art. 234(6) omitted (30.12.2007) by virtue of Transfer of Undertakings and Service Provision Change (Protection of Employment) (Consequential Amendments etc.) Regulations (Northern Ireland) 2007 (S.R. 2007/494) , regs. 2(4) , 6
F4	Art. 234(7) repealed (11.2.2008 with effect as mentioned in ss. 13(4), 19(5) of the amending Act) by Pensions Act (Northern Ireland) 2008 (c. 1) , ss. 13(3), 19(2), Sch. 4 para. 40, Sch. 6 Pt. 6 (with savings in Sch. 4 Pt. 3)
F5	Art. 234(8) substituted (30.12.2007) by Transfer of Undertakings and Service Provision Change (Protection of Employment) (Consequential Amendments etc.) Regulations (Northern Ireland) 2007 (S.R. 2007/494) , regs. 2(5) , 6

Form of protection

235.—(1) In a case where Article 234 applies, it is a condition of the employee's contract of employment with the transferee that the requirements in paragraph (2) or the requirement in paragraph (3) are complied with.

(2) The requirements in this paragraph are that—

- (a) the transferee secures that, as from the relevant time, the employee is, or is eligible to be, an active member of an occupational pension scheme in relation to which the transferee is the employer, and
- (b) in a case where the scheme is a money purchase scheme, as from the relevant time—
 - (i) the transferee makes relevant contributions to the scheme in respect of the employee, or
 - (ii) if the employee is not an active member of the scheme but is eligible to be such a member, the transferee would be required to make such contributions if the employee were an active member, and

(c) in a case where the scheme is not a money purchase scheme, as from the relevant [^{F6}time the scheme complies with prescribed requirements].

(3) The requirement in this paragraph is that, as from the relevant time, the transferee makes relevant contributions to a stakeholder pension scheme of which the employee is a member.

(4) The requirement in paragraph (3) is for the purposes of this Article to be regarded as complied with by the transferee during any period in relation to which the condition in paragraph (5) is satisfied.

(5) The condition in this paragraph is that the transferee has offered to make relevant contributions to a stakeholder pension scheme of which the employee is eligible to be a member (and the transferee has not withdrawn the offer).

(6) Paragraph (1) does not apply in relation to a contract if or to the extent that the employee and the transferee so agree at any time after the time when the employee becomes employed by the transferee.

(7) In this Article—

“the relevant time” means—

- (a) in a case where Article 234 applies by virtue of the application of paragraph (2) or (3) of that Article, the time when the employee becomes employed by the transferee;
- (b) in a case where that Article applies by virtue of the application of paragraph (4) of that Article, the time at which the employee would have been a member of the scheme referred to in paragraph (1)(c)(i) of that Article or (if earlier) would have been eligible to be such a member;

“relevant contributions” means such contributions in respect of such period or periods as may be prescribed;

“stakeholder pension scheme” means a pension scheme which is registered under Article 4 of the 1999 Order.

<p>F6 Words in art. 235(2)(c) substituted (6.4.2016) by Pensions Act (Northern Ireland) 2015 (c. 5), s. 53(3), Sch. 13 para. 71</p>
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Changes to legislation:

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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)(a)(x)-(xii) inserted by [2016 c. 1 \(N.I.\) Sch. 2 para. 21\(3\)\(a\)](#)
- 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. 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. 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. 226A(1)-(1A) substituted for art. 226A(1) by [S.R. 2018/214 reg. 2\(3\)](#)
- art. 226A(3)(d) added by [S.R. 2018/214 reg. 2\(5\)](#)