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STATUTORY INSTRUMENTS

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**1995 No. 3213**

**The Pensions (Northern Ireland) Order 1995**

**PART II**

**OCCUPATIONAL PENSIONS**

*Supervision by the Authority*

**Prohibition orders**

**3.—(1)** The Authority may by order prohibit a person from being a trustee of a particular trust scheme in any of the following circumstances.

(2) The circumstances are—

- (a) that the Authority are satisfied that while being a trustee of the scheme the person has been in serious or persistent breach of any of his duties under—
  - (i) this Part, other than the following provisions: Articles 51 to 54, 62 to 65 and 108 to 110, or
  - (ii) the following provisions of the Pension Schemes Act: section 2 (registration), Chapter IV of Part IV (transfer values), section 109 (information) and section 170 (levy),
- (b) that the Authority are satisfied that, while being a trustee of the scheme, this Article has applied to the person by virtue of any other provision of this Part,
- (c) that the person is a company and any director of the company is prohibited under this Article from being a trustee of the scheme, or
- (d) that the person is a director of a company which, by reason of circumstances falling within sub-paragraph (a) or (b), is prohibited under this Article from being a trustee of the scheme and the Authority are satisfied that the acts or defaults giving rise to those circumstances were committed with the consent or connivance of, or attributable to any neglect on the part of, the director; or any other prescribed circumstances.

(3) The making of an order under paragraph (1) against a person who is a trustee of the scheme in question has the effect of removing him.

(4) The Authority may, on the application of any person against whom an order under paragraph (1) is in force, by order revoke the order, but a revocation made at any time cannot affect anything done before that time.

**Suspension orders**

**4.—(1)** The Authority may by order suspend a trustee of a trust scheme—

- (a) pending consideration being given to the making of an order against him under Article 3(1),

- (b) where proceedings have been instituted against him for an offence involving dishonesty or deception and have not been concluded,
  - (c) where a petition has been presented to the court for an order adjudging him bankrupt, or for the sequestration of his estate, and proceedings on the petition have not been concluded,
  - (d) where the trustee is a company, if a petition for the winding up of the company has been presented to the court and proceedings on the petition have not been concluded,
  - (e) where an application has been made to the court for a disqualification order against him under Part II of the Companies (Northern Ireland) Order 1989(1) or for such an order under any corresponding enactment for the time being in force in Great Britain and proceedings on the application have not been concluded, or
  - (f) where the trustee is a company and, if any director were a trustee, the Authority would have power to suspend him under sub-paragraph (b), (c) or (e).
- (2) An order under paragraph (1)—
- (a) if made by virtue of sub-paragraph (a), has effect for an initial period not exceeding twelve months, and
  - (b) in any other case, has effect until the proceedings in question are concluded;

but the Authority may by order extend the initial period referred to in sub-paragraph (a) for a further period of twelve months, and any order suspending a person under paragraph (1) ceases to have effect if an order is made against that person under Article 3(1).

(3) An order under paragraph (1) has the effect of prohibiting the person suspended, during the period of his suspension, from exercising any functions as trustee of any trust scheme to which the order applies; and the order may apply to a particular trust scheme, a particular class of trust schemes or trust schemes in general.

(4) An order under paragraph (1) may be made on one of the grounds in sub-paragraphs (b) to (e) whether or not the proceedings were instituted, petition presented or application made (as the case may be) before or after the coming into operation of that paragraph.

(5) The Authority may, on the application of any person suspended under paragraph (1), by order revoke the order, either generally or in relation to a particular scheme or a particular class of schemes; but a revocation made at any time cannot affect anything done before that time.

(6) An order under this Article may make provision as respects the period of the trustee's suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in his name or otherwise act for him and for adjusting any rules governing the proceedings of the trustees to take account of the reduction in the number capable of acting.

### **Removal of trustees: notices**

5.—(1) Before the Authority make an order under Article 3 against a person without his consent, the Authority must, unless he cannot be found or has no known address, give him not less than one month's notice of their proposal, inviting representations to be made to them within a time specified in the notice.

(2) Where any such notice is given, the Authority must take into consideration any representations made to them about the proposals within the time specified in the notice.

(3) Before making an order under Article 3 against a person, the Authority must give notice of their intention to do so to each of the trustees of the scheme, except that person (if he is a trustee) and any trustee who cannot be found or has no known address.

(4) Where the Authority make an order under Article 4 against a person, they must—

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- (a) immediately give notice of that fact to that person, and
- (b) as soon as reasonably practicable, give notice of that fact to the other trustees of any trust scheme to which the order applies, except any trustee who cannot be found or has no known address.

(5) For the purposes of section 24(1) of the Interpretation Act (Northern Ireland) 1954(2) (service of documents by post) in its application to this Article, the last known address of any person is his latest address known to the Authority.

### **Removal or suspension of trustees: consequences**

6.—(1) A person who purports to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under Article 3 or suspended in relation to the scheme under Article 4 is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to a fine or imprisonment or both.

(2) An offence under paragraph (1) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that paragraph by reference to any period of time following the preceding conviction of the offence.

(3) Things done by a person purporting to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under Article 3 or suspended in relation to the scheme under Article 4 are not invalid merely because of that prohibition or suspension.

(4) Nothing in Article 3 or 4 or this Article affects the liability of any person for things done, or omitted to be done, by him while purporting to act as trustee of a trust scheme.

### **Appointment of trustees**

7.—(1) Where a trustee of a trust scheme is removed by an order under Article 3, or a trustee of such a scheme ceases to be a trustee by reason of his disqualification, the Authority may by order appoint another trustee in his place.

(2) Where a trustee appointed under paragraph (1) is appointed to replace a trustee appointed under Article 23(1)(b), Articles 22 to 26 shall apply to the replacement trustee as they apply to a trustee appointed under Article 23(1)(b).

(3) The Authority may also by order appoint a trustee of a trust scheme where they are satisfied that it is necessary to do so in order—

- (a) to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme,
- (b) to secure that the number of trustees is sufficient for the proper administration of the scheme, or
- (c) to secure the proper use or application of the assets of the scheme.

(4) The Authority may also appoint a trustee of a trust scheme in prescribed circumstances.

(5) The power to appoint a trustee by an order under this Article includes power by such an order—

- (a) to determine the appropriate number of trustees for the proper administration of the scheme,
- (b) to require a trustee appointed by the order to be paid fees and expenses out of the scheme's resources,

(c) to provide for the removal or replacement of such a trustee.

(6) Regulations may make provision about the descriptions of persons who may or may not be appointed trustees under this Article.

#### **Appointment of trustees: consequences**

**8.**—(1) An order under Article 7 appointing a trustee may provide that an amount equal to the amount (if any) to which paragraph applies is to be treated for all purposes as a debt due from the employer to the trustees.

(2) This paragraph applies to any amount which has been paid to the trustee so appointed out of the resources of the scheme and has not been reimbursed by the employer.

(3) Subject to paragraph (4), a trustee appointed under Article 7 shall, unless he is the independent trustee and Article 22 applies in relation to the scheme, have the same powers and duties as the other trustees.

(4) An order under Article 7 may make provision—

- (a) for restricting the powers or duties of a trustee so appointed, or
- (b) for powers or duties to be exercisable by a trustee so appointed to the exclusion of other trustees.

#### **Removal and appointment of trustees: property**

**9.** Where the Authority have power under this Part to appoint or remove a trustee, they may exercise the same jurisdiction and powers as are exercisable by the High Court for vesting any property in, or transferring any property to, trustees in consequence of the appointment or of the removal.

#### **Civil penalties**

**10.**—(1) Where the Authority are satisfied that by reason of any act or omission this Article applies to any person, they may by notice in writing require him to pay, within a prescribed period, a penalty in respect of that act or omission not exceeding the maximum amount.

(2) In this Article, “the maximum amount” means—

- (a) £5,000 in the case of an individual and £50,000 in any other case, or
- (b) such lower amount as may be prescribed in the case of an individual or in any other case,

and the Department may by order amend sub-paragraph (a) by substituting higher amounts for the amounts for the time being specified in that sub-paragraph.

(3) Regulations made by virtue of this Part may provide for any person who has contravened any provision of such regulations to pay, within a prescribed period, a penalty under this Article not exceeding an amount specified in the regulations; and the regulations must specify different amounts in the case of individuals from those specified in other cases and any amount so specified may not exceed the amount for the time being specified in the case of individuals or, as the case may be, others in paragraph (2)(a).

(4) An order made under paragraph (2) or regulations made by virtue of paragraph (3) do not affect the amount of any penalty recoverable under this Article by reason of an act or omission occurring before the order or, as the case may be, regulations are made.

(5) Where—

- (a) apart from this paragraph, a penalty under this Article is recoverable from a body corporate by reason of any act or omission of the body as a trustee of a trust scheme, and

(b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any persons mentioned in paragraph (6),  
this Article applies to each of those persons who consented to or connived in the act or omission or to whose neglect the act or omission was attributable.

(6) The persons referred to in paragraph (5)(b) are—

(a) any director, manager, secretary, or other similar officer of the body corporate, or a person purporting to act in any such capacity, and

(b) where the affairs of the body corporate are managed by its members, any member in connection with his functions of management.

(7) Where the Authority requires any person to pay a penalty by virtue of paragraph (5), they may not also require the body corporate in question to pay a penalty in respect of the same act or omission.

(8) A penalty under this Article is recoverable by the Authority.

(9) The Authority must pay to the Department any penalty recovered under this Article.

### **Powers to wind up schemes**

**11.**—(1) Subject to paragraphs (2) to (7), the Authority may by order direct or authorise an occupational pension scheme to be wound up if they are satisfied that—

(a) the scheme, or any part of it, ought to be replaced by a different scheme,

(b) the scheme is no longer required, or

(c) it is necessary in order to protect the interests of the generality of the members of the scheme that it be wound up.

(2) The Authority may not make an order under this Article on either of the grounds referred to in paragraph (1)(a) or (b) unless they are satisfied that the winding up of the scheme—

(a) cannot be achieved otherwise than by means of such an order, or

(b) can only be achieved in accordance with a procedure which—

(i) is liable to be unduly complex or protracted, or

(ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

and that it is reasonable in all the circumstances to make the order.

(3) An order made under this Article on either of the grounds referred to in paragraph (1)(a) or (b) may be made only on the application of—

(a) the trustees or managers of the scheme,

(b) any person other than the trustees or managers who has power to alter any of the rules of the scheme, or

(c) the employer.

(4) An order under this Article authorising a scheme to be wound up must include such directions with respect to the manner and timing of the winding up as the Authority think appropriate having regard to the purposes of the order.

(5) The winding up of a scheme in pursuance of an order of the Authority under this Article is as effective in law as if it had been made under powers conferred by or under the scheme.

(6) An order under this Article may be made and complied with in relation to a scheme—

(a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up, or

- (b) except for the purpose of the Authority determining whether they are satisfied as mentioned in paragraph (2), without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the winding up.
- (7) In the case of a public service pension scheme—
  - (a) an order under paragraph (1) directing or authorising the scheme to be wound up may only be made on the grounds referred to in sub-paragraph (c), and
  - (b) such an order may, as the Authority think appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

### **Powers to wind up public service schemes**

**12.**—(1) The appropriate authority may by order direct a public service pension scheme to be wound up if they are satisfied that—

- (a) the scheme, or any part of it, ought to be replaced by a different scheme, or
- (b) the scheme is no longer required.

(2) Paragraph (2) of Article 11 applies for the purposes of this Article as it applies for the purposes of that, but as if references to the Authority were to the appropriate authority.

(3) In this Article, “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury or the Department of Finance and Personnel as having responsibility for the particular scheme.

(4) An order under this Article must include such directions with respect to the manner and timing of the winding up as the appropriate authority thinks appropriate.

(5) Such an order may, as the appropriate authority thinks appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

### **Injunctions**

**13.** If, on the application of the Authority, the High Court is satisfied that—

- (a) there is a reasonable likelihood that a particular person will do any act which constitutes a misuse or misappropriation of assets of an occupational pension scheme, or
- (b) that a particular person has done any such act and that there is a reasonable likelihood that he will continue or repeat the act in question or do a similar act,

the Court may grant an injunction restraining him from doing so.

### **Restitution**

**14.** If, on the application of the Authority, the High Court is satisfied—

- (a) that a power to make a payment, or distribute any assets, to the employer, has been exercised in contravention of Article 37, 76 or 77, or
- (b) that any act or omission of the trustees or managers of an occupational pension scheme was in contravention of Article 40,

the Court may order the employer and any other person who appears to the Court to have been knowingly concerned in the contravention to take such steps as the Court may direct for restoring the parties to the position in which they were before the payment or distribution was made, or the act or omission occurred.

## **Directions**

**15.**—(1) The Authority may, where in the case of any trust scheme the employer fails to comply with any requirement included in regulations by virtue of Article 49(5), direct the trustees to make arrangements for the payment to the members of the benefit to which the requirement relates.

(2) The Authority may—

(a) where in the case of any trust scheme an annual report is published, direct the trustees to include a statement prepared by the Authority in the report, and

(b) in the case of any trust scheme, direct the trustees to send to the members a copy of a statement prepared by the Authority.

(3) A direction under this Article must be given in writing.

(4) Where a direction under this Article is not complied with, Articles 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.