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STATUTORY INSTRUMENTS

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**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 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.

(3) Where the scheme was so expressed as (apart from the said Article 37, as it then applied) 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)—

- (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,
- (b) may only be exercised once, and
- (c) ceases to be exercisable five years after the coming into operation of this Article.

(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.