
STATUTORY INSTRUMENTS

2005 No. 255

The Pensions (Northern Ireland) Order 2005

PART II

THE PENSIONS REGULATOR

Contribution notices where avoidance of employer debt

[^{F1} Article 34 contribution notice issued by reference to employer insolvency test: defence

34D.—(1) This Article applies where—

- (a) a warning notice is given to any person (“P”) in respect of a contribution notice under Article 34, and
- (b) the contribution notice under consideration would be issued wholly or partly by reference to the Regulator's opinion that the employer insolvency test is met in relation to an act or deliberate failure to act to which P was a party.

(2) If the Regulator is satisfied that P has shown that—

- (a) conditions A and C are met, and
- (b) where applicable, condition B is met,

the Regulator must not issue the contribution notice by reference to its being of the opinion mentioned in paragraph (1)(b).

(3) If the Regulator is satisfied that P or another person has shown that condition D is met, the Regulator must not issue the contribution notice by reference to its being of the opinion mentioned in paragraph (1)(b).

(4) Condition A is that, before becoming a party to the act or failure, P gave due consideration to the extent to which, if a debt under Article 75(4) of the 1995 Order were to fall due from the employer to the scheme—

- (a) immediately after the act or failure, or
- (b) where the failure might continue for a period of time, at any time within that period,

the act or failure might materially reduce the amount of the debt likely to be recovered by the scheme.

(5) Condition B is that, in any case where as a result of that consideration P considered that the act or failure might have such an effect, P took all reasonable steps to eliminate or minimise the potential for the act or failure to have such an effect.

(6) Condition C is that, having regard to all relevant circumstances prevailing at the time of the act or at the time when the failure to act first occurred, it was reasonable for P to conclude that, if a debt under Article 75(4) of the 1995 Order were to fall due from the employer to the scheme—

- (a) immediately after the act or failure, or
- (b) where the failure might continue for a period of time, at any time within that period,

Changes to legislation: *The Pensions (Northern Ireland) Order 2005, Section 34D is up to date with all changes known to be in force on or before 01 May 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) View outstanding changes*

the act or failure would not materially reduce the amount of the debt likely to be recovered by the scheme.

(7) Condition D is that, immediately after the relevant time, the value of the assets of the scheme equalled or was more than the amount at that time of the liabilities of the scheme.

(8) P is to be regarded as giving the consideration mentioned in condition A only if P has made the enquiries, and done the other acts, that a reasonably diligent person would have made or done in the circumstances.

(9) For the purposes of condition C the reference to the circumstances mentioned in that condition is a reference to those circumstances of which P was aware, or ought reasonably to have been aware, at the time of the act or the time when the failure to act first occurred (including acts or failures to act which have occurred before that time and P's expectation at that time of other acts or failures to act occurring).

(10) For the purposes of conditions A, C and D the amount of any debt due at the time in question from the employer under Article 75 of the 1995 Order is to be disregarded.

(11) In the case of acts or failures to act forming part of a series, P is to be regarded as having shown the matters mentioned in paragraph (2) if P shows in the case of each of the acts or failures in the series that—

- (a) conditions A and C are met, and (where applicable) condition B is met, in relation to the act or failure, or
- (b) the act or failure was one of a number of acts or failures (a “group” of acts or failures) selected by P in relation to which the following matters are shown.

(12) The matters to be shown are that—

- (a) before becoming a party to the first of the acts or failures in the group, condition A is met in relation to the effect of the acts or failures in the group taken together,
- (b) condition B is (where applicable) met in relation to that effect, and
- (c) condition C is then met in relation to each of the acts or failures in the group (determined at the time at which each act or failure concerned occurred or first occurred).

(13) If at any time P considers that condition C will not be met in relation to any particular act or failure in the group—

- (a) the previous acts or failures in the group are to be regarded as a separate group for the purposes of paragraph (11), and
- (b) P may then select another group consisting of the particular act or failure concerned, and any subsequent act or failure, in relation to which P shows the matters mentioned in paragraph (12).

Nothing in sub-paragraph (b) is to be read as preventing P from showing the matters mentioned in paragraph (11)(a).

(14) If—

- (a) P is unable to show in the case of each of the acts or failures in the series that the matters set out in paragraph (11)(a) or (b) are met, but
- (b) does show in the case of some of them that those matters are met,

the acts or failures within sub-paragraph (b) are not to count for the purposes of Article 34C as acts or failures to act in the series.

(15) In this Article—

- (a) “the relevant time” has the meaning given by Article 34C;
- (b) “a warning notice” means a notice given as mentioned in Article 91(2)(a);

Changes to legislation: *The Pensions (Northern Ireland) Order 2005, Section 34D is up to date with all changes known to be in force on or before 01 May 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) View outstanding changes*

- (c) a reference to a party to an act or failure to act includes a reference to a person who knowingly assists in the act or failure.]

F1 Arts. 34C, 34D inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(2)(b), **Sch. 8 para. 2(2)**; S.R. 2021/271, art. 2(5)(a) (with art. 3(1)(2))

Changes to legislation:

The Pensions (Northern Ireland) Order 2005, Section 34D is up to date with all changes known to be in force on or before 01 May 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\(b\)](#)