
STATUTORY INSTRUMENTS

2005 No. 255

The Pensions (Northern Ireland) Order 2005

PART II

THE PENSIONS REGULATOR

Contribution notices where avoidance of employer debt

Article 34 contribution notice: relationship with employer debt

37^{F1}.—(1) This Article applies where a contribution notice is issued to a person (“P”) under Article 34 and condition A or B is met.

(2) Condition A is met if, at the time at which the contribution notice is issued, there is a debt due under Article 75 of the 1995 Order (deficiencies in the scheme assets) from the employer—

- (a) to the trustees or managers of the scheme, or
- (b) where the Board has assumed responsibility for the scheme in accordance with Chapter 3 of Part III (pension protection), to the Board.

(3) Condition B is met if, after the contribution notice is issued but before the whole of the debt due by virtue of the notice is recovered, a debt becomes due from the employer to the trustees or managers of the scheme under Article 75 of the 1995 Order.

(4) The Regulator may issue a direction to the trustees or managers of the scheme not to take any or any further steps to recover the debt due to them under Article 75 of the 1995 Order pending the recovery of all or a specified part of the debt due to them by virtue of the contribution notice.

(5) If the trustees or managers fail to comply with a direction issued to them under paragraph (4), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(6) Any sums paid—

- (a) to the trustees or managers of the scheme in respect of any debt due to them by virtue of the contribution notice, or
- (b) to the Board in respect of any debt due to it by virtue of the contribution notice,

are to be treated as reducing the amount of the debt due to the trustees or managers or, as the case may be, to the Board under Article 75 of the 1995 Order.

(7) Where a sum is paid to the trustees or managers of the scheme or, as the case may be, to the Board in respect of the debt due under Article 75 of the 1995 Order, P may make an application under this paragraph to the Regulator for a reduction in the amount of the sum specified in P's contribution notice.

(8) An application under paragraph (7) must be made as soon as reasonably practicable after the sum is paid to the trustees or managers or, as the case may be, to the Board in respect of the debt due under Article 75 of the 1995 Order.

[^{F2}(8A) An application under paragraph (7) may not be made after—

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- (a) the date specified under Article 36(2A) for the purposes of Articles 38A(2) and 38B(2) (sanctions for failure to comply with a contribution notice), or
- (b) if a different date has effect instead of that date (see paragraphs (10A) and (11B)), that different date.]

(9) Where such an application is made to the Regulator, the Regulator may, if it is of the opinion that it is appropriate to do so—

- (a) reduce the amount of the sum specified in P's contribution notice by an amount which it considers reasonable, and
- (b) issue a revised contribution notice specifying the revised sum.

(10) For the purposes of paragraph (9), the Regulator must have regard to such matters as the Regulator considers relevant including, where relevant, the following matters—

- (a) the amount paid in respect of the debt due under Article 75 of the 1995 Order since the contribution notice was issued,
- (b) any amounts paid in respect of the debt due by virtue of that contribution notice,
- (c) whether contribution notices have been issued to other persons as a result of the same act or failure to act falling within paragraph (5) of Article 34 as the act or failure as a result of which P's contribution notice was issued,
- (d) where such contribution notices have been issued, the sums specified in each of those notices and any amounts paid in respect of the debt due by virtue of those notices,
- (e) whether P's contribution notice specifies that P is jointly and severally liable for the debt with other persons, and
- (f) such other matters as may be prescribed.

[^{F3}(10A) Where an application under paragraph (7) is made to the Regulator, the Regulator may, if it is of the opinion that it is appropriate to do so—

- (a) change the date that has effect for the purposes of Articles 38A(2) and 38B(2) (whether specified in the contribution notice or an earlier revised contribution notice), and
- (b) specify the revised date in the revised contribution notice issued under paragraph (9)(b) or, if the Regulator does not issue a revised contribution notice under paragraph (9)(b), issue a revised contribution notice specifying the revised date.]

(11) Where—

- (a) P's contribution notice specifies that P is jointly and severally liable for the debt with other persons, and
- (b) a revised contribution notice is issued to P under paragraph (9) specifying a revised sum,

the Regulator must also issue revised contribution notices to those other persons specifying the revised sum and their joint and several liability with P for the debt in respect of that sum.

[^{F4}(11A) Paragraph (11B) applies where—

- (a) P's contribution notice specifies that P is jointly and severally liable for the debt with other persons, and
- (b) the Regulator issues a revised contribution notice to P under paragraph (9)(b) or (10A)(b) specifying a revised date for the purposes of Articles 38A(2) and 38B(2).

(11B) Where this paragraph applies, the Regulator must—

- (a) change the date that has effect for the purposes of Articles 38A(2) and 38B(2) in the case of the contribution notices or revised contribution notices issued in respect of the debt to those other persons, and

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- (b) specify the revised date in the revised contribution notices issued to those other persons under paragraph (11) or, if the Regulator does not issue revised contribution notices under paragraph (11), issue revised contribution notices to those other persons specifying the revised date.]
- (12) For the purposes of this Article—
 - (a) references to a debt due under Article 75 of the 1995 Order include a contingent debt under that Article, and
 - (b) references to the amount of such a debt include the amount of such a contingent debt.

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| <p>F1 mod. by SR 2005/378</p> <p>F2 Art. 37(8A) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(2)(b), Sch. 8 para. 5(2)(a); S.R. 2021/271, art. 2(3)(c) (with art. 3(1)-(3))</p> <p>F3 Art. 37(10A) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(2)(b), Sch. 8 para. 5(2)(b); S.R. 2021/271, art. 2(3)(c) (with art. 3(1)-(3))</p> <p>F4 Art. 37(11A)(11B) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1), s. 131(2)(b), Sch. 8 para. 5(2)(c); S.R. 2021/271, art. 2(3)(c) (with art. 3(1)-(3))</p> |
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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)(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\(b\)](#)