
STATUTORY INSTRUMENTS

2005 No. 255

The Pensions (Northern Ireland) Order 2005

PART II

THE PENSIONS REGULATOR

Exercise of regulatory functions

Standard procedure

91.—(1) The procedure determined under Article 88 must make provision for the standard procedure.

[^{F1}(1A) In any case where—

- (a) a warning notice is given to any person 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 material detriment test [^{F2}, the employer insolvency test or the employer resources test] is met in relation to an act or failure,

the standard procedure must provide for the following matters.

(1B) The matters are—

- (a) a requirement for the warning notice to explain the general effect of Article 34B, [^{F3}34D or 34F (as the case may be)] and
- (b) a requirement for the person to be given an opportunity before the contribution notice is issued to show the matters mentioned in [^{F4}Article 34B(2), 34D(2) and (3) or 34F(2) (as the case may be)].]

(2) The “standard procedure” is a procedure which provides for—

- (a) the giving of notice to such persons as it appears to the Regulator would be directly affected by the regulatory action under consideration (a “warning notice”),
- (b) those persons to have an opportunity to make representations,
- (c) the consideration of any such representations and the determination whether to take the regulatory action under consideration,
- (d) the giving of notice of the determination to such persons as appear to the Regulator to be directly affected by it (a “determination notice”),
- (e) the determination notice to contain details of the right of referral to the Tribunal under paragraph (3),s
- (f) the form and further content of warning notices and determination notices and the manner in which they are to be given, and
- (g) the time limits to be applied at any stage of the procedure.

Changes to legislation: *The Pensions (Northern Ireland) Order 2005, Section 91 is up to date with all changes known to be in force on or before 16 April 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*

(3) Where the standard procedure applies, the determination which is the subject-matter of the determination notice may be referred to the Tribunal by—

- (a) any person to whom the determination notice is given as required under paragraph (2) (d), and
- (b) any other person who appears to the Tribunal to be directly affected by the determination.

(4) Paragraph (3) does not apply where the determination which is the subject-matter of the determination notice is a determination to issue a clearance statement under Article 38 or 42.

(5) Where the determination which is the subject-matter of the determination notice is a determination to exercise a regulatory function and paragraph (3) applies, the Regulator must not exercise the function—

- (a) during the period within which the determination may be referred to the Tribunal^{F5} . . . , and
- (b) if the determination is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.

(6) Paragraph (5) does not apply where the determination is a determination to exercise any of the following functions—

- (a) the power to make a direction under Article 71(8) extending the retention period for documents taken into possession under Article 70;
- (b) the power to make a direction under Article 73(10) extending the retention period for documents taken into possession under that Article;
- (c) the power to make an order under Article 138(8);
- (d) the power to make an order under Article 198(4);
- (e) the power to grant or revoke authorisation under Article 264;
- (f) the power to grant or revoke approval under Article 265;
- (g) the power to issue a notice under Article 269(5);
- (h) the power to make an order under Article 3(1) of the 1995 Order prohibiting a person from being a trustee;
- (i) the power to make an order under Article 3(3) of that Order revoking such an order;
- [^{F6}(ia) the power under Article 3A(3) of that Order to give a notice waiving a prohibition;]
- (j) the power to make an order under Article 4(1) of that Order suspending a trustee;
- (k) the power to make an order under Article 4(2) of that Order extending the period for which an order under Article 4(1) of that Order has effect;
- (l) the power to make an order under Article 4(5) of that Order revoking an order under Article 4(1) of that Order suspending a trustee;
- (m) the power to make an order under Article 7 of that Order appointing a trustee;
- (n) the power under Article 9 of that Order to exercise by order the same jurisdiction and powers as the High Court for vesting property in, or transferring property to, trustees in consequence of the appointment or removal of a trustee;
- (o) the power to make an order under Article 23 of that Order appointing an independent trustee;
- (p) the power under Article 29(5) of that Order to give a notice waiving a disqualification under Article 29 of that Order;
- (q) the power under Article 30(2) of that Order to exercise by order the same jurisdiction and powers as the High Court for vesting property in, or transferring property to, the trustees where a trustee becomes disqualified under Article 29 of that Order;

- (r) the power to give directions under Article 72B of that Order facilitating a winding up;
- (s) the power by direction under section 95(4) of the Pension Schemes Act to grant an extension of the period within which the trustees or managers of a scheme are to carry out certain duties;
- (t) the power by direction under section 97J(2) of that Act to extend the period for compliance with a transfer notice;
- (u) such other regulatory functions as may be prescribed;
- (v) the power under Article 96(1)(b) to vary or revoke in relation to the exercise of any of the regulatory functions mentioned in sub-paragraphs (a) to (u) other than that mentioned in sub-paragraph (i) or (l).

[^{F7}(6A) Paragraph (6B) applies in relation to a warning notice given to a person—

- (a) in respect of a contribution notice under Article 34, or
- (b) in respect of a financial support direction under Article 39.

(6B) Regulations may provide that no determination notice in respect of the contribution notice or the financial support direction may be given after the end of the prescribed period beginning with the day on which the warning notice is given.]

[^{F8}(7) In this Article “ the Tribunal ”, in relation to any reference under paragraph (3), means—

- (a) the First-tier Tribunal, in any case where it is determined by or under Tribunal Procedure Rules that the First-tier Tribunal is to hear the reference;
- (b) the Upper Tribunal, in any other case.]

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| F1 | Art. 91(1A)(1B) inserted (29.6.2009) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13) , ss. 103, 118(1), Sch. 8 para. 4 ; S.R. 2009/249, art. 2(a)(b)(i) |
| F2 | Words in art. 91(1A)(b) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1) , s. 131(2)(b), Sch. 8 para. 23(2) ; S.R. 2021/271, art. 2(4)(f) |
| F3 | Words in art. 91(1B)(a) inserted (1.10.2021) by Pension Schemes Act 2021 (c. 1) , s. 131(2)(b), Sch. 8 para. 23(3)(a) ; S.R. 2021/271, art. 2(4)(f) |
| F4 | Words in art. 91(1B)(b) substituted (1.10.2021) by Pension Schemes Act 2021 (c. 1) , s. 131(2)(b), Sch. 8 para. 23(3)(b) ; S.R. 2021/271, art. 2(4)(f) |
| F5 | Words in art. 91(5)(a) repealed (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4) , ss. 3, 5(2), Sch. 1 para. 14(a), Sch. 3 (with transitional and saving in Sch. 2); S.R. 2010/101, art. 2 |
| F6 | Art. 91(6)(ia) inserted (16.7.2015) by Pensions Act (Northern Ireland) 2015 (c. 5) , s. 53(1), Sch. 19 para. 8 ; S.R. 2015/307, art. 2(1)(o) |
| F7 | Art. 91(6A)(6B) inserted (7.6.2012) by Pensions Act (Northern Ireland) 2012 (c. 3) , ss. 24(7) , 34(3); S.R. 2012/233, art. 2(2)(g) |
| F8 | Art. 91(7) added (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4) , ss. 3(1), 5(2), Sch. 1 para. 14(b) (with transitional and saving in Sch. 2); S.R. 2010/101, art. 2 |

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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\(b\)](#)