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## STATUTORY INSTRUMENTS

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# 2005 No. 255

## The Pensions (Northern Ireland) Order 2005

### PART II

#### THE PENSIONS REGULATOR

##### *General provisions about functions*

#### **Regulator's functions**

- 3.—(1) The Regulator has—
- (a) the functions transferred to it from the Occupational Pensions Regulatory Authority by virtue of this Order, and
  - (b) any other functions conferred by, or by virtue of, this or any other statutory provision.
- (2) Schedule 1 makes further provision about the Regulator.
- (3) As regards the exercise of the Regulator's functions—
- (a) the functions mentioned in the following provisions are exercisable only by the Determinations Panel—
    - (i) Article 7(1) (the power in certain circumstances to determine whether to exercise the functions listed in Schedule 2 and to exercise them), and
    - (ii) Article 94(10) (the functions concerning the compulsory review of certain determinations), and
  - (b) the exercise of other functions of the Regulator (except the non-executive functions which are exercised in accordance with section 4(2)(a) of the Pensions Act 2004 (c. 35) and functions which are delegated in accordance with section 4(2)(c) of that Act) may be delegated by the Regulator under paragraph 1 of Schedule 1.
- (4) Paragraph (3) is subject to any regulations made by the Department under paragraph 2 of Schedule 1 (power to limit or permit delegation of functions).

#### **Regulator's objectives**

- 4.—(1) The main objectives of the Regulator in exercising its functions are—
- (a) to protect the benefits under occupational pension schemes of, or in respect of, members of such schemes,
  - (b) to protect the benefits under personal pension schemes of, or in respect of, members of such schemes within paragraph (2),
  - (c) to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (see Part III), and
  - (d) to promote, and to improve understanding of, the good administration of work-based pension schemes.

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(2) For the purposes of paragraph (1)(b) the members of personal pension schemes within this paragraph are—

- (a) the members who are employees in respect of whom direct payment arrangements exist, and
- (b) where the scheme is a stakeholder pension scheme, any other members.

(3) In this Article—

“stakeholder pension scheme” means a personal pension scheme which is or has been registered under Article 4 of the 1999 Order (register of stakeholder schemes);

“work-based pension scheme” means—

- (a) an occupational pension scheme,
- (b) a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, or
- (c) a stakeholder pension scheme.

### **Supplementary powers**

5. The Regulator may do anything (except borrow money) which—

- (a) is calculated to facilitate the exercise of its functions, or
- (b) is incidental or conducive to their exercise.

### **Transfer of OPRA's functions to the Regulator**

6.—(1) Subject to the provisions of this Order, the functions of the Occupational Pensions Regulatory Authority (“OPRA”) conferred by or by virtue of—

- (a) the Pension Schemes Act,
- (b) the 1995 Order, and
- (c) the 1999 Order,

are hereby transferred to the Regulator.

(2) Accordingly—

- (a) in section 176(1) of the Pension Schemes Act (which defines “the Regulatory Authority” to mean OPRA), for the definition of “the Regulatory Authority” substitute—  
“ “the Regulatory Authority” means the Pensions Regulator;”,
- (b) in Article 121(1) of the 1995 Order (which defines “the Authority”, in Part II of that Order, to mean OPRA), for the definition of “the Authority” substitute—  
“ “the Authority” means the Pensions Regulator;”,
- (c) in Article 9(1) of the 1999 Order (which defines “the Authority”, in Part II of that Order, to mean OPRA), for the definition of “the Authority” substitute—  
“ “the Authority” means the Pensions Regulator;”, and
- (d) in Article 30 of that Order (time for discharge of pension credit liability), in paragraph (5) for “the Occupational Pensions Regulatory Authority” substitute “the Pensions Regulator”.

## *The Determinations Panel*

### **Functions exercisable by the Determinations Panel**

7.—(1) The Determinations Panel is to exercise on behalf of the Regulator—

- (a) the power to determine, in the circumstances described in paragraph (2), whether to exercise a reserved regulatory function, and
- (b) where it so determines to exercise a reserved regulatory function, the power to exercise the function in question.

(2) Those circumstances are—

- (a) where the Regulator considers that the exercise of the reserved regulatory function may be appropriate, or
- (b) where an application is made under, or by virtue of, any of the provisions listed in paragraph (6) for the Regulator to exercise the reserved regulatory function.

(3) Where paragraph (1) applies, the powers mentioned in that paragraph are not otherwise exercisable by or on behalf of the Regulator.

(4) For the purposes of this Part, a function of the Regulator is a “reserved regulatory function” if it is a function listed in Schedule 2.

(5) Regulations may amend Schedule 2 by—

- (a) adding any function of the Regulator conferred by, or by virtue of, this or any other statutory provision,
- (b) omitting any such function, or
- (c) altering the description of any such function contained in that Schedule.

(6) The provisions referred to in paragraph (2)(b) are—

- (a) Article 16(10) (application to permit payments out of an account that is subject to a restraining order);
- (b) Article 22(2) (application for order validating action taken in contravention of freezing order);
- (c) Article 37(7) (application for the issue of a revised contribution notice under Article 37(9));
- (d) Article 46(7) (application for the issue of a revised contribution notice under Article 46(9));
- (e) Article 3(3) of the 1995 Order (application for revocation of prohibition order);
- (f) Article 4(5) of that Order (application for revocation of a suspension order);
- (g) Article 7(5A) of that Order (application for appointment of a trustee under Article 7(3) (a) or (c) of that Order);
- (h) Article 29(5) of that Order (application for waiver of disqualification);
- [<sup>F1</sup>(ha) Article 58(7) of that Order (power of the Regulator in prescribed circumstances to extend or further extend the period referred to in Article 58(6) of that Order in relation to a schedule of contributions);
- (hb) Article 60(7) of that Order (power of the Regulator in prescribed circumstances to extend or further extend the period applicable under Article 60(3) of that Order in relation to securing an increase in value);]
- (i) Article 69(1) of that Order (application for order authorising modification or modifying a scheme);

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- (j) Article 71A(2) of that Order (application for modifying a scheme to secure winding up);
  - (k) section 95(4A) of the Pension Schemes Act (application for extension under section 95(4) of that Act of a period for compliance);
  - (l) section 97J(6)(a) of that Act (application for extension under section 97J(2) of that Act of a period for compliance).
- (7) Regulations may amend paragraph (6) by—
- (a) adding any provision of this or any other statutory provision to the list in that paragraph, or
  - (b) omitting or altering the description of any provision mentioned in that list.
- (8) The Panel may be authorised under paragraph 1(3) or (5) of Schedule 1 to exercise further functions of the Regulator on behalf of the Regulator.
- (9) The Panel may authorise any of its members or any of its sub-committees to exercise on its behalf—
- (a) any of the functions of the Regulator which are exercisable by the Panel on behalf of the Regulator, or
  - (b) any of the functions of the Panel under Article 88(3) or 94(11) or paragraph 18(2) of Schedule 1 to the Pensions Act 2004 (c. 35) (procedure).
- (10) This Article is subject to any regulations made by the Department under paragraph 2 of Schedule 1 (power to limit or permit delegation of functions).

**F1** SR 2005/357

### *Provision of information, education and assistance*

#### **Provision of information, education and assistance**

**8.—(1)** The Regulator may provide such information, education and assistance as it considers appropriate to those involved in—

- (a) the administration of work-based pension schemes, or
- (b) advising the trustees or managers in relation to such schemes as to their operation.

(2) To the extent that it is not authorised to do so under paragraph (1), the Regulator may also provide such information, education and assistance as it considers appropriate to—

- (a) employers in relation to work-based pension schemes,
- (b) persons involved in advising such employers as to the operation of such schemes, or
- (c) persons upon whom duties are imposed by or by virtue of Article 215 (information and advice to employees).

(3) For the purposes of paragraph (2), “employers in relation to work-based pension schemes” means, in the case of stakeholder pension schemes, the persons upon whom duties are imposed by or by virtue of Article 5 of the 1999 Order (duty of employers to facilitate access to stakeholder pension schemes).

(4) In this Article—

“assistance” does not include financial assistance;

“stakeholder pension scheme” and “work-based pension scheme” have the same meaning as in Article 4 (Regulator's objectives).

*New powers in respect of occupational and personal pension schemes*

**Improvement notices**

9.—(1) If the Regulator is of the opinion that a person—

- (a) is contravening one or more provisions of the pensions legislation, or
- (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,

it may issue a notice (an “improvement notice”) to that person directing him to take, or refrain from taking, such steps as are specified in the notice in order to remedy or prevent a recurrence of the contravention.

(2) An improvement notice must—

- (a) state that the Regulator is of that opinion and specify the provision or provisions of the pensions legislation in question,
- (b) contain a statement of the matters which it is asserted constitute the contravention and of the evidence on which that opinion is based, and
- (c) in respect of each step specified in the notice, state the period (being a period of not less than 21 days beginning with the date of the notice) within which it must be complied with.

(3) Directions in an improvement notice—

- (a) may be framed to any extent by reference to a code of practice issued by the Regulator under Article 85, and
- (b) may be framed so as to afford the person to whom the notice is issued a choice between different ways of remedying or preventing the recurrence of the contravention.

(4) Directions in an improvement notice may be expressed to be conditional on compliance by a third party with a specified direction, or specified directions, contained in a notice under Article 10 (third party notices).

(5) An improvement notice may direct the person to whom it is issued to inform the Regulator, within such period as may be specified in the notice, of how he has complied, or is complying, with the notice.

(6) Where a contravention of a provision of the pensions legislation consists of a failure to take action within a time limit, for the purposes of this Article the contravention continues until such time as the action is taken.

(7)<sup>F2</sup> In this Article “pensions legislation” means any statutory provision contained in or made by virtue of—

- (a) the Pension Schemes Act,
- (b) Part II of the 1995 Order, other than Articles 62 to 66A of that Order (equal treatment),
- (c) Part II or Article 30 of the 1999 Order, or
- (d) this Order.

(8) If the trustees or managers of an occupational or personal pension scheme fail to comply with an improvement notice issued to them, 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.

(9) That Article also applies to any other person who, without reasonable excuse, fails to comply with an improvement notice issued to him.

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### Third party notices

10.—(1) Where the Regulator is of the opinion that—

- (a) a person—
  - (i) is contravening one or more provisions of the pensions legislation, or
  - (ii) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,
- (b) the contravention is or was, wholly or partly, a result of a failure of another person (“the third party”) to do any thing, and
- (c) that failure is not itself a contravention of the pensions legislation,

the Regulator may issue a notice (a “third party notice”) directing the third party to take, or refrain from taking, such steps as are specified in the notice in order to remedy or prevent a recurrence of his failure.

(2) A third party notice must—

- (a) state that the Regulator is of that opinion and specify the provision or provisions of the pensions legislation in question,
- (b) contain a statement of—
  - (i) the matters which it is asserted constitute the contravention of the provision or provisions, and
  - (ii) the matters which it is asserted constitute the failure by the third party, and the evidence on which that opinion is based, and
- (c) in respect of each step specified in the notice, state the period (being a period of not less than 21 days beginning with the date of the notice) within which it must be complied with.

(3) Directions in a third party notice may be framed so as to afford the third party a choice between different ways of remedying or preventing the recurrence of his failure.

(4) A third party notice may direct the third party to inform the Regulator, within such period as may be specified in the notice, of how he has complied, or is complying, with the notice.

(5) Where a contravention of a provision of the pensions legislation consists of a failure to take action within a time limit, for the purposes of this Article the contravention continues until such time as the action is taken.

(6) Article 10 of the 1995 Order (civil penalties) applies to a person who, without reasonable excuse, fails to comply with a third party notice issued to him.

(7) Subject to Article 283 (protected items), no duty to which a person is subject is to be regarded as contravened merely because of anything required to be done in compliance with a third party notice.

(8) In this Article “pensions legislation” has the same meaning as in Article 9.

### Injunctions

11. If, on the application of the Regulator, 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 any of the assets of an occupational or personal pension scheme, or
- (b) a particular person has done any such act and 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**

**12.**—(1) If, on the application of the Regulator, the High Court is satisfied that there has been a misuse or misappropriation of any of the assets of an occupational or personal pension scheme, it may order any person involved to take such steps as the Court may direct for restoring the parties to the position in which they were before the misuse or misappropriation occurred.

(2) For this purpose a person is “involved” if he appears to the High Court to have been knowingly concerned in the misuse or misappropriation of the assets.

## **Power of the Regulator to recover unpaid contributions**

**13.**—(1) Where any employer contribution payable towards an occupational or personal pension scheme is not paid on or before its due date, the Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover that contribution.

(2) For the purposes of paragraph (1), any employer contribution payable towards a personal pension scheme which is not paid on or before its due date is, if not a debt due from the employer to the trustees or managers apart from this paragraph, to be treated as if it were such a debt.

(3) In this Article—

“due date”

- (a) in relation to employer contributions payable towards an occupational pension scheme in accordance with a schedule of contributions under Article 206, has the same meaning as in Article 207,
- (b) in relation to employer contributions payable in accordance with a payment schedule under Article 85 of the 1995 Order (schedules of payments to money purchase schemes), has the meaning given in paragraph (2)(c) of that Article, and
- (c) in relation to employer contributions payable towards a personal pension scheme, has the same meaning as in section 107A of the Pension Schemes Act (monitoring of employer payments to personal pension schemes);

“employer contribution”

- (a) in relation to an occupational pension scheme, means any contribution payable by or on behalf of the employer towards the scheme in accordance with a schedule of contributions under Article 206 or a payment schedule under Article 85 of the 1995 Order (schedules of payments to money purchase schemes) whether—
  - (i) on the employer's own account (but in respect of one or more employees), or
  - (ii) on behalf of an employee out of deductions from the employee's earnings, and
- (b) in relation to a personal pension scheme, means any contribution payable towards the scheme under direct payment arrangements.

## **Pension liberation: interpretation**

**14.**—(1) In this Article and Articles 15 to 17—

- (a) “pension scheme” means an occupational pension scheme or a personal pension scheme,
- (b) “deposit-taker” has the meaning given by paragraphs (8A) and (8B) of Article 49 of the 1995 Order, except that, for the purposes of this definition, paragraph (8A)(c) of that Article has effect with the omission of the words from “or” to the end,
- (c) references to money liberated from a pension scheme are to be read in accordance with paragraph (2),

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- (d) “liberated member”, in relation to money liberated from a pension scheme, means the member of the pension scheme who is referred to in paragraph (2)(a), and
  - (e) “restraining order” means a restraining order under Article 16.
- (2) Money is to be taken to have been liberated from a pension scheme if—
- (a) the money directly or indirectly represents an amount that, in respect of accrued rights of a member of a pension scheme, has been transferred out of the scheme in pursuance of—
    - (i) a relevant statutory provision, or
    - (ii) a provision of the applicable rules, other than a relevant statutory provision,
  - (b) the trustees or managers of the scheme transferred the amount out of the scheme on the basis that a third party (“the liberator”) would secure that the amount was used in an authorised way,
  - (c) the amount has not been used in an authorised way, and
  - (d) the liberator has not secured, and is not likely to secure, that the amount will be used in an authorised way.
- (3) The following are “relevant statutory provisions” for the purposes of paragraph (2)—
- (a) section 90(1)(a), (aa) or (b) of the Pension Schemes Act (right to cash equivalent under Chapter 4 of Part IV of that Act);
  - (b) section 97AB(1)(a) of that Act (right to cash transfer sum under Chapter 5 of Part IV of that Act);
  - (c) section 97F(1) of that Act (right to cash equivalent of pension credit benefit).
- (4) In paragraph (2) “authorised way” means—
- (a) where the amount concerned is transferred out of the scheme in pursuance of a provision mentioned in paragraph (3)(a), a way specified in subsection (2) or, as the case may be, subsection (3) of section 91 of the Pension Schemes Act;
  - (b) where that amount is transferred out in pursuance of the provision mentioned in paragraph (3)(b), a way specified in section 97AE(2) of that Act;
  - (c) where that amount is transferred out in pursuance of the provision mentioned in paragraph (3)(c), a way specified in subsection (2) or, as the case may be, subsection (3) of section 97F of that Act;
  - (d) where that amount is transferred out in pursuance of a provision of the kind mentioned in paragraph (2)(a)(ii), a way that is authorised by the applicable rules for amounts transferred out in pursuance of that provision.
- (5) In this Article “the applicable rules” has the same meaning as, in the case of the pension scheme concerned, that expression has in section 90 of the Pension Schemes Act.

#### Commencement Information

- II** Art. 14 wholly in operation at 6.4.2006; art. 14 not in operation at date of making see art. 1(2); art. 14 (except (3)(b) and (4)(b)) in operation at 6.4.2005 by S.R. 2005/48, art. 2(7), Sch. Pt. 7; art. 14 in operation in so far as not already in operation at 6.4.2006 by S.R. 2006/95, art. 2(c), Sch. Pt. 3

#### Pension liberation: Court's power to order restitution

- 15.—**(1) This Article applies where money has been liberated from a pension scheme.
- (2) In this Article “recoverable property” means (subject to paragraph (3))—



- (a) the money or any of it, or
  - (b) property (of any kind and wherever situated) that, directly or indirectly, represents any of the money.
- (3) Where a person acquires the beneficial interest in recoverable property in good faith, for value and without notice that the property is, or (as the case may be) represents, money liberated from a pension scheme—
- (a) the property ceases to be recoverable property, and
  - (b) no property that subsequently represents it is recoverable property.
- (4) The High Court, on the application of the Regulator, may make such order as the Court thinks just and convenient for the purpose of securing that recoverable property, or money representing its value or proceeds of its sale, is transferred—
- (a) towards a pension scheme,
  - (b) towards an annuity or insurance policy, or
  - (c) to the liberated member.
- (5) An order under paragraph (4) may (in particular) direct a person who holds recoverable property, or has any degree of control over recoverable property, to take steps for the purpose mentioned in that paragraph.
- (6) Where the High Court makes an order under sub-paragraph (a) of paragraph (4), it may by order direct the trustees or managers of the scheme referred to in that sub-paragraph—
- (a) to take steps for the purpose mentioned in that paragraph;
  - (b) to apply the property or money transferred, in such manner as the Court may direct, for the purpose of providing benefits under that scheme to or in respect of the liberated member.
- (7) Regulations may modify any of the provisions of the Pension Schemes Act as it applies in relation to cases where an order is made under paragraph (6).
- (8) The generality of the jurisdiction conferred by Article 12 is not to be taken to be prejudiced by this Article.
- (9) The generality of the jurisdiction conferred by this Article is not to be taken to be prejudiced by Article 17.

### **Pension liberation: restraining orders**

- 16.—**(1) The Regulator may make a restraining order in relation to an account with a deposit-taker if—
- (a) it is satisfied that the account contains money which has been liberated from a pension scheme,
  - (b) it is satisfied that the account is held by or on behalf of—
    - (i) the liberator, or
    - (ii) a person who has to, or in practice is likely to, ensure that the account is operated in accordance with the liberator's directions, and
  - (c) the order is made pending consideration being given to the making of one or more repatriation orders in relation to the account under Article 17.
- (2) A restraining order is an order directing that no credit or debit of any amount may be made to the account concerned ( “the restrained account”) during the period for which the order has effect.
- (3) A restraining order must—
- (a) specify the name of the deposit-taker in respect of which it is made,

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- (b) identify the account in respect of which it is made, and
  - (c) contain such other information as may be prescribed.
- (4) A restraining order—
- (a) takes effect when the deposit-taker concerned is notified by the Regulator of the making of the order, and
  - (b) (subject to paragraph (7)) ceases to have effect through expiry of time at the end of the six months beginning with the day when it is made.
- (5) The Regulator may, at a time when a restraining order has effect, make an order extending (or further extending) the restraining order.
- (6) An order under paragraph (5) (an “extension order”) takes effect—
- (a) when the deposit-taker concerned is notified by the Regulator of the making of the order, but
  - (b) only if notification under sub-paragraph (a) occurs at a time when the restraining order concerned has effect.
- (7) Where an extension order takes effect—
- (a) the restraining order concerned does not cease to have effect through expiry of time until the end of the six months beginning with the time when it would have ceased to have effect through expiry of time had it not been extended, but
  - (b) for so long as the extension order has effect, no further extension order can take effect before that time in relation to the restraining order.
- (8) A restraining order does not prevent the crediting to the restrained account of an amount representing interest payable by the deposit-taker on any amount which is, or has been, in the account.
- (9) Where a restraining order has effect, the deposit-taker must return to the payer any money credited to the restrained account in breach of the order.
- (10) Where a restraining order has effect, the Regulator may, on an application made by or with the consent of the person by whom the restrained account is held, by order permit a payment specified in the order to be made out of the account if the Regulator is satisfied—
- (a) that the payment will be made for the purpose of enabling—
    - (i) any individual to meet his reasonable living expenses, or
    - (ii) any person to carry on a trade, business, profession or occupation,
  - (b) that the beneficial interest in the money out of which the payment will be made belongs—
    - (i) to the individual, or person, concerned, or
    - (ii) to a person who consents to the making of the payment, and
  - (c) that the money out of which the payment will be made is not money liberated from a pension scheme.
- (11) Article 10 of the 1995 Order (civil penalties) applies to a deposit-taker who, without reasonable excuse, fails to comply with any obligation imposed by a restraining order or by this Article.

#### **Pension liberation: repatriation orders**

17.—(1) Paragraphs (2) and (3) apply where—

- (a) a restraining order has effect, and
- (b) the Regulator is satisfied that the restrained account contains an amount of money liberated from a pension scheme.

(2) The Regulator may by order—

- (a) direct the deposit-taker concerned to pay from the account a sum not exceeding that amount—
  - (i) towards a pension scheme,
  - (ii) towards an annuity or insurance policy, or
  - (iii) to the liberated member, and
- (b) where it makes an order under sub-paragraph (a)(i), direct the trustees or managers of the scheme to apply the sum, in such manner as the Regulator may direct, for the purpose of providing benefits under the scheme to or in respect of the liberated member.

(3) If it appears to the Regulator, on taking an overall view of transactions taking place before the restraining order was made, that there are two or more individuals each of whom is a person who is or may be the liberated member in relation to some of the money, the Regulator may determine the sums to be paid from the restrained account under paragraph (2) on any basis that appears to the Regulator to be just and reasonable.

(4) Regulations may modify any of the provisions of the Pension Schemes Act as it applies in relation to cases where an order is made under paragraph (2)(b).

(5) Article 10 of the 1995 Order (civil penalties) applies to a deposit-taker who, without reasonable excuse, fails to comply with a direction given to him under paragraph (2)(a).

(6) If the trustees or managers of a pension scheme fail to comply with a direction given to them under paragraph (2)(b), that Article applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(7) In this Article “the restrained account” has the meaning given by Article 16.

#### *Powers in relation to winding up of occupational pension schemes*

### **Powers to wind up occupational pension schemes**

18. In Article 11 of the 1995 Order (powers to wind up occupational pension schemes)—

- (a) omit paragraph (3),
- (b) before paragraph (4) insert—

“(3A) The Authority may, during an assessment period (within the meaning of Article 116 of the Pensions (Northern Ireland) Order 2005 (meaning of “assessment period” for the purposes of Part III of that Order)) in relation to an occupational pension scheme, by order direct the scheme to be wound up if they are satisfied that it is necessary to do so in order—

- (a) to ensure that the scheme's protected liabilities do not exceed its assets, or
- (b) if those liabilities do exceed its assets, to keep the excess to a minimum.

(3B) In paragraph (3A)—

- (a) “protected liabilities” has the meaning given by Article 115 of the Pensions (Northern Ireland) Order 2005, and
- (b) references to the assets of the scheme are references to those assets excluding any assets representing the value of any rights in respect of money purchase benefits (within the meaning of that Order) under the scheme.,”

(c) at the end of paragraph (4) add—

“This paragraph is subject to Articles 24, 119 and 198 of the Pensions (Northern Ireland) Order 2005 (winding up order made when freezing order has effect in relation to scheme or during assessment period under Part III of that Order).”, and

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(d) after paragraph (6) insert—

“(6A) Paragraph (6) does not have effect to authorise the Authority to make an order as mentioned in sub-paragraph (a) or (b) of that paragraph, if their doing so would be unlawful as a result of section 6(1) of the Human Rights Act 1998 (unlawful for public authority to act in contravention of a Convention right).” .

### Freezing orders

**19.**—(1) This Article applies to an occupational pension scheme which is not a money purchase scheme.

(2) The Regulator may make a freezing order in relation to such a scheme if and only if—

- (a) the order is made pending consideration being given to the making of an order in relation to the scheme under Article 11(1)(c) of the 1995 Order (power to wind up schemes where necessary to protect the generality of members), and
- (b) the Regulator is satisfied that—
  - (i) there is, or is likely to be if the order is not made, an immediate risk to the interests of members under the scheme or the assets of the scheme, and
  - (ii) it is necessary to make the freezing order to protect the interests of the generality of the members of the scheme.

But no freezing order may be made in relation to a scheme during an assessment period (within the meaning of Article 116) in relation to the scheme (see Article 119(11)).

(3) A freezing order is an order directing that during the period for which it has effect—

- (a) no benefits are to accrue under the scheme rules to, or in respect of, members of the scheme, and
- (b) winding up of the scheme may not begin.

(4) A freezing order may also contain one or more of the following directions which have effect during the period for which the order has effect—

- (a) a direction that no new members, or no specified classes of new member, are to be admitted to the scheme;
- (b) a direction that—
  - (i) no further contributions or payments, or
  - (ii) no further specified contributions or payments,
 are to be paid towards the scheme by or on behalf of the employer, any members or any specified members of the scheme;
- (c) a direction that any amount or any specified amount which—
  - (i) corresponds to any contribution which would be due to be paid towards the scheme on behalf of a member but for a direction under sub-paragraph (b), and
  - (ii) has been deducted from a payment of any earnings in respect of an employment, is to be repaid to the member in question by the employer;
- (d) a direction that no benefits, or no specified benefits, are to be paid to or in respect of any members or any specified members under the scheme rules;
- (e) a direction that payments of all benefits or specified benefits under the scheme rules to or in respect of all the members or specified members may only be made from the scheme if they are reduced in a specified manner or by a specified amount;
- (f) a direction that—

- (i) no transfers or no specified transfers of, or no transfer payments or no specified transfer payments in respect of, any member's rights under the scheme rules are to be made from the scheme, or
  - (ii) no other steps or no specified other steps are to be taken to discharge any liability of the scheme to or in respect of a member of the scheme in respect of pensions or other benefits;
- (g) a direction that no statements of entitlement are to be provided to members of the scheme under section 89A of the Pension Schemes Act (salary related schemes: right to statement of entitlement);
- (h) a direction that—
  - (i) no refunds of, or no specified refunds of, or in respect of, contributions paid by or in respect of a member towards the scheme are to be made from the scheme, or
  - (ii) refunds or specified refunds of, or in respect of, contributions paid by or in respect of a member towards the scheme may only be made from the scheme if they are determined in a specified manner and satisfy such other conditions as may be specified.
- (5) In paragraph (4)(b)—
  - (a) the references to contributions do not include contributions due to be paid before the order takes effect, and
  - (b) the references to payments towards a scheme include payments in respect of pension credits where the person entitled to the credit is a member of the scheme.
- (6) A freezing order may not contain a direction under paragraph (4)(d) or (e) which reduces the benefits payable to or in respect of a member, for the period during which the order has effect, below the level to which the trustees or managers of the scheme would have power to reduce them if a winding up of the scheme had begun at the time when the freezing order took effect.
- (7) A direction under paragraph (4)(f) may, in particular, provide that transfers or specified transfers of, or transfer payments or specified transfer payments in respect of, any member's rights under the scheme rules may not be made from the scheme unless the amounts paid out from the scheme in respect of the transfers or transfer payments are determined in a specified manner and the transfer or transfer payments satisfy such other conditions as may be specified.
- (8) A freezing order may also require the trustees or managers of the scheme to obtain an actuarial valuation within a specified period.
- (9) A freezing order containing such a requirement must specify—
  - (a) the date by reference to which the assets and liabilities are to be valued,
  - (b) the assets and liabilities which are to be taken into account,
  - (c) the manner in which the valuation must be prepared,
  - (d) the information and statements which it must contain, and
  - (e) any other requirements that the valuation must satisfy.
- (10) For the purposes of paragraph (8)—
  - “an actuarial valuation” means a written valuation of the scheme's assets and liabilities prepared and signed by the actuary,
  - “the actuary” means—
    - (a) the actuary appointed under Article 47(1)(b) of the 1995 Order (professional advisers) in relation to the scheme, or
    - (b) if no such actuary has been appointed—

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- (i) a person with prescribed qualifications or experience, or
  - (ii) a person approved by the Department.
- (11) In this Article “specified” means specified in the freezing order.

### Consequences of freezing order

**20.—**(1) If a freezing order is made in relation to a scheme any action taken in contravention of the order is void except to the extent that the action is validated by an order under Article 22.

(2) A freezing order in relation to a scheme does not prevent any increase in a benefit which is an increase which would otherwise accrue in accordance with the scheme or any statutory provision during the period for which the order has effect, unless the order contains a direction to the contrary.

(3) A freezing order in relation to a scheme does not prevent the scheme being wound up in pursuance of an order under Article 11 of the 1995 Order (power to wind up occupational pension schemes).

(4) If a freezing order contains a direction under Article 19(4)(b) that no further contributions, or no further specified contributions, are to be paid towards a scheme during the period for which the order has effect—

- (a) any contributions which are the subject of the direction and which would otherwise be due to be paid towards the scheme during that period are to be treated as if they do not fall due, and
- (b) any obligation to pay those contributions (including any obligation under Article 49(8) of the 1995 Order to pay amounts deducted corresponding to such contributions) is to be treated as if it does not arise.

(5) If a freezing order contains a direction under Article 19(4)(f) (no transfers or discharge of member's rights) it does not prevent—

- (a) giving effect to a pension sharing order or provision, or
- (b) giving effect to a pension earmarking order in a case where—
  - (i) the order requires a payment to be made if a payment in respect of any benefits under the scheme becomes due to a person, and
  - (ii) a direction under Article 19(4)(d) or (e) does not prevent the payment becoming due.

(6) For the purposes of paragraph (5)—

“pension sharing order or provision” means an order or provision falling within Article 25(1) of the 1999 Order (activation of pension sharing);

“pension earmarking order” means—

- (a) an order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978 (NI 15) (financial provision orders in connection with divorce etc.) so far as it includes provision made by virtue of Article 27B or 27C of that Order (powers to include provision about pensions),
- (aa) [<sup>F3</sup>an order under Part 1 (financial provision in connection with dissolution, nullity or separation) of Schedule 15 to the Civil Partnership Act 2004 (financial relief in the High Court or a county court etc.: Northern Ireland) so far as it includes provision made by virtue of paragraphs 20 and 21 of Part 5 of that Schedule (powers to include provisions about pensions),]
- (b) an order under section 23 of the Matrimonial Causes Act 1973 (c. 18) so far as it includes provision made by virtue of section 25B or 25C of that Act (powers in England and Wales corresponding to those mentioned in paragraph (a)),<sup>F3</sup> . . .

- (c) an order under section 12A(2) or (3) of the Family Law (Scotland) Act 1985 (c. 37) (powers in relation to pension lump sums when making a capital sum order)<sup>F3</sup>, or].
  - (d) [<sup>F3</sup>an order under Part 1 (financial provision in connection with dissolution, nullity or separation) of Schedule 5 to the Civil Partnership Act 2004 (financial relief in the High Court or a county court etc.) so far as it includes provision made by virtue of paragraphs 25 and 26 of Part 6 of that Schedule (powers to include provisions about pensions).]
- (7) Regulations may modify any provisions of—
- (a) Chapter 4 of Part IV of the Pension Schemes Act (protection for early leavers: transfer values), or
  - (b) Chapter 5 of that Part (protection for early leavers: cash transfer sums and contribution refunds),

in their application to an occupational pension scheme in relation to which a freezing order is made containing a direction under Article 19(4)(f), (g) or (h) (no transfers etc. in respect of, member's rights or refunds of contributions etc. from the scheme).

(8) Disregarding paragraph (1), if a freezing order made in relation to a scheme is not complied with, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.

(9) Paragraph (8) does not apply in the case of non-compliance with a direction under Article 19(4)(c) (direction that certain deducted contributions are to be repaid by the employer).

(10) In such a case, Article 10 of the 1995 Order (civil penalties) applies to an employer who, without reasonable excuse, fails to repay an amount as required by the direction.

**F3** SR 2005/434

### **Period of effect etc. of freezing order**

- 21.**—(1) A freezing order must specify the period for which it has effect.
- (2) The period specified must not exceed three months.
  - (3) The Regulator may on one or more occasions by order extend the period for which the order has effect.
  - (4) But the total period for which the order has effect must not exceed six months.
  - (5) This Article is subject to Articles 23, 24 and 25 (effect of winding up and assessment period on freezing orders).

### **Validation of action in contravention of freezing order**

**22.**—(1) If a freezing order is made in relation to a scheme, the Regulator may by order validate action taken in contravention of the order.

(2) Any of the following persons may apply to the Regulator for an order under this Article validating particular action—

- (a) the trustees or managers of the scheme;
- (b) any person directly affected by the action.

### **Effect of determination to wind up scheme on freezing order**

**23.**—(1) This Article applies where—

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- (a) the Regulator determines to make an order under Article 11 of the 1995 Order (power to wind up occupational schemes) in relation to a scheme (“a winding up order”),
  - (b) that determination is made during the period for which a freezing order has effect in relation to the scheme,
  - (c) the case is not one to which the special procedure in Article 93 applies (immediate exercise of powers where immediate risk to assets etc.), and
  - (d) the winding up order accordingly cannot be made until the expiry of the period specified in Article 91(5) (no exercise of powers during period of referral to the Tribunal etc.).
- (2) In such a case the freezing order is to continue to have effect until—
- (a) where the winding up order is made, it ceases to have effect under Article 24 from the time when that order is made, or
  - (b) the determination to make the winding up order is revoked.
- (3) Paragraph (2) is subject to the Regulator's power under Article 96 to revoke the freezing order at any time.

#### **Effect of winding up order on freezing order**

**24.**—(1) This Article applies where—

- (a) an order is made under Article 11 of the 1995 Order (power to wind up occupational pension schemes) in relation to a scheme, and
- (b) the order is made during the period for which a freezing order has effect in relation to the scheme.

(2) In such a case—

- (a) the winding up of the scheme in pursuance of the order under Article 11 of the 1995 Order is to be taken as beginning at the time when the freezing order took effect, and
- (b) the freezing order ceases to have effect from the time when the order under Article 11 of the 1995 Order is made.

(3) The Regulator may by order direct any specified person—

- (a) to take such specified steps as it considers are necessary as a result of the winding up of the scheme being deemed under paragraph (2)(a) to have begun at the time when the freezing order took effect, and
- (b) to take those steps within a specified period.

(4) If the trustees or managers of a scheme fail to comply with a direction to them contained in an order under this Article, 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.

(5) That Article also applies to any other person who, without reasonable excuse, fails to comply with a direction to him contained in an order under this Article.

(6) In this Article “specified” means specified in an order under this Article.

#### **Effect of assessment period under Part III on freezing order**

**25.** Where an assessment period (within the meaning of Article 116) begins in relation to a scheme, any freezing order in relation to the scheme ceases to have effect when the assessment period begins.



## **Power to give a direction where freezing order ceases to have effect**

26.—(1) This Article applies where—

- (a) the Regulator revokes a freezing order in relation to a scheme or it otherwise ceases to have effect, and
- (b) at the time when the freezing order ceases to have effect, the Regulator has not made an order under Article 11 of the 1995 Order in relation to the scheme.

(2) In such a case the Regulator may make an order under this Article in relation to the scheme containing a direction that, if specified conditions are met, specified benefits are to accrue under the scheme rules to, or in respect of, specified members of the scheme in respect of specified periods of service being service in employment which but for the freezing order would have qualified the member in question for those benefits under the scheme rules.

(3) The conditions mentioned in paragraph (2) may include—

- (a) a requirement that specified benefits do not accrue to, or in respect of, a member or a specified member unless a contribution of a specified amount is paid by or on behalf of the member towards the scheme within a specified period;
- (b) a requirement that a contribution of a specified amount must be paid by or on behalf of the employer within a specified period;
- (c) a requirement that such contributions as are specified under sub-paragraph (a) or (b) are to be accepted for the period for which the freezing order had effect or any part of that period.

(4) Where the freezing order contained a direction under Article 19(4)(d) or (e) and any amount of any benefit under the scheme rules was not paid as a result of the direction—

- (a) the direction does not affect any entitlement to that benefit, and
- (b) any benefit to which a member, or a person in respect of a member, remains entitled at the end of the period for which the freezing order had effect is an amount which falls due to the member or, as the case may be, the person at the end of that period.

(5) If an order made under this Article in relation to a scheme is not complied with, Article 10 of the 1995 Order (civil penalties) applies to a trustee or a manager of the scheme who has failed to take all reasonable steps to secure compliance.

(6) Paragraph (7) applies if—

- (a) an order is made under this Article in relation to a scheme,
- (b) the order contains a requirement as described in paragraph (3)(b) that a contribution of a specified amount must be paid by or on behalf of the employer within a specified period, and
- (c) the contribution is not paid within that period.

(7) In such a case—

- (a) Article 10 of the 1995 Order applies to the employer if he has failed, without reasonable excuse, to secure compliance,
- (b) the amount which for the time being remains unpaid after the end of the specified period is to be treated as a debt due from the employer to the trustees or managers of the scheme, and
- (c) except in prescribed circumstances, the trustees or managers must, within a prescribed period, give notice of the failure to pay to the Regulator and to the member.

(8) If in any case paragraph (7)(c) is not complied with, Article 10 of the 1995 Order applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(9) In this Article “specified” means specified in an order under this Article.

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## **Notification of trustees, managers, employers and members**

27.—(1) This Article applies where—

- (a) a freezing order is made in relation to a scheme,
- (b) an order is made under Article 22 validating action taken in contravention of a freezing order made in relation to a scheme,
- (c) an order is made under Article 24 directing specified steps to be taken following the winding up of a scheme, or
- (d) an order is made under Article 26 in relation to a scheme where a freezing order ceases to have effect.

(2) The Regulator must, as soon as reasonably practicable after the order has been made, notify—

- (a) the trustees or managers of the scheme, and
- (b) the employer in relation to the scheme,

of the fact that the order has been made and of its effect.

(3) The Regulator may by order direct the trustees or managers of the scheme to notify—

- (a) all the members of the scheme, or
- (b) the members of the scheme specified in the order,

of the fact that the order mentioned in paragraph (1) has been made and of its effect.

(4) Notification is to be within the period and in the manner specified in the order under paragraph (3).

(5) If the trustees or managers of a scheme fail to comply with a direction to them contained in an order made under paragraph (3), 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.

## **Articles 19 to 27: supplementary**

28.—(1) An order may be made in relation to a scheme under any of Articles 19, 21, 22, 24, 26 and 27—

- (a) in spite of any statutory provision or rule of law, or any rule of the scheme, which would otherwise operate to prevent the order being made, and
- (b) without regard to any such statutory provision, 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 making of the order.

(2) Paragraph (1) does not have effect to authorise the Regulator to make an order as mentioned in that paragraph if its doing so would be unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42) (unlawful for public authority to act in contravention of a Convention right).

### *Trustees of occupational pension schemes*

## **Prohibition orders**

29. For Article 3 of the 1995 Order (prohibition orders) substitute—

### **“Prohibition orders**

3.—(1) The Authority may by order prohibit a person from being a trustee of—

- (a) a particular trust scheme,

- (b) a particular description of trust schemes, or
- (c) trust schemes in general,

if they are satisfied that he is not a fit and proper person to be a trustee of the scheme or schemes to which the order relates.

(2) Where a prohibition order is made under paragraph (1) against a person in respect of one or more schemes of which he is a trustee, the order has the effect of removing him.

(3) The Authority may, on the application of any person prohibited under this Article, by order revoke the order either generally or in relation to a particular scheme or description of schemes.

(4) An application under paragraph (3) may not be made—

- (a) during the period within which the determination to exercise the power to make the prohibition order may be referred to the Tribunal under Article 91(3) or 94(7) of the Pensions (Northern Ireland) Order 2005, and
- (b) if the determination is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.

(5) A revocation made at any time under this Article cannot affect anything done before that time.

(6) The Authority must prepare and publish a statement of the policies they intend to adopt in relation to the exercise of their powers under this Article.

(7) The Authority may revise any statement published under paragraph (6) and must publish any revised statement.

(8) In this Article “the Tribunal” means the Pensions Regulator Tribunal established under section 102 of the Pensions Act 2004.”.

### **Suspension orders**

**30.** In Article 4 of the 1995 Order (suspension orders)—

(a) after paragraph (1)(a) insert—

“(aa) pending consideration being given to the institution of proceedings against him for an offence involving dishonesty or deception, ,”

(b) in paragraph (2)—

- (i) in sub-paragraph (a) after “sub-paragraph (a)” insert “ or (aa) ”,
- (ii) after “have effect” insert “ in relation to a trust scheme ”, and
- (iii) after “Article 3(1)” insert “ in relation to that scheme ”,

(c) after paragraph (5) insert—

“(5A) An application under paragraph (5) may not be made—

- (a) during the period within which the determination to exercise the power to make an order under paragraph (1) may be referred to the Tribunal under Article 91(3) or 94(7) of the Pensions (Northern Ireland) Order 2005, and
- (b) if the determination is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of. , and”

(d) after paragraph (6) add—

“(7) In this Article “the Tribunal” means the Pensions Regulator Tribunal established under section 102 of the Pensions Act 2004.” .

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### Appointment of trustees by the Regulator

**31.**—(1) In Article 7 of the 1995 Order (appointment of trustees)—

- (a) omit paragraph (4), and
- (b) after paragraph (5) insert—

“(5A) An application may be made to the Authority in relation to a trust scheme by—

- (a) the trustees of the scheme,
- (b) the employer, or
- (c) any member of the scheme,

for the appointment of a trustee of the scheme under paragraph (3)(a) or (c).”

(2) In Article 8 of that Order (consequences of appointment of trustees under Article 7), for paragraphs (1) and (2) substitute—

“(1) An order under Article 7 appointing a trustee may provide for any fees and expenses of trustees appointed under the order to be paid—

- (a) by the employer,
- (b) out of the resources of the scheme, or
- (c) partly by the employer and partly out of those resources.

(2) Such an order may also provide that an amount equal to the amount (if any) paid out of the resources of the scheme by virtue of paragraph (1)(b) or (c) is to be treated for all purposes as a debt due from the employer to the trustees of the scheme.”

### Independent trustees

**32.**—(1) Part II of the 1995 Order (occupational pension schemes) is amended as follows.

(2) In Article 22 (circumstances in which provisions relating to independent trustees apply)—

- (a) in paragraph (1)(b) omit “or” at the end of head (i) and after that head insert—

“(ia) the interim receiver of the property of a person who is the employer in relation to the scheme, or,”

- (b) in paragraph (2), after “a scheme” insert “by virtue of paragraph (1)”,

- (c) after paragraph (2) insert—

“(2A) To the extent that it does not already apply by virtue of paragraph (1), this Article also applies in relation to a trust scheme—

- (a) at any time during an assessment period (within the meaning of Article 116 of the Pensions (Northern Ireland) Order 2005) in relation to the scheme, and
- (b) at any time, not within sub-paragraph (a), when the scheme is authorised under Article 137 of that Order (closed schemes) to continue as a closed scheme.”, and

- (d) after paragraph (2A) (inserted by sub-paragraph (c)) insert—

“(2B) The responsible person must, as soon as reasonably practicable, give notice of an event within paragraph (2C) to—

- (a) the Authority,
- (b) the Board of the Pension Protection Fund, and
- (c) the trustees of the scheme.

(2C) The events are—

- (a) the practitioner beginning to act as mentioned in paragraph (1)(a), if immediately before he does so this Article does not apply in relation to the scheme;
  - (b) the practitioner ceasing to so act, if immediately after he does so this Article does not apply in relation to the scheme;
  - (c) the official receiver beginning to act in a capacity mentioned in paragraph (1)(b)(i), (ia) or (ii), if immediately before he does so this Article does not apply in relation to the scheme;
  - (d) the official receiver ceasing to act in such a capacity, if immediately after he does so this Article does not apply in relation to the scheme.
- (2D) For the purposes of paragraph (2B) “the responsible person” means—
- (a) in the case of an event within paragraph (2C)(a) or (b), the practitioner, and
  - (b) in the case of an event within paragraph (2C)(c) or (d), the official receiver.
- (2E) Regulations may require prescribed persons in prescribed circumstances where this Article begins or ceases to apply in relation to a trust scheme by virtue of paragraph (2A) to give a notice to that effect to—
- (a) the Authority,
  - (b) the Board of the Pension Protection Fund, and
  - (c) the trustees of the scheme.
- (2F) A notice under paragraph (2B), or under regulations under paragraph (2E), must be in writing and contain such information as may be prescribed. .”
- (3) For Articles 23 and 24 (appointment of independent trustees) substitute—

**“Power to appoint independent trustees**

**23.—**(1) While Article 22 applies in relation to a trust scheme, the Authority may by order appoint as a trustee of the scheme a person who—

- (a) is an independent person in relation to the scheme, and
- (b) is registered in the register maintained by the Authority in accordance with regulations under paragraph (4).

(2) In relation to a particular trust scheme, no more than one trustee may at any time be an independent trustee appointed under paragraph (1).

(3) For the purposes of this Article a person is independent in relation to a trust scheme only if—

- (a) he has no interest in the assets of the employer or of the scheme otherwise than as trustee of the scheme,
- (b) he is neither connected with, nor an associate of—
  - (i) the employer,
  - (ii) any person for the time being acting as an insolvency practitioner in relation to the employer, or
  - (iii) the official receiver acting in any of the capacities mentioned in Article 22(1)(b) in relation to the employer, and
- (c) he satisfies any prescribed requirements;

and any reference in this Part to an independent trustee is to be construed accordingly.

(4) Regulations must provide for the Authority to compile and maintain a register of persons who satisfy the prescribed conditions for registration.

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- (5) Regulations under paragraph (4) may provide—
- (a) for copies of the register or of extracts from it to be provided to prescribed persons in prescribed circumstances;
  - (b) for the inspection of the register by prescribed persons in prescribed circumstances.
- (6) The circumstances which may be prescribed under paragraph (5)(a) or (b) include the payment by the person to whom the copy is to be provided, or by whom the register is to be inspected, of such reasonable fee as may be determined by the Authority.
- (7) This Article is without prejudice to the powers conferred by Article 7.” .
- (4) In Article 25 (appointment and powers of independent trustees: further provisions)—
- (a) for paragraph (4)(a) substitute—
    - “(a) he must as soon as reasonably practicable give written notice of that fact to the Authority, and” ,
  - (b) after paragraph (5) insert—
    - “(5A) Article 10 applies to any person who, without reasonable excuse, fails to comply with paragraph (4)(a).” , and
  - (c) for paragraph (6) substitute—
    - “(6) An order under Article 23(1) may provide for any fees and expenses of the trustee appointed under the order to be paid—
      - (a) by the employer,
      - (b) out of the resources of the scheme, or
      - (c) partly by the employer and partly out of those resources.
    - (7) Such an order may also provide that an amount equal to the amount (if any) paid out of the resources of the scheme by virtue of paragraph (6)(b) or (c) is to be treated for all purposes as a debt due from the employer to the trustees of the scheme.
    - (8) Where, by virtue of paragraph (6)(b) or (c), an order makes provision for any fees or expenses of the trustee appointed under the order to be paid out of the resources of the scheme, the trustee is entitled to be so paid in priority to all other claims falling to be met out of the scheme's resources.” .

### **Disqualification**

**33.** In Article 30 of the 1995 Order (consequences of disqualification under Article 29), for paragraph (1) substitute—

“(1) Where a person who is a trustee of a trust scheme becomes disqualified under Article 29 in relation to the scheme, his becoming so disqualified has the effect of removing him as a trustee.” .

### *Contribution notices where avoidance of employer debt*

### **Contribution notices where avoidance of employer debt**

**34**<sup>F4</sup>.—(1) This Article applies in relation to an occupational pension scheme other than—

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(2) The Regulator may issue a notice to a person stating that the person is under a liability to pay the sum specified in the notice (a “contribution notice”)—

- (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) The Regulator may issue a contribution notice to a person only if—
- (a) the Regulator is of the opinion that the person was a party to an act or a deliberate failure to act which falls within paragraph (5),
  - (b) the person was at any time in the relevant period—
    - (i) the employer in relation to the scheme, or
    - (ii) a person connected with, or an associate of, the employer,
  - (c) the Regulator is of the opinion that the person, in being a party to the act or failure, was not acting in accordance with his functions as an insolvency practitioner in relation to another person, and
  - [<sup>F5</sup>(d) the Regulator is of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice, having regard to—
    - (i) the extent to which, in all the circumstances of the case, it was reasonable for the person to act, or fail to act, in the way that the person did, and
    - (ii) such other matters as the Regulator considers relevant, including (where relevant) the matters falling within paragraph (7).]
- (4) But the Regulator may not issue a contribution notice, in such circumstances as may be prescribed, to a person of a prescribed description.
- (5) An act or a failure to act falls within this paragraph if—
- (a) the Regulator is of the opinion that [<sup>F6</sup>the material detriment test is met in relation to the act or failure (see Article 34A) or that] the main purpose or one of the main purposes of the act or failure was—
    - (i) to prevent the recovery of the whole or any part of a debt which was, or might become, due from the employer in relation to the scheme under Article 75 of the 1995 Order (deficiencies in the scheme assets), or
    - (ii) <sup>F7</sup> . . . to prevent such a debt becoming due, to compromise or otherwise settle such a debt, or to reduce the amount of such a debt which would otherwise become due,
  - (b) it is an act which occurred or a failure to act which first occurred—
    - (i) on or after 27th April 2004, and
    - (ii) before any assumption of responsibility for the scheme by the Board in accordance with Chapter 3 of Part III, and
  - (c) it is either—
    - (i) an act which occurred during the period of six years ending with the determination by the Regulator to exercise the power to issue the contribution notice in question, or
    - (ii) a failure which first occurred during, or continued for the whole or part of, that period.
- (6) For the purposes of paragraph (3)—
- (a) the parties to an act or a deliberate failure include those persons who knowingly assist in the act or failure, and
  - (b) “the relevant period” means the period which—
    - (i) begins with the time when the act falling within paragraph (5) occurs or the failure to act falling within that paragraph first occurs, and

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(ii) ends with the determination by the Regulator to exercise the power to issue the contribution notice in question.

(7) <sup>[F8]</sup>The matters within this paragraph are—

- (a) the degree of involvement of the person in the act or failure to act which falls within paragraph (5),
- (b) the relationship which the person has or has had with the employer (including, where the employer is a company within the meaning of paragraph (11) of Article 4 of the Insolvency Order, whether the person has or has had control of the employer within the meaning of paragraph (10) of that Article),
- (c) any connection or involvement which the person has or has had with the scheme,
- (d) if the act or failure to act was a notifiable event for the purposes of Article 64 (duty to notify the Regulator of certain events), any failure by the person to comply with any obligation imposed on the person by paragraph (1) of that Article to give the Regulator notice of the event,
- (e) all the purposes of the act or failure to act (including whether a purpose of the act or failure was to prevent or limit loss of employment),

<sup>[F9]</sup>(ea) the value of any benefits which directly or indirectly the person receives, or is entitled to receive, from the employer or under the scheme;

(eb) the likelihood of relevant creditors being paid and the extent to which they are likely to be paid;]

(f) the financial circumstances of the person, and

(g) such other matters as may be prescribed.

<sup>[F10]</sup>(7A) In paragraph (7)(eb) “relevant creditors” means—

(a) creditors of the employer, and

(b) creditors of any other person who has incurred a liability or other obligation (including one that is contingent or otherwise might fall due) to make a payment, or transfer an asset, to the scheme.]

(8) For the purposes of this Article references to a debt due under Article 75 of the 1995 Order include a contingent debt under that Article.

(9) Accordingly, in the case of such a contingent debt, the reference in paragraph (5)(a)(ii) to preventing a debt becoming due is to be read as including a reference to preventing the occurrence of any of the events specified in Article 75(4C)(a) or (b) of that Order upon which the debt is contingent.

(10) For the purposes of this Article—

(a) Article 7 of the Insolvency Order (connected persons) applies as it applies for the purposes of any provision of Parts II to VII of that Order, and

(b) Article 4 of that Order (associated persons) applies as it applies for the purposes of that Order.

(11) For the purposes of this Article “insolvency practitioner”, in relation to a person, means—

(a) a person acting as an insolvency practitioner, in relation to that person, in accordance with Article 3 of the Insolvency Order, or

(b) an insolvency practitioner within the meaning of Article 105(9)(b) (persons of a prescribed description).

<sup>[F11]</sup>(12) Paragraph (13) applies if the Regulator is of the opinion that—

(a) a person was a party to a series of acts or failures to act,



- (b) each of the acts or failures in the series falls within paragraph (5)(b) and (c), and
- (c) the material detriment test is met in relation to the series, or the main purpose or one of the main purposes of the series was as mentioned in paragraph (5)(a)(i) or (ii).

(13) The series of acts or failures to act is to be regarded as an act or failure to act falling within paragraph (5) (and, accordingly, the reference in paragraph (6)(b)(i) to the act or failure to act falling with paragraph (5) is to the first of the acts or failures to act in the series.)]

- F4** mod. by SR 2005/378
- F5** Art. 34(3)(d) substituted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(iii)(vi)(b), **Sch. 8 para. 7(2)** (with Sch. 8 para. 15(1))
- F6** Words in art. 34(5)(a) inserted (15.12.2008 for certain purposes, otherwise 29.6.2009) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(ii)(vi)(b), **Sch. 8 para. 2(1)** (with Sch. 8 para. 15(1)); S.R. 2009/249, **art. 2(a)(b)(ii)**
- F7** Words in art. 34(5)(a)(ii) repealed (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 116, 118(1)(2)(h)(3)(a)(iii)(vi)(b)(c), Sch. 8 para. 6, **Sch. 10 Pt. 5** (with Sch. 8 para. 15(1))
- F8** Words in art. 34(7) substituted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(iii)(vi)(b), **Sch. 8 para. 7(3)(a)** (with Sch. 8 para. 15(1))
- F9** Art. 34(7)(ea)(eb) inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(iii)(vi)(b), **Sch. 8 para. 7(3)(b)** (with Sch. 8 para. 15(1))
- F10** Art. 34(7A) inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(iii)(vi)(b), **Sch. 8 para. 7(4)** (with Sch. 8 para. 15(1))
- F11** Art. 34(12)(13) added (15.12.2008 for certain purposes, otherwise 29.6.2009) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(iv)(vi)(b), **Sch. 8 para. 8(1)** (with Sch. 8 para. 15(2)); S.R. 2009/249, **art. 2(a)(b)(ii)**

#### [<sup>F12</sup>Article 34 contribution notice: meaning of “material detriment test”

**34A.—(1)** For the purposes of Article 34 the material detriment test is met in relation to an act or failure if the Regulator is of the opinion that the act or failure has detrimentally affected in a material way the likelihood of accrued scheme benefits being received (whether the benefits are to be received as benefits under the scheme or otherwise).

(2) In this Article any reference to accrued scheme benefits being received is a reference to benefits the rights to which have accrued by the relevant time being received by, or in respect of, the persons who were members of the scheme before that time.

(3) In this Article “the relevant time” means—

- (a) in the case of an act, the time of the act, or
- (b) in the case of a failure—
  - (i) the time when the failure occurred, or
  - (ii) where the failure continued for a period of time, the time which the Regulator determines and which falls within that period;

and, in the case of acts or failures to act forming part of a series, any reference in this paragraph to an act or failure is a reference to the last of the acts or failures in that series.

(4) In deciding for the purposes of Article 34 whether the material detriment test is met in relation to an act or failure, the Regulator must have regard to such matters as it considers relevant, including (where relevant)—

- (a) the value of the assets or liabilities of the scheme or of any relevant transferee scheme,
- (b) the effect of the act or failure on the value of those assets or liabilities,

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- (c) the scheme obligations of any person,
  - (d) the effect of the act or failure on any of those obligations (including whether the act or failure causes the country or territory in which any of those obligations would fall to be enforced to be different),
  - (e) the extent to which any person is likely to be able to discharge any scheme obligation in any circumstances (including in the event of insolvency or bankruptcy),
  - (f) the extent to which the act or failure has affected, or might affect, the extent to which any person is likely to be able to do as mentioned in sub-paragraph (e), and
  - (g) such other matters as may be prescribed.
- (5) In paragraph (4) “scheme obligation” means a liability or other obligation (including one that is contingent or otherwise might fall due) to make a payment, or transfer an asset, to—
- (a) the scheme, or
  - (b) any relevant transferee scheme in respect of any persons who were members of the scheme before the relevant time.
- (6) In this Article—
- (a) “relevant transferee scheme” means any work-based pension scheme to which any accrued rights to benefits under the scheme are transferred;
  - (b) any reference to the assets or liabilities of any relevant transferee scheme is a reference to those assets or liabilities so far as relating to persons who were members of the scheme before the relevant time.
- (7) For the purposes of paragraph (6)(a) the reference to the transfer of accrued rights of members of a pension scheme to another pension scheme includes a reference to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.
- (8) In this Article—
- (a) “work-based pension scheme” has the meaning given by Article 4(3);
  - (b) any reference to rights which have accrued is to be read in accordance with Article 67A(6) and (7) of the 1995 Order (reading any reference in those paragraphs to a subsisting right as a reference to a right which has accrued).
- (9) In deciding for the purposes of this Article whether an act or failure has detrimentally affected in a material way the likelihood of accrued scheme benefits being received, the following statutory provisions are to be disregarded—
- (a) Chapter 3 of Part 3 (the Board of the Pension Protection Fund: pension protection), and
  - (b) section 286 of the Pensions Act 2004 (the financial assistance scheme for members of certain pension schemes).
- (10) Regulations may amend any provision of paragraphs (4) to (8).

**F12** Arts. 34A, 34B inserted (15.12.2008 for certain purposes, otherwise 29.6.2009) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), ss. 103, 118(1)(2)(h)(3)(a)(ii)(vi)(b), [Sch. 8 para. 2\(2\)](#) (with [Sch. 8 para. 15\(1\)](#)); S.R. 2009/249, [art. 2\(a\)\(b\)\(ii\)](#)

### **Article 34 contribution notice issued by reference to material detriment test: defence**

**34B.**—(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 material detriment 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) Condition A is that, before becoming a party to the act or failure, P gave due consideration to the extent to which the act or failure might detrimentally affect in a material way the likelihood of accrued scheme benefits being received.
- (4) 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 detrimental effects that the act or failure might have on the likelihood of accrued scheme benefits being received.
- (5) Condition C is that, having regard to all relevant circumstances prevailing at the relevant time, it was reasonable for P to conclude that the act or failure would not detrimentally affect in a material way the likelihood of accrued scheme benefits being received.
- (6) 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.
- (7) For the purposes of condition C—
- (a) “the relevant time” means the time at which the act occurred or the failure to act first occurred;
  - (b) 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 that time (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).
- (8) 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.
- (9) 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).
- (10) 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 (8), and

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- (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 (9).

Nothing in sub-paragraph (b) is to be read as preventing P from showing the matters mentioned in paragraph (8)(a).

(11) 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 (8)(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 34A as acts or failures to act in the series.

(12) In this Article—

- (a) “a warning notice” means a notice given as mentioned in Article 91(2)(a);  
(b) any reference to an act or failure to which a person is a party has the same meaning as in Article 34(6)(a);  
(c) any reference to the accrued scheme benefits being received has the same meaning as in Article 34A;

and paragraph (9) of Article 34A applies for the purposes of conditions A to C as it applies for the purposes of that Article.

(13) Regulations may amend this Article.]

**F12** Arts. 34A, 34B inserted (15.12.2008 for certain purposes, otherwise 29.6.2009) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), ss. 103, 118(1)(2)(h)(3)(a)(ii)(vi)(b), [Sch. 8 para. 2\(2\)](#) (with [Sch. 8 para. 15\(1\)](#)); S.R. 2009/249, [art. 2\(a\)\(b\)\(ii\)](#)

### The sum specified in an Article 34 contribution notice

**35**<sup>F13</sup>.—(1) The sum specified by the Regulator in a contribution notice under Article 34 may be either the whole or a specified part of the shortfall sum in relation to the scheme.

(2) Subject to paragraph (3), the shortfall sum in relation to a scheme is—

- (a) in a case where, at the relevant time, a debt was due from the employer to the trustees or managers of the scheme under Article 75 of the 1995 Order (deficiencies in the scheme assets), the amount which the Regulator estimates to be the amount of that debt at that time, and  
(b) in a case where, at the relevant time, no such debt was due, the amount which the Regulator estimates to be the amount of the debt under Article 75 of the 1995 Order which would become due if—  
(i) paragraph (2) of that Article applied, and  
(ii) the time designated by the trustees or managers of the scheme for the purposes of that paragraph were the relevant time.

(3) Where the Regulator is satisfied that the act or failure to act falling within Article 34(5) resulted—

- (a) in a case falling within sub-paragraph (a) of paragraph (2), in the amount of the debt which became due under Article 75 of the 1995 Order being less than it would otherwise have been, or

- (b) in a case falling within sub-paragraph (b) of paragraph (2), in the amount of any such debt calculated for the purposes of that sub-paragraph being less than it would otherwise have been,

the Regulator may increase the amounts calculated under paragraph (2)(a) or (b) by such amount as the Regulator considers appropriate.

(4) For the purposes of this Article “the relevant time” means [<sup>F14</sup>(subject to paragraph (4A))]

- (a) in the case of an act falling within paragraph (5) of Article 34, the time of the act, or
- (b) in the case of a failure to act falling within that paragraph—
  - (i) the time when the failure occurred, or
  - (ii) where the failure continued for a period of time, the time which the Regulator determines and which falls within that period.

[<sup>F15</sup>(4A) In the case of a series of acts or failures to act, “the relevant time” is determined by reference to whichever of the acts or failures in the series is, in the Regulator's opinion, most appropriate.]

(5) 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.

**F13** mod. by SR 2005/378

**F14** Words in [art. 35\(4\)](#) inserted (15.12.2008 for certain purposes, otherwise 29.6.2009) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), ss. 103, 118(1)(2)(h)(3)(a)(iv)(vi)(b), [Sch. 8 para. 8\(2\)\(a\)](#) (with [Sch. 8 para. 15\(2\)](#)); S.R. 2009/249, [art. 2\(a\)\(b\)\(ii\)](#)

**F15** [Art. 35\(4A\)](#) inserted (15.12.2008 for certain purposes, otherwise 29.6.2009) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), ss. 103, 118(1)(2)(h)(3)(a)(iv)(vi)(b), [Sch. 8 para. 8\(2\)\(b\)](#) (with [Sch. 8 para. 15\(2\)](#)); S.R. 2009/249, [art. 2\(a\)\(b\)\(ii\)](#)

#### [<sup>F16</sup> **Article 34 contribution notice: transfer of members of the scheme**

**35A.**—(1) This Article applies where—

- (a) the Regulator is of the opinion that in relation to a scheme (“the initial scheme”) in relation to which Article 34 applies—
  - (i) an act or failure to act falling within paragraph (5) of that Article has occurred (or first occurred) at any time, and
  - (ii) the other conditions in that Article for issuing a contribution notice are met in relation to the initial scheme (or, but for any transfer falling within sub-paragraph (b), would be met), and
- (b) the accrued rights of at least two persons who were members of the initial scheme are transferred at that or any subsequent time to one or more work-based pension schemes (whether by virtue of the act or otherwise).

(2) The Regulator may issue a contribution notice under Article 34 in relation to any transferee scheme (and, accordingly, any reference in Article 36 or 37 to the scheme is to the transferee scheme).

(3) In the case of any contribution notice issued by virtue of paragraph (2) to any transferee scheme which is not within paragraph (5)(a) or (b), Article 35 has effect as if any reference in that Article to the scheme were a reference to whichever of—

- (a) the initial scheme, and

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(b) the transferee scheme,

the Regulator determines to be more appropriate in the circumstances.

(4) In any case where Article 35 has effect in relation to the transferee scheme by virtue of paragraph (3), any reference in that Article to a debt under Article 75 of the 1995 Order is a reference to so much of that debt as, in the Regulator's opinion, is attributable to those members of the transferee scheme who were members of the initial scheme.

(5) In the case of any contribution notice issued by virtue of paragraph (2) to any transferee scheme which is—

- (a) a scheme to which Article 75 of the 1995 Order does not apply, or
- (b) a scheme to which that Article does apply in a case where the liabilities of the scheme that would be taken into account for the purposes of that Article do not relate to the members of the initial scheme,

the sum specified by the Regulator in the notice is determined in accordance with regulations (and not in accordance with Article 35).

(6) The Regulator may also issue a direction to the trustees or managers of any transferee scheme requiring them to take specified steps to secure that the sum payable under the notice is applied for the benefit of the members of the transferee scheme who were members of the initial scheme.

(7) If the trustees or managers fail to comply with a direction issued to them under paragraph (6), 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.

**F16** Arts. 35A, 35B inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(v)(vi)(b), Sch. 8 para. 9 (with Sch. 8 para. 15(3) and transitional provision in Sch. 8 para. 16(1) for art. 35B(8)(10)(a))

### **Article 35A: supplemental**

**35B.**—(1) In Article 35A a “transferee scheme”, in relation to any time, means any work-based pension scheme—

- (a) to which the accrued rights of at least two persons who were members of the initial scheme have been transferred, and
- (b) of which any of those persons are members at that time.

(2) For the purposes of Article 35A(1) and paragraph (1) it does not matter whether any rights are transferred to a work-based pension scheme directly from the initial scheme or following one or more other transfers to other work-based pension schemes.

(3) For the purposes of Article 35A and this Article references to the transfer of accrued rights of members of a pension scheme to another pension scheme include references to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.

(4) In Article 35A and this Article—

- (a) “work-based pension scheme” has the meaning given by Article 4(3);
- (b) any reference to rights which have accrued is to be read in accordance with Article 67A(6) and (7) of the 1995 Order (reading any reference in those paragraphs to a subsisting right as a reference to a right which has accrued).

(5) Article 35A applies even if the initial scheme—

- (a) is wound up as a result of any transfer falling within paragraph (1)(b) of that Article, or

- (b) otherwise ceases to exist at the time of the transfer or at any subsequent time.
- (6) Accordingly, in any such case, in paragraph (1) of that Article—
  - (a) the reference to a scheme to which Article 34 applies is a reference to a scheme which was such a scheme before the transfer;
  - (b) the reference to any conditions in Article 34 being met is a reference to any conditions in that Article that, but for the transfer, would have been met in relation to the scheme.
- (7) Nothing in Article 35A or this Article is to be read as preventing the Regulator from issuing a contribution notice in relation to the initial scheme.
- (8) Regulations may make provision applying, with or without modifications, any provision made by or under Article 35A or this Article in relation to any scheme or other arrangement in any case where the accrued rights of persons who were members of the initial scheme are transferred or extinguished directly or indirectly in consequence of or otherwise in connection with—
  - (a) the making of any payment at any time to or for the benefit of the scheme or other arrangement,
  - (b) the transfer of any asset at any time to or for the benefit of the scheme or other arrangement,
  - (c) the discharge (wholly or partly) at any time of any liability incurred by or on behalf of the scheme or other arrangement, or
  - (d) the incurring at any time of any obligation to do any act falling within sub-paragraphs (a) to (c).
- (9) Any reference in paragraph (8)(a) to (d) to the doing of an act of any description at any time in relation to the scheme or other arrangement includes a reference to the doing of an act of that description at any previous time in relation to any other scheme or other arrangement.
- (10) Regulations under paragraph (8) may—
  - (a) make provision having effect in relation to any case where rights are transferred or extinguished on or after the date on which the Department publishes a statement of the intention to make the regulations; and
  - (b) without prejudice to Article 287(3), make consequential provision applying with modifications any provision of this Order which relates to contribution notices under Article 34.]

**F16** Arts. 35A, 35B inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(v)(vi)(b), Sch. 8 para. 9 (with Sch. 8 para. 15(3) and transitional provision in Sch. 8 para. 16(1) for art. 35B(8)(10)(a))

### **Content and effect of an Article 34 contribution notice**

- 36**<sup>F17</sup>.—(1) This Article applies where a contribution notice is issued to a person under Article 34.
- (2) The contribution notice must—
- (a) contain a statement of the matters which it is asserted constitute the act or failure to act which falls within paragraph (5) of Article 34,
  - (b) specify the sum which the person is stated to be under a liability to pay, and
  - (c) identify any other persons to whom contribution notices have been or are issued as a result of the act or failure to act in question and the sums specified in each of those notices.
- (3) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the trustees or managers of the scheme, the sum is to be treated as a debt due from the person to the trustees or managers of the scheme.

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(4) In such a case, the Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover the debt.

(5) But during any assessment period (within the meaning of Article 116) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a contribution notice are exercisable by the Board to the exclusion of the trustees or managers and the Regulator.

(6) Where, by virtue of paragraph (5), any amount is paid to the Board in respect of a debt due by virtue of a contribution notice, the Board must pay the amount to the trustees or managers of the scheme.

(7) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the Board, the sum is to be treated as a debt due from the person to the Board.

(8) Where the contribution notice so specifies, the person to whom the notice is issued (“P”) is to be treated as jointly and severally liable for the debt with any persons specified in the notice who are persons to whom corresponding contribution notices are issued.

(9) For the purposes of paragraph (8), a corresponding contribution notice is a notice which—

- (a) is issued 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 is issued,
- (b) specifies the same sum as is specified in P's contribution notice, and
- (c) specifies that the person to whom the contribution notice is issued is jointly and severally liable with P, or with P and other persons, for the debt in respect of that sum.

(10) A debt due by virtue of a contribution notice is not to be taken into account for the purposes of Article 75(2) and (4) of the 1995 Order (deficiencies in the scheme assets) when ascertaining the amount or value of the assets or liabilities of a scheme.

F17 mod. by SR 2005/378

#### **Article 34 contribution notice: relationship with employer debt**

**37**<sup>F18</sup>.—(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.

(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.

(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.

(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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### Article 34 contribution notice: clearance statements

**38**<sup>F19</sup>.—(1) An application may be made to the Regulator under this Article for the issue of a clearance statement within sub-paragraph (a), (b) or (c) of paragraph (2) in relation to circumstances described in the application.

(2) A clearance statement is a statement, made by the Regulator, that in its opinion in the circumstances described in the application—

- (a) the applicant would not be, for the purposes of paragraph (3)(a) of Article 34, a party to an act or a deliberate failure to act falling within paragraph (5)(a) of that Article,
- (b) it would not be reasonable to impose any liability on the applicant under a contribution notice issued under Article 34, or
- (c) such requirements of that Article as may be prescribed would not be satisfied in relation to the applicant.

(3) Where an application is made under this Article, the Regulator—

- (a) may request further information from the applicant;
- (b) may invite the applicant to amend the application to modify the circumstances described.

(4) Where an application is made under this Article, the Regulator must as soon as reasonably practicable—

- (a) determine whether to issue the clearance statement, and
- (b) where it determines to do so, issue the statement.

(5) A clearance statement issued under this Article binds the Regulator in relation to the exercise of the power to issue a contribution notice under Article 34 to the applicant unless—

- (a) the circumstances in relation to which the exercise of the power under that Article arises are not the same as the circumstances described in the application, and
- (b) the difference in those circumstances is material to the exercise of the power.

<b>F19</b> mod. by SR 2005/378
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### *Financial support directions*

#### **Financial support directions**

**39**<sup>F20</sup>.—(1) This Article applies in relation to an occupational pension scheme other than—

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(2) The Regulator may issue a financial support direction under this Article in relation to such a scheme if the Regulator is of the opinion that the employer in relation to the scheme—

- (a) is a service company, or
- (b) is insufficiently resourced,

at a time determined by the Regulator which falls within paragraph (9) ( “the relevant time” ).

(3) A financial support direction in relation to a scheme is a direction which requires the person or persons to whom it is issued to secure—

- (a) that financial support for the scheme is put in place within the period specified in the direction,

- (b) that thereafter that financial support or other financial support remains in place while the scheme is in existence, and
  - (c) that the Regulator is notified in writing of prescribed events in respect of the financial support as soon as reasonably practicable after the event occurs.
- (4) A financial support direction in relation to a scheme may be issued to one or more persons.
- (5) But the Regulator may issue such a direction to a person only if—
- (a) the person is at the relevant time a person falling within paragraph (6), and
  - (b) the Regulator is of the opinion that it is reasonable to impose the requirements of the direction on that person.
- (6) A person falls within this paragraph if the person is—
- (a) the employer in relation to the scheme,
  - (b) an individual who—
    - (i) is an associate of an individual who is the employer, but
    - (ii) is not an associate of that individual by reason only of being employed by him, or
  - (c) a person, other than an individual, who is connected with or an associate of the employer.
- (7) The Regulator, when deciding for the purposes of paragraph (5)(b) whether it is reasonable to impose the requirements of a financial support direction on a particular person, must have regard to such matters as the Regulator considers relevant including, where relevant, the following matters—
- (a) the relationship which the person has or has had with the employer (including, where the employer is a company within the meaning of paragraph (11) of Article 4 of the Insolvency Order, whether the person has or has had control of the employer within the meaning of paragraph (10) of that Article),
  - (b) in the case of a person falling within paragraph (6)(b) or (c), the value of any benefits received directly or indirectly by that person from the employer,
  - (c) any connection or involvement which the person has or has had with the scheme,
  - (d) the financial circumstances of the person, and
  - (e) such other matters as may be prescribed.
- (8) A financial support direction must identify all the persons to whom the direction is issued.
- (9) A time falls within this paragraph if it is a time which falls within a prescribed period which ends with the determination by the Regulator to exercise the power to issue the financial support direction in question.
- (10) For the purposes of paragraph (3), a scheme is in existence until it is wound up.
- (11) Subject to Article 283 (protected items), no duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a notice given by virtue of paragraph (3)(c).

**F20** mod. by SR 2005/378

## **[<sup>F21</sup>Financial support directions: transfer of members of the scheme**

**39A.**—(1) This Article applies where—

- (a) the Regulator is of the opinion by reference to any time that the conditions in Article 39 for issuing a financial support direction are met in relation to a scheme (“the initial scheme”) in relation to which that Article applies (or, but for any transfer falling within sub-paragraph (b), would be met), and

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(b) the accrued rights of at least two persons who were members of the initial scheme are transferred at any subsequent time to one or more work-based pension schemes.

(2) The Regulator may issue a financial support direction under that Article in relation to any transferee scheme (and, accordingly, any reference in Article 41 or any of Articles 43 to 46 to the scheme is to the transferee scheme).

(3) The Regulator may also issue a direction to the trustees or managers of any transferee scheme requiring them to take specified steps to secure that the financial support is put in place for the benefit of the members of the transferee scheme who were members of the initial scheme.

(4) If the trustees or managers fail to comply with a direction issued to them under paragraph (3), 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.

**F21** Arts. 39A, 39B inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(v)(vi)(b), Sch. 8 para. 10 (with Sch. 8 para. 15(3) and transitional provision in Sch. 8 para. 16(2) for art. 39B(8)(10)(a))

### Article 39A: supplemental

**39B.**—(1) In Article 39A a “transferee scheme”, in relation to any time, means any work-based pension scheme—

- (a) to which the accrued rights of at least two persons who were members of the initial scheme have been transferred, and
- (b) of which any of those persons are members at that time.

(2) For the purposes of Article 39A(1) and paragraph (1) it does not matter whether any rights are transferred to a work-based pension scheme directly from the initial scheme or following one or more other transfers to other work-based pension schemes.

(3) For the purposes of Article 39A and this Article references to the transfer of accrued rights of members of a pension scheme to another pension scheme include references to the extinguishing of those accrued rights in consequence of the obligation to make a payment, or transfer an asset, to that other scheme.

(4) In Article 39A and this Article—

- (a) “work-based pension scheme” has the meaning given by Article 4(3);
- (b) any reference to rights which have accrued is to be read in accordance with Article 67A(6) and (7) of the 1995 Order (reading any reference in those paragraphs to a subsisting right as a reference to a right which has accrued).

(5) Article 39A applies even if the initial scheme—

- (a) is wound up as a result of any transfer falling within paragraph (1)(b) of that Article, or
- (b) otherwise ceases to exist at the time of the transfer or at any subsequent time.

(6) Accordingly, in any such case, in paragraph (1) of that Article—

- (a) the reference to a scheme to which Article 39 applies is a reference to a scheme which was such a scheme before the transfer;
- (b) the reference to any conditions in Article 39 being met is a reference to any conditions in that Article that, but for the transfer, would have been met in relation to the scheme.

(7) Nothing in Article 39A or this Article is to be read as preventing the Regulator from issuing a financial support direction in relation to the initial scheme.

(8) Regulations may make provision applying, with or without modifications, any provision made by Article 39A or this Article in relation to any scheme or other arrangement in any case where the accrued rights of persons who were members of the initial scheme are transferred or extinguished directly or indirectly in consequence of or otherwise in connection with—

- (a) the making of any payment at any time to or for the benefit of the scheme or other arrangement,
- (b) the transfer of any asset at any time to or for the benefit of the scheme or other arrangement,
- (c) the discharge (wholly or partly) at any time of any liability incurred by or on behalf of the scheme or other arrangement, or
- (d) the incurring at any time of any obligation to do any act falling within sub-paragraphs (a) to (c).

(9) Any reference in paragraph (8)(a) to (d) to the doing of an act of any description at any time in relation to the scheme or other arrangement includes a reference to the doing of an act of that description at any previous time in relation to any other scheme or other arrangement.

(10) Regulations under paragraph (8) may—

- (a) make provision having effect in relation to any case where rights are transferred or extinguished on or after the date on which the Department publishes a statement of the intention to make the regulations; and
- (b) without prejudice to Article 287(3), make consequential provision applying with modifications any provision of this Order which relates to financial support directions under Article 39.]

**F21** Arts. 39A, 39B inserted (15.12.2008) by *Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13)*, ss. 103, 118(1)(2)(h)(3)(a)(v)(vi)(b), **Sch. 8 para. 10** (with Sch. 8 para. 15(3) and transitional provision in Sch. 8 para. 16(2) for art. 39B(8)(10)(a))

### Meaning of “service company” and “insufficiently resourced”

**40**<sup>F22</sup>.—(1) This Article applies for the purposes of Article 39 (financial support directions).

(2) An employer (“E”) is a service company at the relevant time if—

- (a) E is a company [<sup>F23</sup>as defined in section 1(1) of the Companies Act 2006],
- (b) E is a member of a group of companies, and
- (c) E's turnover, as shown in the latest available [<sup>F24</sup>individual accounts] for E prepared in accordance with [<sup>F25</sup>Part 15 of that Act], is solely or principally derived from amounts charged for the provision of the services of employees of E to other members of that group.

(3) The employer in relation to a scheme is insufficiently resourced at the relevant time if—

- (a) at that time the value of the resources of the employer is less than the amount which is a prescribed percentage of the estimated Article 75 debt in relation to the scheme, and

[<sup>F26</sup>(b) condition A or B is met.]

[<sup>F27</sup>(3A) Condition A is met if—

- (a) there is at that time a person who falls within Article 39(6)(b) or (c), and
- (b) the value at that time of that person's resources is not less than the relevant deficit, that is to say the amount which is the difference between—
  - (i) the value of the resources of the employer, and
  - (ii) the amount which is the prescribed percentage of the estimated Article 75 debt.

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(3B) Condition B is met if—

- (a) there are at that time two or more persons who—
  - (i) fall within Article 39(6)(b) or (c), and
  - (ii) are connected with, or associates of, each other, and
- (b) the aggregate value at that time of the resources of the persons who fall within subparagraph (a) (or any of them) is not less than the relevant deficit.]

(4) For the purposes of [<sup>F28</sup>paragraphs (3) to (3B)]—

- (a) what constitutes the resources of a person is to be determined in accordance with regulations, and
- (b) the value of a person's resources is to be determined, calculated and verified in a prescribed manner.

(5) In this Article the “estimated Article 75 debt”, in relation to a scheme, means the amount which the Regulator estimates to be the amount of the debt which would become due from the employer to the trustees or managers of the scheme under Article 75 of the 1995 Order (deficiencies in the scheme assets) if—

- (a) paragraph (2) of that Article applied, and
- (b) the time designated by the trustees or managers of the scheme for the purposes of that paragraph were the relevant time.

(6) When calculating the estimated Article 75 debt in relation to a scheme under paragraph (5), the amount of any debt due at the relevant time from the employer under Article 75 of the 1995 Order is to be disregarded.

(7) In this Article “the relevant time” has the same meaning as in Article 39.

**F22** mod. by SR 2005/378

**F23** Words in art. 40(2)(a) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 252(3)(a)** (with art. 10)

**F24** Words in art. 40(2)(c) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 252(3)(b)(i)** (with art. 10)

**F25** Words in art. 40(2)(c) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 252(3)(b)(ii)** (with art. 10)

**F26** Art. 40(3)(b) substituted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(v)(vi)(b), **Sch. 8 para. 14(1)** (with Sch. 8 para. 15(4))

**F27** Art. 40(3A)(3B) inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(v)(vi)(b), **Sch. 8 para. 14(2)** (with Sch. 8 para. 15(4))

**F28** Words in art. 40(4) substituted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(v)(vi)(b), **Sch. 8 para. 14(3)** (with Sch. 8 para. 15(4))

### Meaning of “financial support”

**41** <sup>F29</sup>.—(1) For the purposes of Article 39 (financial support directions), “financial support” for a scheme means one or more of the arrangements falling within paragraph (2) the details of which are approved in a notice issued by the Regulator.

(2) The arrangements falling within this paragraph are—

- (a) an arrangement whereby, at any time when the employer is a member of a group of companies, all the members of the group are jointly and severally liable for the whole or part of the employer's pension liabilities in relation to the scheme;
  - (b) an arrangement whereby, at any time when the employer is a member of a group of companies, a company (<sup>F30</sup>within the meaning of section 1159 of the Companies Act 2006) which meets prescribed requirements and is the holding company of the group is liable for the whole or part of the employer's pension liabilities in relation to the scheme;
  - (c) an arrangement which meets prescribed requirements and whereby additional financial resources are provided to the scheme;
  - (d) such other arrangements as may be prescribed.
- (3) The Regulator may not issue a notice under paragraph (1) approving the details of one or more arrangements falling within paragraph (2) unless it is satisfied that the arrangement is, or the arrangements are, reasonable in the circumstances.
- (4) In paragraph (2), “the employer's pension liabilities” in relation to a scheme means—
- (a) the liabilities for any amounts payable by or on behalf of the employer towards the scheme (whether on his own account or otherwise) in accordance with a schedule of contributions under Article 206, and
  - (b) the liabilities for any debt which is or may become due to the trustees or managers of the scheme from the employer whether by virtue of Article 75 of the 1995 Order (deficiencies in the scheme assets) or otherwise.

**F29** mod. by SR 2005/378

**F30** Words in art. 41(2)(b) substituted (1.10.2009) by [Companies Act 2006 \(Consequential Amendments, Transitional Provisions and Savings\) Order 2009 \(S.I. 2009/1941\)](#), art. 2(1), [Sch. 1 para. 252\(4\)](#) (with art. 10)

### **Financial support directions: clearance statements**

**42** <sup>F31</sup>.—(1) An application may be made to the Regulator under this Article for the issue of a clearance statement within sub-paragraph (a), (b) or (c) of paragraph (2) in relation to circumstances described in the application and relating to an occupational pension scheme.

(2) A clearance statement is a statement, made by the Regulator, that in its opinion in the circumstances described in the application—

- (a) the employer in relation to the scheme would not be a service company for the purposes of Article 39,
  - (b) the employer in relation to the scheme would not be insufficiently resourced for the purposes of that Article, or
  - (c) it would not be reasonable to impose the requirements of a financial support direction, in relation to the scheme, on the applicant.
- (3) Where an application is made under this Article, the Regulator—
- (a) may request further information from the applicant;
  - (b) may invite the applicant to amend the application to modify the circumstances described.
- (4) Where an application is made under this Article, the Regulator must as soon as reasonably practicable—
- (a) determine whether to issue the clearance statement, and
  - (b) where it determines to do so, issue the statement.

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(5) A clearance statement issued under this Article binds the Regulator in relation to the exercise of the power to issue a financial support direction under Article 39 in relation to the scheme to the applicant unless—

- (a) the circumstances in relation to which the exercise of the power under that Article arises are not the same as the circumstances described in the application, and
- (b) the difference in those circumstances is material to the exercise of the power.

**F31** mod. by SR 2005/378

### **Contribution notices where non-compliance with financial support direction**

**43**<sup>F32</sup>.—(1) This Article applies where there is non-compliance with a financial support direction issued in relation to a scheme under Article 39.

(2) The Regulator may issue a notice to any one or more of the persons to whom the direction was issued stating that the person is under a liability to pay to the trustees or managers of the scheme the sum specified in the notice (a “contribution notice”).

(3) The Regulator may issue a contribution notice to a person only if the Regulator is of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice.

(4) The Regulator, when deciding for the purposes of paragraph (3) whether it is reasonable to impose liability on a particular person to pay the sum specified in the notice, must have regard to such matters as the Regulator considers relevant including, where relevant, the following matters—

- (a) whether the person has taken reasonable steps to secure compliance with the financial support direction,
- (b) the relationship which the person has or has had with the employer (including, where the employer is a company within the meaning of paragraph (11) of Article 4 of the Insolvency Order, whether the person has or has had control of the employer within the meaning of paragraph (10) of that Article),
- (c) in the case of a person to whom the financial support direction was issued as a person falling within Article 39(6)(b) or (c), the value of any benefits received directly or indirectly by that person from the employer,
- (d) the relationship which the person has or has had with the parties to any arrangements put in place in accordance with the direction (including, where any of those parties is a company within the meaning of paragraph (11) of Article 4 of the Insolvency Order, whether the person has or has had control of that company within the meaning of paragraph (10) of that Article),
- (e) any connection or involvement which the person has or has had with the scheme,
- (f) the financial circumstances of the person, and
- (g) such other matters as may be prescribed.

(5) A contribution notice may not be issued under this Article in respect of non-compliance with a financial support direction in relation to a scheme where the Board has assumed responsibility for the scheme in accordance with Chapter 3 of Part III (pension protection).

**F32** mod. by SR 2005/378



### **The sum specified in an Article 43 contribution notice**

**44**<sup>F33</sup>.—(1) The sum specified by the Regulator in a contribution notice under Article 43 may be either the whole or a specified part of the shortfall sum in relation to the scheme.

(2) The shortfall sum in relation to a scheme is—

- (a) in a case where, at the time of non-compliance, a debt was due from the employer to the trustees or managers of the scheme under Article 75 of the 1995 Order (deficiencies in the scheme assets), the amount which the Regulator estimates to be the amount of that debt at that time, and
- (b) in a case where, at the time of non-compliance, no such debt was due, the amount which the Regulator estimates to be the amount of the debt under Article 75 of the 1995 Order which would become due if—
  - (i) paragraph (2) of that Article applied, and
  - (ii) the time designated by the trustees or managers of the scheme for the purposes of that paragraph were the time of non-compliance.

(3) For the purposes of this Article “the time of non-compliance” means—

- (a) in the case of non-compliance with sub-paragraph (a) of paragraph (3) of Article 39 (financial support directions), the time immediately after the expiry of the period specified in the financial support direction for putting in place the financial support,
- (b) in the case of non-compliance with sub-paragraph (b) of that paragraph, the time when financial support for the scheme ceased to be in place,
- (c) in the case of non-compliance with sub-paragraph (c) of that paragraph, the time when the prescribed event occurred in relation to which there was the failure to notify the Regulator, or
- (d) where more than one of sub-paragraphs (a) to (c) apply, whichever of the times specified in the applicable sub-paragraphs the Regulator determines.

**F33** mod. by SR 2005/378

### **Content and effect of an Article 43 contribution notice**

**45**<sup>F34</sup>.—(1) This Article applies where a contribution notice is issued to a person under Article 43.

(2) The contribution notice must—

- (a) contain a statement of the matters which it is asserted constitute the non-compliance with the financial support direction in respect of which the notice is issued, and
- (b) specify the sum which the person is stated to be under a liability to pay.

(3) The sum specified in the notice is to be treated as a debt due from the person to the trustees or managers of the scheme.

(4) The Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover the debt.

(5) But during any assessment period (within the meaning of Article 116) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a contribution notice, are exercisable by the Board to the exclusion of the trustees or managers and the Regulator.

(6) Where, by virtue of paragraph (5), any amount is paid to the Board in respect of a debt due by virtue of a contribution notice, the Board must pay the amount to the trustees or managers of the scheme.

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(7) The contribution notice must identify any other persons to whom contribution notices have been or are issued in respect of the non-compliance in question and the sums specified in each of those notices.

(8) Where the contribution notice so specifies, the person to whom the notice is issued (“P”) is to be treated as jointly and severally liable for the debt with any persons specified in the notice who are persons to whom corresponding contribution notices are issued.

(9) For the purposes of paragraph (8), a corresponding contribution notice is a notice which—

- (a) is issued in respect of the same non-compliance with the financial support direction as the non-compliance in respect of which P's contribution notice is issued,
- (b) specifies the same sum as is specified in P's contribution notice, and
- (c) specifies that the person to whom the contribution notice is issued is jointly and severally liable with P, or with P and other persons, for the debt in respect of that sum.

(10) A debt due by virtue of a contribution notice is not to be taken into account for the purposes of Article 75(2) and (4) of the 1995 Order (deficiencies in the scheme assets) when ascertaining the amount or value of the assets or liabilities of a scheme.

**F34** mod. by SR 2005/378

#### **Article 43 contribution notice: relationship with employer debt**

**46**<sup>F35</sup>.—(1) This Article applies where a contribution notice is issued to a person (“P”) under Article 43 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 from the employer to the trustees or managers of the scheme under Article 75 of the 1995 Order (deficiencies in the scheme assets).

(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 (where it has assumed responsibility for the scheme in accordance with Chapter 3 of Part III (pension protection)),

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.

(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 in respect of the same non-compliance with the financial support direction in question as the non-compliance in respect 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.

(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.

**F35** mod. by SR 2005/378

### Articles 39 to 46: interpretation

**47** <sup>F36</sup>.—<sup>F37</sup>(1) In Articles 39 to 46—

“group of companies” means a holding company and its subsidiaries (and references to a member of a group of companies are to be read accordingly); and  
“holding company” and “subsidiary” have the meaning given by section 1159 of the Companies Act 2006.]

(2) For the purposes of Articles 39 to 46—

- (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.

(3) For the purposes of Articles 39 to 46—

- (a) Article 7 of the Insolvency Order (connected persons) applies as it applies for the purposes of any provision of Parts II to VII of that Order, and

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- (b) Article 4 of that Order (associated persons) applies as it applies for the purposes of that Order.

**F36** mod. by SR 2005/378

**F37** Art. 47(1) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 252(5)** (with art. 10)

### *Transactions at an undervalue*

#### **Restoration orders where transactions at an undervalue**

- 48**<sup>F38</sup>.—(1) This Article applies in relation to an occupational pension scheme other than—
- (a) a money purchase scheme, or
  - (b) a prescribed scheme or a scheme of a prescribed description.
- (2) The Regulator may make a restoration order in respect of a transaction involving assets of the scheme if—
- (a) a relevant event has occurred in relation to the employer in relation to the scheme, and
  - (b) the transaction is a transaction at an undervalue entered into with a person at a time which—
    - (i) is on or after 27th April 2004, but
    - (ii) is not more than two years before the occurrence of the relevant event in relation to the employer.
- (3) A restoration order in respect of a transaction involving assets of a scheme is such an order as the Regulator thinks fit for restoring the position to what it would have been if the transaction had not been entered into.
- (4) For the purposes of this Article a relevant event occurs in relation to the employer in relation to a scheme if and when on or after the appointed day—
- (a) an insolvency event occurs in relation to the employer, or
  - (b) the trustees or managers of the scheme make an application under paragraph (1) of Article 113 or receive a notice from the Board under paragraph (5)(a) of that Article (applications and notifications prior to the Board assuming responsibility for a scheme).
- (5) For the purposes of paragraph (4)—
- (a) the “appointed day” means the day appointed under Article 110(2) (no pension protection under Chapter 3 of Part III if the scheme begins winding up before the day appointed by the Department),
  - (b) Article 105 (meaning of “insolvency event”) applies for the purposes of determining if and when an insolvency event has occurred in relation to the employer, and
  - (c) the reference to an insolvency event in relation to the employer does not include an insolvency event which occurred in relation to him before he became the employer in relation to the scheme.
- (6) For the purposes of this Article and Article 49, a transaction involving assets of a scheme is a transaction at an undervalue entered into with a person (“P”) if the trustees or managers of the scheme or appropriate persons in relation to the scheme—
- (a) make a gift to P or otherwise enter into a transaction with P on terms that provide for no consideration to be provided towards the scheme, or

- (b) enter into a transaction with P for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by or on behalf of the trustees or managers of the scheme.

(7) In paragraph (6) “appropriate persons” in relation to a scheme means a person who, or several persons each of whom is a person who, at the time at which the transaction in question is entered into, is—

- (a) a person of a prescribed description, and
- (b) entitled to exercise powers in relation to the scheme.

(8) For the purposes of this Article and Article 49—

“assets” includes future assets;

“transaction” includes a gift, agreement or arrangement and references to entering into a transaction are to be construed accordingly.

(9) The provisions of this Article apply without prejudice to the availability of any other remedy, even in relation to a transaction where the trustees or managers of the scheme or appropriate persons in question had no power to enter into the transaction.

**F38** mod. by SR 2005/378

### Restoration orders: supplementary

**49**<sup>F39</sup>.—(1) This Article applies in relation to a restoration order under Article 48 in respect of a transaction involving assets of a scheme ( “the transaction”).

(2) The restoration order may in particular—

- (a) require any assets of the scheme (whether money or other property) which were transferred as part of the transaction to be transferred back—
  - (i) to the trustees or managers of the scheme, or
  - (ii) where the Board has assumed responsibility for the scheme, to the Board;
- (b) require any property to be transferred to the trustees or managers of the scheme or, where the Board has assumed responsibility for the scheme, to the Board if it represents in any person's hands—
  - (i) any of the assets of the scheme which were transferred as part of the transaction, or
  - (ii) property derived from any such assets so transferred;
- (c) require such property as the Regulator may specify in the order, in respect of any consideration for the transaction received by the trustees or managers of the scheme, to be transferred—
  - (i) by the trustees or managers of the scheme, or
  - (ii) where the Board has assumed responsibility for the scheme, by the Board, to such persons as the Regulator may specify in the order;
- (d) require any person to pay, in respect of benefits received by him as a result of the transaction, such sums (not exceeding the value of the benefits received by him) as the Regulator may specify in the order—
  - (i) to the trustees or managers of the scheme, or
  - (ii) where the Board has assumed responsibility for the scheme, to the Board.

(3) A restoration order is of no effect to the extent that it prejudices any interest in property which was acquired in good faith and for value or any interest deriving from such an interest.

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(4) Nothing in paragraph (3) prevents a restoration order requiring a person to pay a sum of money if the person received a benefit as a result of the transaction otherwise than in good faith and for value.

(5) Where a person has acquired an interest in property from a person or has received a benefit as a result of the transaction and—

(a) he is one of the trustees or managers or appropriate persons who entered into the transaction as mentioned in paragraph (6) of Article 48, or

(b) at the time of the acquisition or receipt—

(i) he has notice of the fact that the transaction was a transaction at an undervalue,

(ii) he is a trustee or manager, or the employer, in relation to the scheme, or

(iii) he is connected with, or an associate of, any of the persons mentioned in subparagraph (a) or (b)(ii),

then, unless the contrary is shown, it is to be presumed for the purposes of paragraphs (3) and (4) that the interest was acquired or the benefit was received otherwise than in good faith.

(6) For the purposes of this Article—

(a) Article 7 of the Insolvency Order (connected persons) applies as it applies for the purposes of any provision of Parts II to VII of that Order, and

(b) Article 4 of that Order (associated persons) applies as it applies for the purposes of that Order.

(7) For the purposes of this Article “property” includes—

(a) money, goods, things in action, land and every description of property wherever situated, and

(b) obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property.

(8) References in this Article to where the Board has assumed responsibility for a scheme are to where the Board has assumed responsibility for the scheme in accordance with Chapter 3 of Part III (pension protection).

**F39** mod. by SR 2005/378

### **Content and effect of a restoration order**

**50**<sup>F40</sup>.—(1) This Article applies where a restoration order is made under Article 48 in respect of a transaction involving assets of a scheme.

(2) Where the restoration order imposes an obligation on a person to do something, the order must specify the period within which the obligation must be complied with.

(3) Where the restoration order imposes an obligation on a person (“A”) to transfer or pay a sum of money to a person specified in the order (“B”), the sum is to be treated as a debt due from A to B.

(4) Where the trustees or managers of the scheme are the persons to whom the debt is due, the Regulator may on their behalf, exercise such powers as the trustees or managers have to recover the debt.

(5) But during any assessment period (within the meaning of Article 116) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a restoration order are exercisable by the Board to the exclusion of the trustees or managers and the Regulator.

(6) Where, by virtue of paragraph (5), any amount is transferred or paid to the Board in respect of a debt due by virtue of a restoration order, the Board must pay the amount to the trustees or managers of the scheme.

**F40** mod. by SR 2005/378

### **Contribution notice where failure to comply with a restoration order**

**51**<sup>F41</sup>.—(1) This Article applies where—

- (a) a restoration order is made under Article 48 in respect of a transaction involving assets of a scheme (“the transaction”), and
- (b) a person fails to comply with an obligation imposed on him by the order which is not an obligation to transfer or pay a sum of money.

(2) The Regulator may issue a notice to the person stating that the person is under a liability to pay the sum specified in the notice (a “contribution notice”)—

- (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) The sum specified by the Regulator in a contribution notice may be either the whole or a specified part of the shortfall sum in relation to the scheme.

(4) The shortfall sum in relation to the scheme is the amount which the Regulator estimates to be the amount of the decrease in the value of the assets of the scheme as a result of the transaction having been entered into.

**F41** mod. by SR 2005/378

### **Content and effect of an Article 51 contribution notice**

**52**<sup>F42</sup>.—(1) This Article applies where a contribution notice is issued to a person under Article 51.

(2) The contribution notice must—

- (a) contain a statement of the matters which it is asserted constitute the failure to comply with the restoration order under Article 48 in respect of which the notice is issued, and
- (b) specify the sum which the person is stated to be under a liability to pay.

(3) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the trustees or managers of the scheme, the sum is to be treated as a debt due from the person to the trustees or managers of the scheme.

(4) In such a case, the Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover the debt.

(5) But during any assessment period (within the meaning of Article 116) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a contribution notice, are exercisable by the Board to the exclusion of the trustees or managers and the Regulator.

(6) Where, by virtue of paragraph (5), any amount is paid to the Board in respect of a debt due by virtue of a contribution notice, the Board must pay the amount to the trustees or managers of the scheme.

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(7) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the Board, the sum is to be treated as a debt due from the person to the Board.

**F42** mod. by SR 2005/378

*Articles 34 to 52: partnerships and limited liability partnerships*

**Articles 34 to 52: partnerships and limited liability partnerships**

**53.**—(1) For the purposes of any of Articles 34 to 52, regulations may modify any of the definitions mentioned in paragraph (2) (as applied by any of those Articles) in relation to—

- (a) a partnership or a partner in a partnership;
- (b) a limited liability partnership or a member of such a partnership.

(2) The definitions mentioned in paragraph (1) are—

- (a) Article 7 of the Insolvency Order (connected persons),
- (b) Article 4 of that Order (associated persons), and
- (c) [<sup>F43</sup>section 1159 of the Companies Act 2006] (meaning of “subsidiary” and “holding company” etc.).

(3) Regulations may also provide that any provision of Articles 34 to 52 applies with such modifications as may be prescribed in relation to—

- (a) any case where a partnership is or was—
  - (i) the employer in relation to an occupational pension scheme, or
  - (ii) for the purposes of any of those Articles, connected with or an associate of the employer;
- (b) any case where a limited liability partnership is—
  - (i) the employer in relation to an occupational pension scheme, or
  - (ii) for the purposes of any of those Articles, connected with or an associate of the employer.

(4) Regulations may also provide that any provision of Articles 48 to 52 applies with such modifications as may be prescribed in relation to a partnership or a limited liability partnership.

(5) For the purposes of this Article—

- (a) “partnership” includes a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom, and
- (b) references to a partner are to be construed accordingly.

(6) For the purposes of this Article, “limited liability partnership” means—

- [<sup>F44</sup>(a) a limited liability partnership registered under the Limited Liability Partnerships Act 2000, or]
- (b) an entity which is of a similar character to such a limited liability partnership and which is formed under the law of a country or territory outside the United Kingdom,

and references to a member of a limited liability partnership are to be construed accordingly.

(7) This Article is without prejudice to—

- (a) Article 2(5) (power to extend the meaning of “employer”), and
- (b) Article 280 (power to modify this Order in relation to certain categories of schemes).



- F43** Words in art. 53(2)(c) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 252(6)(a)** (with art. 10)
- F44** Art. 53(6)(a) substituted (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(1), **Sch. 1 para. 252(6)(b)** (with art. 10)

### *Applications under the Insolvency Order*

#### **Regulator's right to apply under Article 367 of the Insolvency Order**

**54.**—(1) In this Article “Article 367” means Article 367 of the Insolvency Order (transactions defrauding creditors).

(2) The Regulator may apply for an order under Article 367 in relation to a debtor if—

- (a) the debtor is the employer in relation to an occupational pension scheme, and
- (b) condition A or condition B is met in relation to the scheme.

(3) Condition A is that an actuarial valuation under Article 127 obtained by the Board in respect of the scheme indicates that the value of the assets of the scheme at the relevant time, as defined by that Article, was less than the amount of the protected liabilities, as defined by Article 115, at that time.

(4) Condition B is that an actuarial valuation, as defined by Article 203(2), obtained by the trustees or managers of the scheme indicates that the statutory funding objective in Article 201 is not met.

(5) In a case where the debtor—

- (a) has been adjudged bankrupt,
- (b) is a body corporate which is being wound up or is in administration, or
- (c) is a partnership which is being wound up or is in administration,

paragraph (2) does not enable an application to be made under Article 367 except with the permission of the court.

(6) An application made under this Article is to be treated as made on behalf of every victim of the transaction who is—

- (a) a trustee or member of the scheme, or
- (b) the Board.

(7) This Article does not apply where the valuation mentioned in paragraph (3) or (4) is made by reference to a date that falls before the coming into operation of this Article.

(8) Expressions which are defined by Article 367 for the purposes of that Article have the same meaning when used in this Article.

### *Register of schemes*

#### **Registrable information**

**55.**—(1) For the purposes of this Article and Articles 56 to 60 “registrable information”, in relation to an occupational or personal pension scheme, means information within paragraph (2).

(2) That information is—

- (a) the name of the scheme;
- (b) the address of the scheme;

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- (c) the full names and addresses of each of the trustees or managers of the scheme;
  - (d) the status of the scheme with respect to the following matters—
    - (i) whether new members may be admitted to the scheme;
    - (ii) whether further benefits may accrue to, or in respect of, members under the scheme;
    - (iii) whether further contributions may be paid towards the scheme;
    - (iv) whether any members of the scheme are active members;
  - (e) the categories of benefits under the scheme;
  - (f) in the case of an occupational pension scheme—
    - (i) the name and address of each relevant employer, and
    - (ii) any other name by which any relevant employer has been known at any time on or after the relevant date;
  - (g) in the case of an occupational pension scheme, the number of members of the scheme on the later of—
    - (i) the last day of the scheme year which ended most recently, and
    - (ii) the day on which the scheme became a registrable scheme; and
  - (h) such other information as may be prescribed.
- (3) Regulations may make provision about the interpretation of any of the descriptions in paragraph (2).
- (4) For the purposes of paragraph (2)(f)—
- “relevant employer” means any person—
- (a) who is, or
  - (b) who, at any time on or after 6th April 1975, has been, the employer in relation to the scheme;
- “relevant date”, in relation to a relevant employer, means—
- (a) 6th April 1975, or
  - (b) if later, the date on which the relevant employer first became the employer in relation to the scheme.
- (5) In this Article and Articles 57 to 60 “registrable scheme” means an occupational pension scheme, or a personal pension scheme, of a prescribed description.

### **The register: inspection, provision of information and reports etc.**

**56.**—(1) Regulations may provide—

- (a) for—
  - (i) information recorded in the register,
  - (ii) extracts from the register, or
  - (iii) copies of the register or of extracts from it,
 to be provided to prescribed persons in prescribed circumstances, and
- (b) for the inspection of—
  - (i) the register,
  - (ii) extracts from the register, or
  - (iii) copies of the register or of extracts from it,

by prescribed persons in prescribed circumstances.

(2) Regulations under paragraph (1) may, in particular—

(a) confer functions on—

(i) the Department, or

(ii) a person authorised by the Department for the purposes of the regulations;

(b) make provision with respect to the disclosure of information obtained by virtue of the regulations.

(3) Regulations which contain any provision made by virtue of paragraph (2)(b) may, in particular, modify Article 77 (restricted information).

(4) The Department may direct the Regulator to submit to it statistical and other reports concerning—

(a) information recorded in the register, and

(b) the operation of the Regulator's functions in relation to the register.

(5) A direction under paragraph (4) may specify—

(a) the form in which, and

(b) the times at which,

reports required by the direction are to be submitted.

(6) The Department may publish any report submitted to it by virtue of a direction under paragraph (4) in such manner as it considers appropriate.

(7) In this Article “the register” means the register of occupational and personal pension schemes compiled and maintained under section 59 of the Pensions Act 2004 (c. 35).

### **The register: duties of trustees or managers**

57.—(1) Paragraph (2) applies where—

(a) a registrable scheme is established, or

(b) an occupational or personal pension scheme otherwise becomes a registrable scheme.

(2) The trustees or managers of the scheme must, before the end of the initial notification period—

(a) notify the Regulator that the scheme is a registrable scheme, and

(b) provide to the Regulator all the registrable information with respect to the scheme.

(3) In paragraph (2), the “initial notification period” means the period of three months beginning with—

(a) the date on which the scheme is established, or

(b) if later, the date on which it becomes a registrable scheme.

(4) Where there is a change in any registrable information in respect of a registrable scheme, the trustees or managers of the scheme must as soon as reasonably practicable, notify the Regulator—

(a) of that fact, and

(b) of the new registrable information.

(5) Where a registrable scheme—

(a) ceases to be a registrable scheme, or

(b) is wound up (otherwise than under Article 145(2) (effect of Board assuming responsibility for scheme)),

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the trustees or managers of the scheme must as soon as reasonably practicable, notify the Regulator of that fact.

(6) If paragraph (2), (4) or (5) is not complied with, 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.

### **Duty of the Regulator to issue scheme return notices**

**58.**—(1) The Regulator must issue scheme return notices in accordance with this Article requiring scheme returns to be provided in respect of registrable schemes.

(2) In respect of each registrable scheme, the Regulator—

- (a) must issue the first scheme return notice in accordance with paragraph (3), and
- (b) must issue subsequent scheme return notices in accordance with paragraph (4).

(3) The return date specified in a scheme return notice issued in respect of a scheme under paragraph (2)(a)—

- (a) must fall within the period of three years beginning with—
  - (i) the date on which the Regulator receives a notice under Article 57(2)(a) in respect of the scheme, or
  - (ii) if earlier, the date on which the Regulator first becomes aware that the scheme is a registrable scheme, and
- (b) if the trustees or managers have complied with sub-paragraph (b) of Article 57(2), must fall after the end of the period of one year beginning with the date on which they provided the information required by that sub-paragraph to the Regulator.

(4) The return date specified in a scheme return notice issued in respect of a scheme under paragraph (2)(b) must fall—

- (a) within the period of three years, but
- (b) after the end of the period of one year,

beginning with the return date specified in the previous scheme return notice issued in respect of the scheme.

### **Duty of trustees or managers to provide scheme return**

**59.**—(1) The trustees or managers of a registrable scheme in respect of which a scheme return notice is issued must, on or before the return date, provide a scheme return to the Regulator.

(2) If a scheme return in respect of a scheme is not provided in compliance with paragraph (1), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.

### **Scheme returns: supplementary**

**60.**—(1) This Article has effect for the purposes of Articles 58 and 59.

(2) In those Articles and this Article, in relation to a scheme return notice—

- “return date” means the date specified under paragraph (3)(b) in the scheme return notice;
- “scheme return” means a document in the form (if any) specified in the scheme return notice, containing the information required by the notice.

(3) A scheme return notice must specify—

- (a) the descriptions of information required by it, and
- (b) the return date,

and may specify the form in which that information is to be provided.

- (4) A scheme return notice in respect of a registrable scheme—
  - (a) must require all registrable information in relation to the scheme, and
  - (b) may require other information which the Regulator reasonably requires for the purposes of the exercise of its functions in relation to the scheme.
- (5) The return date specified in a scheme return notice must fall after the end of the period of 28 days beginning with the date on which the notice is issued.
- (6) A scheme return notice must be in writing and is treated as issued in respect of a registrable scheme when it is sent to the trustees or managers of the scheme.

### *Register of prohibited trustees*

#### **Register of prohibited trustees**

**61.**—(1) The Regulator must keep in such manner as it thinks fit a register of all persons who are prohibited under Article 3 of the 1995 Order ( “the prohibition register”).

(2) Arrangements made by the Regulator for the prohibition register must secure that the contents of the register are not disclosed or otherwise made available to members of the public except in accordance with Article 62.

(3) Nothing in paragraph (2) requires the Regulator to exclude any matter from a report published under Article 84 (reports of Regulator’s consideration of cases).

#### **Accessibility of register of prohibited trustees**

**62.**—(1) The Regulator must make arrangements to secure that the prohibition register is open, during its normal working hours, for inspection in person and without notice at—

- (a) the principal office used by it for the carrying out of its functions, and
  - (b) such other offices (if any) of the Regulator or of the Department as the Regulator considers to be places where it would be reasonable for a copy of the register to be kept open for inspection.
- (2) If a request is made to the Regulator—
- (a) to state whether a particular person identified in the request is a person appearing in the prohibition register as prohibited in respect of an occupational trust scheme specified in the request,
  - (b) to state whether a particular person so identified is a person appearing in that register as prohibited in respect of a particular description of occupational trust schemes so specified, or
  - (c) to state whether a particular person so identified is a person appearing in that register as prohibited in respect of all occupational trust schemes,

the Regulator must promptly comply with the request in such manner as it considers reasonable.

(3) The Regulator may, in such manner as it considers appropriate, publish a summary of the prohibition register if (subject to paragraphs (6) to (8)) the summary—

- (a) contains all the information described in paragraph (4),
- (b) arranges that information in the manner described in paragraph (5),
- (c) does not (except by identifying a person as prohibited in respect of all occupational trust schemes, in respect of a particular description of such schemes or in respect of a particular

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such scheme) identify any of the schemes in respect of which persons named in the summary are prohibited, and

(d) does not disclose any other information contained in the register.

(4) That information is—

(a) the full names and titles, so far as the Regulator has a record of them, of all the persons appearing in the register as persons who are prohibited,

(b) the dates of birth of such of those persons as are persons whose dates of birth are matters of which the Regulator has a record, and

(c) in the case of each person whose name is included in the published summary, whether that person appears in the register—

(i) as prohibited in respect of only one occupational trust scheme,

(ii) as prohibited in respect of one or more particular descriptions of such schemes, but not in respect of all such schemes, or

(iii) as prohibited in respect of all such schemes.

(5) For the purposes of sub-paragraph (c) of paragraph (4), the information in the published register must be arranged in three separate lists, one for each of the descriptions of prohibition specified in the heads of that sub-paragraph.

(6) The Regulator must ensure, in the case of any published summary, that a person is not identified in the summary as a prohibited person if it appears to the Regulator that the determination by virtue of which that person appears in the register—

(a) is the subject of any pending reference, review, appeal or legal proceedings which could result in that person's removal from the register, or

(b) is a determination which might still become the subject of any such reference, review, appeal or proceedings.

(7) The Regulator must ensure, in the case of any published summary, that the particulars relating to a person do not appear in a particular list mentioned in paragraph (5) if it appears to the Regulator that a determination by virtue of which that person's particulars would appear in that list—

(a) is the subject of any pending reference, review, appeal or legal proceedings which could result in such a revocation or other overturning of a prohibition of that person as would require his particulars to appear in a different list, or

(b) is a determination which might still become the subject of any such reference, review, appeal or proceedings.

(8) Where paragraph (7) prevents a person's particulars from being included in a particular list in the published summary, they must be included, instead, in the list (if any) in which they would have been included if the prohibition to which the reference, review, appeal or proceedings relate or might relate had already been revoked or otherwise overturned.

(9) For the purposes of this Article a determination is one which might still become the subject of a reference, review, appeal or proceedings if, and only if, in the case of that determination—

(a) the time for the making of an application for a review or reference, or for the bringing of an appeal or other proceedings, has not expired, and

(b) there is a reasonable likelihood that such an application might yet be made, or that such an appeal or such proceedings might yet be brought.

(10) In this Article—

“name”, in relation to a person any of whose names is recorded by the Regulator as an initial, means that initial;

“occupational trust scheme” means an occupational pension scheme established under a trust.

### *Collecting information relevant to the Board*

#### **Information relevant to the Board**

**63.** The Regulator may collect any information which appears to it to be relevant to the exercise of the functions of the Board.

#### **Duty to notify the Regulator of certain events**

**64.**—(1) Except where the Regulator otherwise directs, the appropriate person must give notice of any notifiable event to the Regulator.

(2) In paragraph (1) “notifiable event” means—

- (a) a prescribed event in respect of an eligible scheme, or
- (b) a prescribed event in respect of the employer in relation to an eligible scheme.

(3) For the purposes of paragraph (1)—

- (a) in the case of an event within paragraph (2)(a), each of the following is “the appropriate person”
  - (i) the trustees or managers of the scheme,
  - (ii) a person of a prescribed description, and
- (b) in relation to an event within paragraph (2)(b), each of the following is “the appropriate person”
  - (i) the employer in relation to the scheme,
  - (ii) a person of a prescribed description.

(4) A notice under paragraph (1)—

- (a) must be in writing, and
- (b) subject to paragraph (5), must be given as soon as reasonably practicable after the person giving it becomes aware of the notifiable event.

(5) Regulations may require a notice under paragraph (1) to be given before the beginning of the prescribed period ending with the notifiable event in question.

(6) Subject to Article 283 (protected items), no duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a notice under this Article.

(7) Where the trustees or managers of a scheme fail to comply with an obligation imposed on them by paragraph (1), Article 10 of the 1995 Order (civil penalties) applies in relation to any trustee or manager who has failed to take all reasonable steps to secure compliance with that paragraph.

(8) That Article also applies to any other person who, without reasonable excuse, fails to comply with an obligation imposed on him by paragraph (1).

(9) In this Article—

- “eligible scheme” has the meaning given by Article 110,
- “event” includes a failure to act.

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### *Reporting breaches of the law*

#### **Duty to report breaches of the law**

- 65.**—(1) Paragraph (2) imposes a reporting requirement on the following persons—
- (a) a trustee or manager of an occupational or personal pension scheme;
  - (b) a person who is otherwise involved in the administration of such a scheme;
  - (c) the employer in relation to an occupational pension scheme;
  - (d) a professional adviser in relation to such a scheme;
  - (e) a person who is otherwise involved in advising the trustees or managers of an occupational or personal pension scheme in relation to the scheme.
- (2) Where the person has reasonable cause to believe that—
- (a) a duty which is relevant to the administration of the scheme in question, and is imposed by or by virtue of a statutory provision or rule of law, has not been or is not being complied with, and
  - (b) the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions,

he must give a written report of the matter to the Regulator as soon as reasonably practicable.

(3) Subject to Article 283 (protected items), no duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a written report under this Article.

(4) Article 10 of the 1995 Order (civil penalties) applies to any person who, without reasonable excuse, fails to comply with an obligation imposed on him by this Article.

### *Reports by skilled persons*

#### **Reports by skilled persons**

- 66.**—(1) The Regulator may issue a notice (a “report notice”) to—
- (a) the trustees or managers of a work-based pension scheme,
  - (b) any employer in relation to such a scheme, or
  - (c) any person who is otherwise involved in the administration of such a scheme,
- requiring them or, as the case may be, him to provide the Regulator with a report on one or more specified matters which are relevant to the exercise of any of the Regulator's functions.
- (2) A report notice must require the person appointed to make the report to be a person—
- (a) nominated or approved by the Regulator, and
  - (b) appearing to the Regulator to have the skills necessary to make a report on the matter or matters concerned.
- (3) A report notice may require the report to be provided to the Regulator—
- (a) in a specified form;
  - (b) before a specified date.
- (4) The costs of providing a report in accordance with a report notice must be met by the person to whom the notice is issued ( “the notified person”).
- (5) But a report notice may require a specified person (other than the Regulator) to reimburse to the notified person the whole or any part of the costs of providing the report.



(6) Where, by virtue of paragraph (5), an amount is required to be reimbursed by a specified person to the notified person, that amount is to be treated as a debt due from the specified person to the notified person.

(7) If the trustees or managers of a work-based pension scheme fail to comply with a report notice issued to them, 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.

(8) That Article also applies to any other person who, without reasonable excuse, fails to comply with a report notice issued to him.

(9) Where a report notice is issued, any person who is providing (or who at any time has provided) services to the notified person in relation to a matter on which the report is required must give the person appointed to make the report such assistance as he may reasonably require.

(10) The duty imposed by paragraph (9) is enforceable, on the application of the Regulator, by an injunction.

(11) In this Article—

“specified”, in relation to a report notice, means specified in the notice;

“work-based pension scheme” has the same meaning as in Article 4 (Regulator's objectives).

### *Gathering information*

#### **Provision of information**

**67.**—(1) The Regulator may, by notice in writing, require any person to whom paragraph (2) applies to produce any document, or provide any other information, which is—

- (a) of a description specified in the notice, and
- (b) relevant to the exercise of the Regulator's functions.

(2) This paragraph applies to—

- (a) a trustee or manager of an occupational or personal pension scheme,
- (b) a professional adviser in relation to an occupational pension scheme,
- (c) the employer in relation to—
  - (i) an occupational pension scheme, or
  - (ii) a personal pension scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, and
- (d) any other person appearing to the Regulator to be a person who holds, or is likely to hold, information relevant to the exercise of the Regulator's functions.

(3) Where the production of a document, or the provision of information, is required by a notice given under paragraph (1), the document must be produced, or information must be provided, in such a manner, at such a place and within such a period as may be specified in the notice.

#### **Inspection of premises**

**68.**—(1) An inspector may, for the purposes of investigating whether, in the case of any occupational pension scheme, the occupational scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.

(2) In paragraph (1), the “occupational scheme provisions” means provisions contained in or made by virtue of—

- (a) any of the following provisions of this Order—

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- Part I (introductory);
- this Part;
- Part IV (scheme funding);
- Articles 218 to 220 (member-nominated trustees and directors);
- Articles 224 to 226 (requirement for knowledge and understanding);
- Article 229 (UK-based scheme to be trust with effective rules);
- Article 230 (non-European scheme to be trust with UK resident trustee);
- Article 232 (activities of occupational pension schemes);
- Article 233 (no indemnification for fines or civil penalties);
- Articles 236 and 238 (consultation by employers);
- Part VII (cross-border activities within European Union);
- Part IX (miscellaneous and supplementary);
- (b) either of the following provisions of the 1999 Order—
  - Article 30 (time for discharge of pension credit liability);
  - Article 42 (information);
- (c) any of the provisions of Part II of the 1995 Order (occupational pension schemes), other than—
  - (i) Articles 51 to 54 (indexation), and
  - (ii) Articles 62 to 65 (equal treatment);
- (d) any of the following provisions of the Pension Schemes Act—
  - Chapter 4 of Part IV (transfer values);
  - Chapter 5 of Part IV (early leavers: cash transfer sums and contribution refunds);
  - Chapter 2 of Part IVA (pension credit transfer values);
  - section 109 (information);
  - section 170 (levy);
- (e) any provisions in force in Great Britain corresponding to any provisions within subparagraphs (a) to (d).
- (3) An inspector may, for the purposes of investigating whether, in the case of a stakeholder scheme—
  - (a) Articles 3 and 4(4) of the 1999 Order (stakeholder pension schemes: registration etc.), or
  - (b) any corresponding provisions in force in Great Britain,
 are being, or have been, complied with, at any reasonable time enter premises liable to inspection.
- (4) An inspector may, for the purposes of investigating whether, in the case of any trust-based personal stakeholder scheme, the trust-based scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.
- (5) In paragraph (4)—
  - “trust-based personal stakeholder scheme” means a personal pension scheme which—
    - (a) is a stakeholder scheme, and
    - (b) is established under a trust;
  - the “trust-based scheme provisions” means any provisions contained in or made by virtue of—

- (a) any provision which applies in relation to trust-based personal stakeholder schemes by virtue of paragraph 1 of Schedule 1 to the 1999 Order, as the provision applies by virtue of that paragraph, or
  - (b) any corresponding provision in force in Great Britain.
- (6) Premises are liable to inspection for the purposes of this Article if the inspector has reasonable grounds to believe that—
- (a) members of the scheme are employed there,
  - (b) documents relevant to the administration of the scheme are being kept there, or
  - (c) the administration of the scheme, or work connected with that administration, is being carried out there.
- (7) In this Article, “stakeholder scheme” means an occupational pension scheme or a personal pension scheme which is or has been registered under—
- (a) Article 4 of the 1999 Order (register of stakeholder schemes), or
  - (b) any corresponding provision in force in Great Britain.

### **Inspection of premises in respect of employers' obligations**

**69.**—(1) An inspector may, for the purposes of investigating whether an employer is complying, or has complied, with the requirements under—

- (a) Article 5 of the 1999 Order (duty of employers to facilitate access to stakeholder pension schemes), or
- (b) any corresponding provision in force in Great Britain,

at any reasonable time enter premises liable to inspection.

(2) Premises are liable to inspection for the purposes of paragraph (1) if the inspector has reasonable grounds to believe that—

- (a) employees of the employer are employed there,
- (b) documents relevant to the administration of the employer's business are being kept there, or
- (c) the administration of the employer's business, or work connected with that administration, is being carried out there.

(3) In paragraphs (1) and (2), “employer” has the meaning given in Article 5(9) of the 1999 Order (or, where paragraph (1)(b) applies, in any corresponding provision in force in Great Britain).

(4) An inspector may, for the purposes of investigating whether, in the case of any direct payment arrangements relating to a personal pension scheme, any of the following provisions—

- (a) regulations made by virtue of Articles 237 and 238 (consultation by employers),
- (b) section 107A of the Pension Schemes Act (monitoring of employers' payments to personal pension schemes), or
- (c) any corresponding provision in force in Great Britain,

is being, or has been, complied with, at any reasonable time enter premises liable to inspection.

(5) Premises are liable to inspection for the purposes of paragraph (4) if the inspector has reasonable grounds to believe that—

- (a) employees of the employer are employed there,
- (b) documents relevant to the administration of—
  - (i) the employer's business,
  - (ii) the direct payment arrangements, or

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- (iii) the scheme to which those arrangements relate,  
are being kept there, or
- (c) either of the following is being carried out there—
  - (i) the administration of the employer's business, the arrangements or the scheme;
  - (ii) work connected with that administration.
- (6) In the application of paragraphs (4) and (5) in relation to any provision mentioned in paragraph (4)(c) (a “corresponding Great Britain provision”), references in those paragraphs to—
  - direct payment arrangements,
  - a personal pension scheme,
  - the employer, or
  - employees of the employer,
 are to be read as having the meanings that they have for the purposes of the corresponding Great Britain provision.

#### **Inspection of premises: powers of inspectors**

**70.**—(1) Paragraph (2) applies where, for a purpose mentioned in paragraph (1), (3) or (4) of Article 68 or paragraph (1) or (4) of Article 69, an inspector enters premises which are liable to inspection for the purposes of that provision.

- (2) While there, the inspector—
  - (a) may make such examination and inquiry as may be necessary for the purpose for which he entered the premises,
  - (b) may require any person on the premises to produce, or secure the production of, any document relevant to compliance with the regulatory provisions for his inspection,
  - (c) may take copies of any such document,
  - (d) may take possession of any document appearing to be a document relevant to compliance with the regulatory provisions or take in relation to any such document any other steps which appear necessary for preserving it or preventing interference with it,
  - (e) may, in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, require the information to be produced in a form—
    - (i) in which it can be taken away, and
    - (ii) in which it is legible or from which it can readily be produced in a legible form, and
  - (f) may, as to any matter relevant to compliance with the regulatory provisions, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter.

#### **Inspection of premises: supplementary**

**71.**—(1) This Article applies for the purposes of Articles 68 to 70.

(2) Premises which are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business are not liable to inspection.

(3) Any question whether—

(a) anything is being or has been done or omitted which might by virtue of any of the regulatory provisions give rise to a liability for a civil penalty under or by virtue of Article 10 of the 1995 Order or section 164(4) of the Pension Schemes Act (or under or by virtue of any provision in force in Great Britain corresponding to either of them), or

(b) an offence is being or has been committed under any of the regulatory provisions,

is to be treated as a question whether the regulatory provision is being, or has been, complied with.

(4) An inspector applying for admission to any premises for the purposes of Article 68 or 69 must, if so required, produce his certificate of appointment.

(5) When exercising a power under Article 68, 69 or 70 an inspector may be accompanied by such persons as he considers appropriate.

(6) Any document of which possession is taken under Article 70 may be retained—

(a) if the document is relevant to proceedings against any person for any offence which are commenced before the end of the retention period, until the conclusion of those proceedings, and

(b) otherwise, until the end of the retention period.

(7) In paragraph (6), “the retention period” means the period comprising—

(a) the period of 12 months beginning with the date on which possession was taken of the document, and

(b) any extension of that period under paragraph (8).

(8) The Regulator may, by a direction made before the end of the retention period (including any extension of it under this paragraph), extend it by such period not exceeding 12 months as the Regulator considers appropriate.

(9) “The regulatory provisions”, in relation to an inspection under paragraph (1), (3) or (4) of Article 68 or paragraph (1) or (4) of Article 69, means any provision referred to in that paragraph.

### **Penalties relating to Articles 67 to 70**

**72.—**(1) A person who, without reasonable excuse, neglects or refuses to provide information or produce a document when required to do so under Article 67 is guilty of an offence.

(2) A person who without reasonable excuse—

(a) intentionally delays or obstructs an inspector exercising any power under Article 68, 69 or 70,

(b) neglects or refuses to produce, or secure the production of, any document when required to do so under Article 70, or

(c) neglects or refuses to answer a question or to provide information when so required,

is guilty of an offence.

(3) A person guilty of an offence under paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) An offence under paragraph (1) or (2)(b) or (c) 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 by reference to any period of time following the preceding conviction of the offence.

(5) Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which he is or is liable to be required to produce under Article 67 or 70 is guilty of an offence.

(6) Any person guilty of an offence under paragraph (5) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

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- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

## Warrants

**73.—(1)** A justice of the peace may issue a warrant under this Article if satisfied on complaint on oath given by or on behalf of the Regulator that there are reasonable grounds for believing—

- (a) that there is on, or accessible from, any premises any document—
  - (i) whose production has been required under Article 67 or 70, or any corresponding provision in force in Great Britain, and
  - (ii) which has not been produced in compliance with that requirement,
- (b) that there is on, or accessible from, any premises any document whose production could be so required and, if its production were so required, the document—
  - (i) would not be produced, but
  - (ii) would be removed, or made inaccessible, from the premises, hidden, tampered with or destroyed, or
- (c) that—
  - (i) an offence has been committed,
  - (ii) a person will do any act which constitutes a misuse or misappropriation of the assets of an occupational pension scheme or a personal pension scheme,
  - (iii) a person is liable to pay a penalty under or by virtue of Article 10 of the 1995 Order (civil penalties) or section 164(4) of the Pension Schemes Act (civil penalties for breach of regulations), or under or by virtue of any provision in force in Great Britain corresponding to either of them, or
  - (iv) a person is liable to be prohibited from being a trustee of an occupational or personal pension scheme under Article 3 of the 1995 Order (prohibition orders), including that Article as it applies by virtue of paragraph 1 of Schedule 1 to the 1999 Order (stakeholder schemes), or under or by virtue of any corresponding provisions in force in Great Britain,

and that there is on, or accessible from, any premises any document which relates to whether the offence has been committed, whether the act will be done or whether the person is so liable, and whose production could be required under Article 67 or 70 or any corresponding provision in force in Great Britain.

- (2) A warrant under this Article shall authorise an inspector—
  - (a) to enter the premises specified in the complaint, using such force as is reasonably necessary for the purpose,
  - (b) to search the premises and—
    - (i) take possession of any document appearing to be such a document as is mentioned in paragraph (1), or
    - (ii) take in relation to such a document any other steps which appear necessary for preserving it or preventing interference with it,
  - (c) to take copies of any such document,
  - (d) to require any person named in the warrant to provide an explanation of any such document or to state where it may be found or how access to it may be obtained, and

- (e) in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, to require the information to be produced in a form—
  - (i) in which it can be taken away, and
  - (ii) in which it is legible or from which it can readily be produced in a legible form.
- (3) In paragraph (1), any reference in sub-paragraph (a) or (b) to a document does not include any document which is relevant to whether a person has complied with—
  - (a) paragraph (3) of Article 215 (information and advice to employees) or regulations under paragraph (4) of that Article, or
  - (b) any provision in force in Great Britain which corresponds to that paragraph (3) or is made under provision corresponding to that paragraph (4),and is not relevant to the exercise of the Regulator's functions for any other reason.
- (4) For the purposes of paragraph (1)(c)(iii), any liability to pay a penalty under—
  - (a) Article 10 of the 1995 Order, or
  - (b) any corresponding provision in force in Great Britain,which might arise out of a failure to comply with any provision within paragraph (3)(a) or (b) is to be disregarded.
- (5) References in paragraph (2) to such a document as is mentioned in paragraph (1) are to be read in accordance with paragraphs (3) and (4).
- (6) When executing a warrant under this Article, an inspector may be accompanied by such persons as he considers appropriate.
- (7) A warrant under this Article continues in force until the end of the period of one month beginning with the day on which it is issued.
- (8) Any document of which possession is taken under this Article may be retained—
  - (a) if the document is relevant to proceedings against any person for any offence which are commenced before the end of the retention period, until the conclusion of those proceedings, and
  - (b) otherwise, until the end of the retention period.
- (9) In paragraph (8), “the retention period” means the period comprising—
  - (a) the period of 12 months beginning with the date on which possession was taken of the document, and
  - (b) any extension of that period under paragraph (10).
- (10) The Regulator may, by a direction made before the end of the retention period (including any extension of it under this paragraph), extend it by such period not exceeding 12 months as the Regulator considers appropriate.

### **Articles 67 to 73: interpretation**

- 74.—(1) This Article applies for the purposes of Articles 67 to 73.
- (2) “Document” includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in a legible form, is to producing a copy of the information—
  - (a) in a legible form, or
  - (b) in a form from which it can readily be produced in a legible form.
- (3) “Inspector” means a person appointed by the Regulator as an inspector.

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### *Provision of false or misleading information*

#### **Offences of providing false or misleading information**

**75.**—(1) Any person who knowingly or recklessly provides the Regulator with information which is false or misleading in a material particular is guilty of an offence if the information—

- (a) is provided in purported compliance with a requirement under—
  - (i) Article 57 (the register: duties of trustees or managers),
  - (ii) Article 59 (duty of trustees or managers to provide scheme return),
  - (iii) Article 67 (provision of information), or
  - (iv) Article 70 (inspection of premises: powers of inspectors),
- (b) is provided in applying for registration of a pension scheme under Article 4 of the 1999 Order (register of stakeholder pension schemes), or
- (c) is provided otherwise than as mentioned in sub-paragraph (a) or (b) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Regulator for the purpose of exercising its functions under this Order or the 1995 Order.

(2) Any person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

### *Use of information*

#### **Use of information**

**76.** Information—

- (a) contained in the register referred to in Article 56(7), or
- (b) otherwise held by the Regulator in the exercise of any of its functions,

may be used by the Regulator for the purposes of, or for any purpose connected with or incidental to, the exercise of its functions.

### *Disclosure of information*

#### **Restricted information**

**77.**—(1) Restricted information must not be disclosed—

- (a) by the Regulator, or
- (b) by any person who receives the information directly or indirectly from the Regulator.

(2) Paragraph (1) is subject to—

- (a) paragraph (3), and
- (b) Articles 66(9) and 78 to 83 and section 235 of the Pensions Act 2004 (c. 35).

(3) Subject to Article [F45]83(4)(d)], restricted information may be disclosed with the consent of the person to whom it relates and (if different) the person from whom the Regulator obtained it.



(4) For the purposes of this Article and Articles 78 to 82, “restricted information” means any information obtained by the Regulator in the exercise of its functions which relates to the business or other affairs of any person, except for information—

- (a) which at the time of the disclosure is or has already been made available to the public from other sources, or
- (b) which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(5) Any person who discloses information in contravention of this Article is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum [<sup>F46</sup>, or imprisonment for a term not exceeding six months, or both];
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

**F45** Word in art. 77(3) substituted (26.1.2009) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 61(2), 118(1) (with s. 73); S.R. 2009/22, art. 2(1)(a)

**F46** Words in art. 77(5)(a) added (26.1.2009) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 62, 118(1) (with s. 73); S.R. 2009/22, art. 2(1)(b)

**Modifications etc. (not altering text)**

**C1** Art. 77(2) applied (with modifications) by S.R. 2005/93, reg. 5A(2) (as inserted (4.7.2007) by Register of Occupational and Personal Pension Schemes (Amendment) Regulations (Northern Ireland) 2007 (S.R. 2007/297), reg. 2)

**Information supplied to the Regulator by corresponding overseas authorities**

**78.**—(1) Subject to paragraph (2), for the purposes of Article 77, “restricted information” includes information which has been supplied to the Regulator, for the purposes of its functions, by an authority which exercises functions corresponding to the functions of the Regulator in a country or territory outside the United Kingdom.

(2) Articles 79 to 82 do not apply to such information as is mentioned in paragraph (1), and such information must not be disclosed except—

- (a) as provided in Article 77(3),
- (b) for the purpose of enabling or assisting the Regulator to discharge its functions, or
- (c) by or on behalf of—
  - (i) the Regulator, or
  - (ii) any public authority (within the meaning of section 6 of the Human Rights Act 1998 (c. 42)) which receives the information directly or indirectly from the Regulator, for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (criminal proceedings and investigations).

(3) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure authorised by paragraph (2) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.

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### Disclosure for facilitating exercise of functions by the Regulator

**79.**—(1) Article 77 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Regulator to exercise its functions.

(2) Paragraph (3) applies where, in order to enable or assist the Regulator properly to exercise any of its functions, the Regulator considers it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation or other matter requiring the exercise of professional skill.

(3) Article 77 does not preclude the disclosure by the Regulator to a person qualified to provide that advice of such information as appears to the Regulator to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.

[<sup>F47</sup>(4) Article 77 does not preclude the disclosure by the Regulator to the Personal Accounts Delivery Authority of such information as appears to the Regulator to be necessary to enable the Authority to provide assistance or advice to the Regulator under section 79(2) of the Pensions Act 2008 or section 65(2) of the Pensions (No. 2) Act (Northern Ireland) 2008.]

**F47** Art. 79(4) added (15.12.2008) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), **ss. 68, 118(1)** (2)(a) (with s. 73)

### Disclosure for facilitating exercise of functions by the Board

**80.** Article 77 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Board to exercise its functions.

### Disclosure for facilitating exercise of functions by other supervisory authorities

**81.**—(1) Article 77 does not preclude the disclosure by the Regulator of restricted information to any person specified in the first column of Schedule 3 if the Regulator considers that the disclosure would enable or assist that person to exercise the functions specified in relation to him in the second column of that Schedule.

(2) The Department may after consultation with the Regulator—

(a) by order amend Schedule 3 by—

(i) adding any person exercising regulatory functions and specifying functions in relation to that person,

(ii) removing any person for the time being specified in the Schedule, or

(iii) altering the functions for the time being specified in the Schedule in relation to any person, or

(b) by order restrict the circumstances in which, or impose conditions subject to which, disclosure may be made to any person for the time being specified in the Schedule.

#### Commencement Information

**I2** Art. 81 wholly in operation at 6.4.2006; art. 81 not in operation at date of making see art. 1(2); art. 81 (except (2)) in operation at 6.4.2005 by [S.R. 2005/48](#), art. 2(7), Sch. Pt. 7; art. 81 in operation in so far as not already in operation at 6.4.2006 by [S.R. 2006/95](#), **art. 2(c)**, Sch. Pt. 3

### Other permitted disclosures

**82.**—(1) Article 77 does not preclude the disclosure by the Regulator of restricted information to—

- (a) the Department,
- (b) the Commissioners of Inland Revenue or their officers, or
- (c) the Secretary of State,

if the disclosure appears to the Regulator to be desirable or expedient in the interest of members of occupational pension schemes or personal pension schemes or in the public interest.

(2) Article 77 does not preclude the disclosure of restricted information—

- (a) by or on behalf of—
  - (i) the Regulator, or
  - (ii) any public authority (within the meaning of section 6 of the Human Rights Act 1998 (c. 42)) which receives the information directly or indirectly from the Regulator, for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (criminal proceedings and investigations),
- (b) in connection with any proceedings arising out of—
  - (i) this Order,
  - (ii) the 1999 Order,
  - (iii) the 1995 Order, or
  - (iv) the Pension Schemes Act,or any corresponding enactment in force in Great Britain, or any proceedings for breach of trust in relation to an occupational pension scheme,
- (c) with a view to the institution of, or otherwise for the purposes of, proceedings under—
  - (i) Article 10 or 11 of the Company Directors Disqualification (Northern Ireland) Order 2002 (NI 4), or
  - (ii) section 7 or 8 of the Company Directors Disqualification Act 1986 (c. 46),
- (d) in connection with any proceedings under—
  - (i) the Insolvency Order, or
  - (ii) the Insolvency Act 1986 (c. 45),which the Regulator has instituted or in which it has a right to be heard,
- (e) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by a solicitor, an actuary, an accountant or an insolvency practitioner,
- (f) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by a public servant of his functions,
- (g) for the purpose of enabling or assisting an authority in a country outside the United Kingdom to exercise functions corresponding to those of the Regulator under this Order, the 1999 Order, the 1995 Order or the Pension Schemes Act, or
- (h) in pursuance of a Community obligation (within the meaning of Schedule 1 to the European Communities Act 1972 (c. 68)).

(3) In paragraph (2)(f), “public servant” means an officer or servant of the Crown or of any prescribed authority.

(4) Article 77 does not preclude the disclosure by the Regulator of restricted information to—

- (a) the Director of Public Prosecutions for Northern Ireland,
- (b) the Director of Public Prosecutions,
- (c) the Lord Advocate,

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- (d) a procurator fiscal, or
- (e) a constable.

(5) Article 77 does not preclude the disclosure of restricted information in any case where the disclosure is required by or by virtue of a statutory provision.

(6) Article 77 does not preclude the disclosure of restricted information in any case where the disclosure is to a Regulator-appointed trustee of an occupational pension scheme for the purpose of enabling or assisting him to exercise his functions in relation to the scheme.

(7) In paragraph (6), “Regulator-appointed trustee” means a trustee appointed by the Regulator under Article 7 or 23(1) of the 1995 Order or any corresponding provision in force in Great Britain.

(8) Article 77 does not preclude the disclosure by any person mentioned in paragraph (1) or (4) of restricted information obtained by the person by virtue of that paragraph, if the disclosure is made with the consent of the Regulator.

(9) Article 77 does not preclude the disclosure by any person specified in the first column of Schedule 3 of restricted information obtained by the person by virtue of Article 81(1), if the disclosure is made—

- (a) with the consent of the Regulator, and
- (b) for the purpose of enabling or assisting the person to exercise any functions specified in relation to him in the second column of the Schedule.

(10) Before deciding whether to give its consent to such a disclosure as is mentioned in paragraph (8) or (9), the Regulator must take account of any representations made to it, by the person seeking to make the disclosure, as to the desirability of the disclosure or the necessity for it.

(11) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure authorised by paragraph (2) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.

### **Tax information etc.**

[<sup>F48</sup>83.—(1) This Article applies to information held by the Revenue and Customs if it is held by them in connection with a function of the Revenue and Customs that relates to any of these matters—

- (a) tax or duty;
- (b) national insurance contributions;
- (c) the national minimum wage.

(2) An officer of Revenue and Customs may disclose to the Regulator information to which this Article applies, if the disclosure is made for the purpose of enabling or assisting the Regulator to discharge its functions.

(3) Where information to which this Article applies is disclosed to the Regulator by virtue of paragraph (2) or section 19 of the Anti-terrorism, Crime and Security Act 2001 (disclosure of information held by revenue departments), it must, subject to paragraphs (4) and (5), be treated for the purposes of Article 77 as restricted information.

(4) Information to which this Article applies which is disclosed to the Regulator as mentioned in paragraph (3) may not be disclosed by the Regulator or any person who receives the information directly or indirectly from the Regulator except—

- (a) to, or in accordance with authority given by, the Commissioners for Her Majesty's Revenue and Customs,
- (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings,

- (c) with a view to the institution of any other proceedings by the Regulator, or for the purposes of any such proceedings instituted by the Regulator,
- (d) in accordance with Article 79, otherwise than for the purposes of any proceedings, or
- (e) in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(5) Accordingly Articles 77(3), 78 and 80 to 82, and section 235 of and paragraph 4 of Schedule 10 to, the Pensions Act 2004, do not apply to such information, and Article 79 applies subject to paragraph (4)(d).

(6) In paragraph (4)(c) and (d), “proceedings” includes the issue of notices or any other enforcement action taken by the Regulator under Chapter 2 of Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008 or any other provision.

(7) In this Article “the Revenue and Customs” and a “function of the Revenue and Customs” have the same meaning as in section 18 of the Commissioners for Revenue and Customs Act 2005 (confidentiality).]

**F48** Art. 83 substituted (26.1.2009) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), [ss. 61\(1\), 118\(1\)](#) (with [s. 73](#)); [S.R. 2009/22](#), [art. 2\(1\)\(a\)](#)

## *Reports*

### **Publishing reports etc.**

**84.**—(1) The Regulator may, if it considers it appropriate to do so in any particular case, publish a report of the consideration given by it to the exercise of its functions in relation to that case and the results of that consideration.

(2) The publication of a report under paragraph (1) may be in such form and manner as the Regulator considers appropriate.

(3) For the purposes of the law of defamation, the publication of any matter by the Regulator is privileged unless the publication is shown to be made with malice.

## *Codes of practice*

### **Codes of practice**

**85.**—(1) The Regulator may issue codes of practice—

- (a) containing practical guidance in relation to the exercise of functions under the pensions legislation, and
- (b) regarding the standards of conduct and practice expected from those who exercise such functions.

(2) The Regulator must issue one or more such codes of practice relating to the following matters—

- (a) what constitutes a “reasonable” period for the purposes of any provision of the pensions legislation (other than any statutory provision contained in or made by virtue of Part III) which requires any action to be taken within such a period;

[<sup>F49</sup>(aa) the circumstances in which the Regulator expects to issue contribution notices under Article 34 as a result of being of the opinion that the material detriment test is met in relation to an act or failure;]

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- (b) the discharge of the duty imposed by Article 64 (duty to notify Regulator of certain events);
- (c) the discharge of the duty imposed by Article 65 (duty to report breaches of the law);
- (d) the discharge of duties imposed on trustees or managers of occupational pension schemes by, or by virtue of, Part IV (scheme funding);
- (e) the discharge of the duties imposed by Articles 218 and 219 (member-nominated trustees and directors);
- (f) the obligations imposed by Articles 224 and 225 (requirements for knowledge and understanding: individual and corporate trustees);
- (g) the discharge of the duty imposed by Article 49(9)(b) of the 1995 Order (duty of trustees or managers of occupational pension schemes to report material failures by employers to pay contributions deducted from employee's earnings timeously);
- (h) the discharge of the duties imposed by Articles 67 to 67I of that Order (the subsisting rights provisions);
- (i) the discharge of the duty imposed by Article 86(1) of that Order (duty of trustees or managers of money purchase schemes to report failures to pay employer contributions etc. timeously);
- (j) the discharge of the duty imposed by section 107A(7A) of the Pension Schemes Act (duty of trustees or managers of personal pension schemes to report material failures to pay employer contributions timeously);
- (k) such other matters as are prescribed for the purposes of this Article.

(3) The Regulator may from time to time revise the whole or any part of a code of practice issued under this Article and issue that revised code.

(4) Subject to Article 9(3)(a) and (8) (power for improvement notice to direct that person complies with code of practice and civil penalties for failure to comply), a failure on the part of any person to observe any provision of a code of practice does not of itself render that person liable to any legal proceedings.

(5) A code of practice issued under this Article is admissible in evidence in any legal proceedings and, if any provision of such a code appears to the court or tribunal concerned to be relevant to any question arising in the proceedings, it must be taken into account in determining that question.

(6) <sup>F50</sup> In this Article—

“legal proceedings” includes proceedings of the Pensions Ombudsman, proceedings of the PPF Ombudsman and proceedings of the Board under Article 189 or 190; and

“the pensions legislation” means any statutory provision contained in or made by virtue of—

- (a) the Pension Schemes Act,
- (b) Part II of the 1995 Order, other than Articles 62 to 66A of that Order (equal treatment),
- (c) Part II or Article 30 of the 1999 Order, or
- (d) this Order.

(7) Articles 86 and 87 make provision about the procedure to be followed when a code of practice is issued or revoked.

**F49** Art. 85(2)(aa) inserted (15.12.2008) by Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13), ss. 103, 118(1)(2)(h)(3)(a)(ii)(b), Sch. 8 para. 3

**F50** mod. by SR 2005/570

## Procedure for issue and publication of codes of practice

**86.**—(1) Where the Regulator proposes to issue a code of practice it must prepare and publish a draft of the code.

(2) Where the Regulator publishes a draft under paragraph (1), it must consult—

- (a) such persons as it considers appropriate, and
- (b) any other persons the Department requires it to consult.

(3) Having considered any representations made on the draft, the Regulator must make such modifications to it as it considers appropriate.

(4) Paragraphs (2) and (3) do not apply—

- (a) to a code made for the purpose only of consolidating other codes issued under Article 85, or
- (b) to a code if the Department considers consultation inexpedient by reason of urgency.

(5) If the Regulator determines to proceed with a draft, it must send it to the Department which—

- (a) if it approves of the draft, must lay it before the Assembly, and
- (b) if it does not approve of the draft, must publish details of its reasons for withholding approval.

(6) If, within the statutory period beginning with the day on which the draft code of practice is laid before the Assembly, the Assembly so resolves, no further proceedings may be taken on the draft, but without prejudice to the laying before the Assembly of a new draft.

(7) If no such resolution is passed as is referred to in paragraph (6), the Regulator must issue the code of practice in the form of the draft and the code shall come into operation on such day as the Department may by order appoint.

(8) Without prejudice to Article 287, an order under paragraph (7) may contain such transitional provisions or savings as appear to the Department to be necessary or expedient in connection with the code of practice brought into operation.

(9) The Regulator must arrange for any code issued by it under Article 85 to be published in the way appearing to it to be appropriate.

(10) The Regulator may charge a reasonable fee for providing a person with a copy of a code published under this Article.

(11) This Article applies to a revised code as it applies to the first issue of a code.

### Subordinate Legislation Made

- P1** Art. 86(7) power partly exercised: 15.2.2006 appointed by S.R. 2006/45, **art. 2(1)**;  
30.5.2006 by S.R. 2006/231, **art. 2**;  
22.11.2006 by S.R. 2006/460, **art. 2**;  
24.1.2007 by S.R. 2007/26, **art. 2**;  
28.7.2008 by S.R. 2008/305, **art. 2**;  
26.11.2009 by S.R. 2009/374, **art. 2**;  
29.6.2009 by S.R. 2009/250, **art. 2**

## Revocation of codes of practice

**87.**—(1) A code of practice may be revoked by the Department by order.

(2) An order under this Article may be made only with the consent of the Regulator.

(3) Without prejudice to Article 287, an order under this Article may contain such savings as appear to the Department to be necessary or expedient in connection with the revocation of the code.

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### *Exercise of regulatory functions*

#### **The Regulator's procedure in relation to its regulatory functions**

**88.**—(1) The Regulator must determine the procedure that it proposes to follow in relation to the exercise of its regulatory functions.

(2) For the purposes of this Part the “regulatory functions” of the Regulator are—

- (a) the power to issue an improvement notice under Article 9,
- (b) the power to issue a third party notice under Article 10,
- (c) the reserved regulatory functions (see Schedule 2),
- (d) the power to issue a clearance statement under Article 38,
- (e) the power to issue a notice under Article 41(1) approving the details of arrangements,
- (f) the power to issue a clearance statement under Article 42,
- (g) the power to vary or revoke under Article 96 (to the extent that it does not fall within sub-paragraph (c)),
- (h) the power to make an order under Article 138(8),
- (i) the power to make an order under Article 198(4),
- (j) the power to grant or revoke authorisation under Article 264,
- (k) the power to grant or revoke approval under Article 265,
- (l) the power to issue a notice under Article 269(5),
- (m) the power by direction under Article 4(3)(a) of the 1999 Order to refuse to register a scheme under Article 4 of that Order,
- (n) the power to make an order under Article 7 of the 1995 Order appointing a trustee (to the extent that it does not fall within sub-paragraph (c)),
- (o) the power to make an order under Article 23 of that Order appointing an independent trustee,
- (p) the power to give directions under Article 72B of that Order (directions facilitating winding up), and
- (q) such other functions of the Regulator as may be prescribed.

(3) The Determinations Panel must determine the procedure to be followed by it in relation to any exercise by it on behalf of the Regulator of—

- (a) the power to determine whether to exercise a regulatory function, and
- (b) where the Panel so determines to exercise a regulatory function, the power to exercise the function in question.

(4) The procedure determined under this Article—

- (a) must provide for the procedure required under—
  - (i) Article 91 (standard procedure), and
  - (ii) Article 93 (special procedure), and
- (b) may include such other procedural requirements as the Regulator or, as the case may be, the Panel considers appropriate.

(5) This Article is subject to—

- (a) Articles 94 to 98 (the remaining provisions concerning the procedure in relation to the regulatory functions), and



- (b) any regulations made by the Secretary of State under paragraph 19 of Schedule 1 to the Pensions Act 2004 (c. 35).

### **Publication of procedure in relation to regulatory functions**

- 89.**—(1) The Regulator must issue a statement of the procedure determined under Article 88.
- (2) The Regulator must arrange for the statement to be published in the way appearing to it to be appropriate.
  - (3) The Regulator may charge a reasonable fee for providing a person with a copy of the statement.
  - (4) If the procedure determined under Article 88 is changed in a material way, the Regulator must publish a revised statement.
  - (5) The Regulator must, without delay, give the Department a copy of any statement which it issues under this Article.

### **Application of standard and special procedure**

- 90.**—(1) The Regulator must comply with the standard procedure (see Article 91) or, where Article 92 applies, the special procedure (see Article 93) in a case where—
- (a) the Regulator considers that the exercise of one or more of the regulatory functions may be appropriate, or
  - (b) an application is made under or by virtue of—
    - (i) any of the provisions listed in Article 7(6), or
    - (ii) any prescribed provision of this or any other statutory provision, for the Regulator to exercise a regulatory function.
- (2) For the purposes of Article 91, references to the regulatory action under consideration in a particular case are—
- (a) in a case falling within paragraph (1)(a), references to the exercise of the one or more regulatory functions which the Regulator considers that it may be appropriate to exercise, and
  - (b) in a case falling within paragraph (1)(b), references to the exercise of the regulatory function which is the subject-matter of the application.
- (3) Neither Article 91 (standard procedure) nor Article 93 (special procedure) applies in relation to a determination whether to exercise a regulatory function on a review under Article 94 (compulsory review of regulatory action).

### **Standard procedure**

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

[<sup>F51</sup>(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 is met in relation to an act or failure,

the standard procedure must provide for the following matters.

(1B) The matters are—

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- (a) a requirement for the warning notice to explain the general effect of Article 34B, and
  - (b) a requirement for the person to be given an opportunity before the contribution notice is issued to show the matters mentioned in paragraph (2) of that Article.]
- (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.
- (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 (see Article 97(1)), 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;

- (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).

**F51** 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)

### Special procedure: applicable cases

- 92.**—(1) The special procedure in Article 93 (and not the standard procedure) applies to—
- (a) a case falling within paragraph (2),
  - (b) a case falling within paragraph (3), and
  - (c) a case falling within paragraph (4).
- (2) A case falls within this paragraph if—
- (a) the Regulator considers that it may be necessary to exercise a regulatory function listed in paragraph (5) immediately because there is, or the Regulator considers it likely that if a warning notice were to be given there would be, an immediate risk to—
    - (i) the interests of members under an occupational or personal pension scheme, or
    - (ii) the assets of such a scheme,
  - (b) the Regulator accordingly dispenses with the giving of a warning notice and an opportunity to make representations as described in Article 91(2)(a) and (b), and

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- (c) the Regulator determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—
  - (i) the interests of members under an occupational or personal pension scheme, or
  - (ii) the assets of such a scheme.
- (3) A case falls within this paragraph if—
  - (a) the Regulator gives a warning notice as described in Article 91(2)(a) in relation to a determination whether to exercise a regulatory function listed in paragraph (5), and
  - (b) before it has considered the representations of those persons to whom the warning notice is given, the Regulator determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—
    - (i) the interests of members under an occupational or personal pension scheme, or
    - (ii) the assets of such a scheme.
- (4) A case falls within this paragraph if the Regulator—
  - (a) gives a warning notice as described in Article 91(2)(a) in relation to a determination whether to exercise a regulatory function which—
    - (i) is listed in paragraph (5), and
    - (ii) is not a function listed in Article 91(6) (functions which may be exercised immediately under the standard procedure),
  - (b) considers the representations of those persons to whom the warning notice is given, and
  - (c) determines to exercise the function immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—
    - (i) the interests of members under an occupational or personal pension scheme, or
    - (ii) the assets of such a scheme.
- (5) The regulatory functions referred to in paragraphs (2), (3) and (4) are—
  - (a) the power to make or extend a restraining order under Article 16;
  - (b) the power to make a freezing order under Article 19;
  - (c) the power to make an order under Article 21(3) extending the period for which a freezing order has effect;
  - (d) the power to make an order under Article 22 validating action taken in contravention of a freezing order;
  - (e) the power to make an order under Article 24 directing that specified steps are taken;
  - (f) the power to make an order under Article 26 giving a direction where a freezing order ceases to have effect;
  - (g) the power to make an order under Article 27(3) directing the notification of members;
  - (h) the power to make an order under Article 210 modifying a scheme, giving directions or imposing a schedule of contributions;
  - (i) the power to make an order under Article 3(1) of the 1995 Order prohibiting a person from being a trustee;
  - (j) the power to make an order under Article 3(3) of that Order revoking such an order;
  - (k) the power to make an order under Article 4(1) of that Order suspending a trustee;

- (l) the power to make an order under Article 4(5) of that Order revoking such an order;
- (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 11 of that Order directing or authorising an occupational pension scheme to be wound up;
- (p) the power to make an order under Article 23 of that Order appointing an independent trustee;
- (q) the power under Article 29(5) of that Order to give a notice waiving a disqualification under Article 29 of that Order;
- (r) 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;
- (s) the power to make an order under Article 67G(2) of that Order by virtue of which any modification of, or grant of rights under, an occupational pension scheme is void to any extent;
- (t) the power to make an order under Article 67H(2) of that Order prohibiting, or specifying steps to be taken in relation to, the exercise of a power to modify an occupational pension scheme;
- [<sup>F52</sup>(ta) a power under section 20H of the Pension Schemes Act;]
- (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 (j) or (l).

**F52** Art. 92(5)(ta) inserted (3.3.2009 for certain purposes otherwise 6.4.2009) by [Pensions Act \(Northern Ireland\) 2008 \(c. 1\), ss. 12\(6\), 21\(1\)\(a\); S.R. 2009/75, art. 2](#)

### Special procedure

**93.**—(1) The procedure determined under Article 88 must make provision for the special procedure.

- (2) The “special procedure” is a procedure which provides for—
  - (a) the giving of notice of the determination to exercise the regulatory function to such persons as appear to the Regulator to be directly affected by it (a “determination notice”),
  - (b) the determination notice to contain details of the requirement for the Regulator to review the determination under Article 94(1) and of any subsequent right of referral to the Tribunal under Article 94(7),
  - (c) the persons to whom the determination notice was given (as required under sub-paragraph (a)) to have an opportunity to make representations in relation to the determination before it is reviewed under Article 94(1),
  - (d) the consideration of any such representations before the determination on the review,
  - (e) the giving of a notice in accordance with Article 94(4) of the determination on the review (a “final notice”),
  - (f) the final notice to contain details of the right of referral to the Tribunal under Article 94(7),

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- (g) the form and further content of determination notices and final notices and the manner in which they are to be given, and
- (h) the time limits to be applied at any stage of the procedure.

### **Compulsory review**

**94.**—(1) In a case where the special procedure applies, the Regulator must review the determination to exercise the regulatory function.

(2) The review must be determined as soon as reasonably practicable.

(3) The Regulator's powers on a review under this Article include power to—

- (a) confirm, vary or revoke the determination,
- (b) confirm, vary or revoke any order, notice or direction made, issued or given as a result of the determination,
- (c) substitute a different determination, order, notice or direction,
- (d) deal with the matters arising on the review as if they had arisen on the original determination, and
- (e) make savings and transitional provision.

(4) When the Regulator has completed a review under this Article a notice of its determination on the review must be given to such persons as appear to it to be directly affected by its determination on the review.

(5) If the final notice contains a determination to exercise a different regulatory function to the function which was the subject-matter of the determination notice, then the final notice may not be given unless—

- (a) such persons as appear to the Regulator to be directly affected by the exercise of the regulatory function have been given an opportunity to make representations, and
- (b) the Regulator has considered any such representations before it makes its determination on the review.

(6) Paragraph (5) does not apply if the regulatory function is listed in Article 92(5) and the Regulator determines to exercise it immediately on the basis that it is necessary to do so because there is, or the Regulator considers it likely that if the function were not exercised immediately there would be, an immediate risk to—

- (a) the interests of members under an occupational or personal pension scheme, or
- (b) the assets of such a scheme.

(7) The determination which is the subject-matter of a final notice may be referred to the Tribunal by—

- (a) any person to whom the final notice is given as required under paragraph (4), and
- (b) any other person who appears to the Tribunal to be directly affected by the determination.

(8) Where that determination is a determination to exercise a different regulatory function to the function which was the subject-matter of the determination notice, the Regulator must not exercise the regulatory function—

- (a) during the period within which the determination may be referred to the Tribunal (see Article 97(1)), and
- (b) if the determination is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.

(9) Paragraph (8) does not apply where—

- (a) the regulatory function in question is a function listed in Article 91(6) (functions which may be exercised immediately under the standard procedure), or
  - (b) the regulatory function in question is a function listed in Article 92(5) (functions which may be exercised immediately under the special procedure) and the Regulator determines to exercise it immediately on the basis described in paragraph (6).
- (10) The functions of the Regulator under this Article are exercisable on behalf of the Regulator by the Determinations Panel (and are not otherwise exercisable by or on behalf of the Regulator).
- (11) The Panel must determine the procedure that it proposes to follow in relation to the exercise of those functions.
- (12) Article 89 (publication of Regulator's procedure) applies in relation to the procedure determined under paragraph (11) as it applies to the procedure determined under Article 88 (procedure in relation to the regulatory functions).

#### **Duty to have regard to the interests of members etc.**

- 95.**—(1) The Regulator must have regard to the matters mentioned in paragraph (2)—
- (a) when determining whether to exercise a regulatory function—
    - (i) in a case where the requirements of the standard or special procedure apply, or
    - (ii) on a review under Article 94, and
  - (b) when exercising the regulatory function in question.
- (2) Those matters are—
- (a) the interests of the generality of the members of the scheme to which the exercise of the function relates, and
  - (b) the interests of such persons as appear to the Regulator to be directly affected by the exercise.

#### **Powers to vary or revoke orders, notices or directions etc.**

- 96.**—(1) The Regulator may vary or revoke—
- (a) any determination by the Regulator whether to exercise a regulatory function, or
  - (b) any order, notice or direction made, issued or given by the Regulator in the exercise of a regulatory function.
- (2) Paragraph (1)(b) does not apply to—
- (a) an order under Article 3(3) of the 1995 Order revoking a prohibition order under that Article,
  - (b) an order under Article 4(5) of that Order revoking a suspension order under that Article,
  - (c) a direction under Article 4(3) of the 1999 Order refusing to register a scheme under that Article or removing a scheme from the register of stakeholder pension schemes, or
  - (d) such other orders, notices or directions made, issued or given by the Regulator, in the exercise of a regulatory function, as may be prescribed.
- (3) A variation or revocation of an order, a notice or a direction must be made by an order, notice or direction (as the case may be).
- (4) A variation or revocation made under this Article must take effect from a specified time which must not be a time earlier than the time when the variation or revocation is made.
- (5) The power to vary or revoke under this Article—
- (a) is not to be treated for the purposes of paragraph (1) as a regulatory function, and

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- (b) is in addition to any such power which is conferred on the Regulator by, or by virtue of, this or any other statutory provision.

### The Pensions Regulator Tribunal

VALID FROM 06/04/2010

#### [<sup>F53</sup> Offences

**96A.**—(1) This Article applies in respect of proceedings before a tribunal in relation to a decision of the Regulator.

(2) A person is guilty of an offence if that person, without reasonable excuse, refuses or fails—

- (a) to attend following the issue of a summons by the tribunal, or
- (b) to give evidence.

(3) A person guilty of an offence under paragraph (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A person is guilty of an offence if that person, without reasonable excuse—

- (a) alters, suppresses, conceals or destroys a document which that person is or is liable to be required to produce for the purposes of proceedings before the tribunal, or
- (b) refuses to produce a document when so required.

(5) A person guilty of an offence under paragraph (4) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

(6) In this Article “document” includes information recorded in any form and, in relation to information recorded otherwise than in a legible form, references to its production include references to producing a copy of the information in a legible form, or in a form from which it can readily be produced in a legible form.]

**F53** Art. 96A inserted (6.4.2010) by Pensions Regulator Tribunal (Transfer of Functions) Act (Northern Ireland) 2010 (c. 4), ss. 3(1), 5(2), Sch. 1 para. 17 (with transitional and saving in Sch. 2); S.R. 2010/101, art. 2

#### References to the Tribunal

**97.**—(1) A reference to the Tribunal under this Order must be made—

- (a) in the case of a reference under Article 91(3) (referral following determination under standard procedure), during the period of 28 days beginning with the day on which the determination notice in question is given,
- (b) in the case of a reference under Article 94(7) (referral following determination under special procedure), during the period of 28 days beginning with the day on which the final notice in question is given, or
- (c) in either case, during such other period as may be specified in rules made under section 102 of the Pensions Act 2004 (c. 35).



(2) Subject to rules made under section 102 of the Pensions Act 2004, the Tribunal may allow a reference to be made after the end of the relevant period specified in or under paragraph (1).

(3) On a reference, the Tribunal may consider any evidence relating to the subject-matter of the reference, whether or not it was available to the Regulator at the material time.

(4) On a reference, the Tribunal must determine what (if any) is the appropriate action for the Regulator to take in relation to the matter referred to the Tribunal.

(5) On determining a reference, the Tribunal must remit the matter to the Regulator with such directions (if any) as the Tribunal considers appropriate for giving effect to its determination.

(6) Those directions may include directions to the Regulator—

- (a) confirming the Regulator's determination and any order, notice or direction made, issued or given as a result of it;
- (b) to vary or revoke the Regulator's determination, and any order, notice or direction made, issued or given as a result of it;
- (c) to substitute a different determination, order, notice or direction;
- (d) to make such savings and transitional provision as the Tribunal considers appropriate.

(7) The Regulator must act in accordance with the determination of, and any direction given by, the Tribunal (and accordingly Articles 91 to 94 (standard and special procedure) do not apply).

(8) The Tribunal may, on determining a reference, make recommendations as to the procedure followed by the Regulator or the Determinations Panel.

(9) An order of the Tribunal may be enforced as if it were an order of a county court.

### **Appeal on a point of law**

**98.**—(1) A party to a reference to the Tribunal may with permission appeal to the Court of Appeal on a point of law arising from a decision of the Tribunal disposing of the reference.

(2) “Permission” means permission given by—

- (a) the Tribunal, or
- (b) if it is refused by the Tribunal, by the Court of Appeal.

(3) If, on an appeal under paragraph (1), the Court considers that the decision of the Tribunal was wrong in law, it may—

- (a) remit the matter to the Tribunal for rehearing and determination by it under Article 97, or
- (b) itself make a determination.

(4) An appeal may not be brought from a decision of the Court of Appeal under paragraph (3) except with the leave of—

- (a) the Court of Appeal, or
- (b) the House of Lords.

(5) Rules made under section 102 of the Pensions Act 2004 (c. 35) may make provision for regulating or prescribing any matters incidental to or consequential on an appeal under this Article.

### **Redetermination etc. by the Tribunal**

**99.**—(1) This Article applies where an application is made to the Tribunal for permission under Article 98(2)(a) to appeal from a decision of the Tribunal disposing of a reference.

(2) If the person who constitutes, or is the chairman of, the Tribunal for the purposes of dealing with that application considers that the decision of the Tribunal disposing of the reference was wrong in law, he may set aside the decision and refer the matter—

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- (a) for rehearing and redetermination by the Tribunal under Article 97, or
- (b) for rehearing and determination under that Article by a differently constituted Tribunal.

### Disclosure of information

**100.** <sup>F54</sup> .....

<p><b>F54</b> Art. 100 repealed (1.10.2009) by Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 2(2), <b>Sch. 2</b> (with art. 10)</p>
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