

**2005 No. 173**

**PENSIONS**

**The Pensions Regulator (Contribution Notices and Restoration Orders) Regulations (Northern Ireland) 2005**

*Made* - - - - - *25th March 2005*

*Coming into operation* *6th April 2005*

The Department for Social Development, in exercise of the powers conferred on it by Articles 34(1)(b), 48(1)(b) and (7)(a) and 287(3) of the Pensions (Northern Ireland) Order 2005(a) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Pensions Regulator (Contribution Notices and Restoration Orders) Regulations (Northern Ireland) 2005 and shall come into operation on 6th April 2005.

(2) In these Regulations –

“the Order” means the Pensions (Northern Ireland) Order 2005;

“the 1988 Act” means the Income and Corporation Taxes Act 1988(b);

“registered for tax purposes” in relation to a scheme, means registered in accordance with section 153 of the Finance Act 2004(c) (registration of pension schemes) or treated as registered by virtue of Schedule 36 of that Act (pension schemes etc: transitional provisions and savings);

“relevant public authority” has the meaning given in Article 280(4) (modification of the Order in relation to certain categories of schemes);

“tax approved scheme” means a scheme which is approved, or was formerly approved, under section 590(d) (conditions for approval of retirement benefit schemes) or 591(e) (discretionary approval) of the 1988 Act, or in respect of which an application for such approval has been duly made but has not been determined.

(3) In these Regulations any reference to a numbered Article is a reference to the Article of the Order bearing that number.

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(a) S.I. 2005/255 (N.I. 1)

(b) 1988 c. 1

(c) 2004 c.12; at the time of the coming into operation of these Regulations section 153 had not yet been brought into force to the Finance Act 1989 (c. 26) (*see also* paragraph 18(2) and (3), of that Schedule) sections 34(2) and 36(2) and (3) of, the Finance Act 1991 (c. 31) and paragraph 2 of Schedule 10 to the Finance Act 1999 (c. 16)

(e) Section 591 was amended by paragraph 6 of Schedule 13 to the Finance Act 1988 (*see also* paragraph 1 of that Schedule), section 107 of the Finance Act 1994 (c. 9), section 59(2) of the Finance Act 1995 (c. 4) and paragraph 3 of Schedule 10 to the Finance Act 1999 (*see also* paragraph 18(1) and (3) of that Schedule)

## Prescribed schemes

2. For the purposes of Articles 34(1)(b) and 48(1)(b) (schemes to which Articles 34 (contribution notices) and 48 (restoration orders) do not apply), a prescribed scheme or a scheme of a prescribed description is –

- (a) a scheme which has never been a tax approved scheme or has never been registered for tax purposes;
- (b) a public service pension scheme under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to voluntary contributions);
- (c) a scheme which is made under Article 9 of the Superannuation (Northern Ireland) Order 1972<sup>(a)</sup> (superannuation of persons employed in local government service, etc.) and which provides pensions to persons mentioned in paragraph (1)(a) of that Article;
- (d) a scheme which is established under section 48 of the Northern Ireland Act 1998<sup>(b)</sup> (pensions of members), or which was established under Part II of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965<sup>(c)</sup> or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976<sup>(d)</sup>;
- (e) a scheme in respect of which a relevant public authority has given a guarantee or made any other arrangements for the purpose of securing that the assets of the scheme are sufficient to meet its liabilities;
- (f) a scheme which provides relevant benefits within the meaning of section 612(1) of the 1988 Act (interpretation) but which is not a relevant statutory scheme within the meaning of section 611A<sup>(e)</sup> of that Act (definition of relevant statutory scheme);
- (g) a scheme –
  - (i) which has been categorised by the Commissioners of Inland Revenue for the purposes of its approval, or registration, as a centralised scheme for non-associated employers;
  - (ii) which is not contracted-out, and
  - (iii) under the provisions of which the only benefits that may be provided on or after retirement (other than money purchase benefits derived from the payment of voluntary contributions by any person) are lump sum benefits which are not calculated by reference to a member's salary;
- (h) a scheme –
  - (i) the only benefits provided by which (other than money purchase benefits) are death benefits, and
  - (ii) under the provisions of which no member has accrued rights (other than rights to money purchase benefits);
- (i) a scheme with such a superannuation fund as is mentioned in section 615(6) of the 1988 Act<sup>(f)</sup> (exemption from tax in respect of certain pensions), and
- (j) the scheme established by the Salvation Army Act 1963<sup>(g)</sup>.

## Person of a prescribed description

3. A person who is prescribed for the purposes of Article 48(7)(a) is any person whom the trustees or managers of the scheme have authorised to enter into transactions involving the assets of that scheme.

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(a) S.I. 1972/1073 (N.I. 10)

(b) 1998 c. 47

(c) 1965 c. 18 (N.I.)

(d) S.I. 1976/1779

(e) Section 611A was inserted by paragraph 15 of Schedule 6 to the Finance Act 1989 and amended by paragraph 5 of Schedule 5 to the Finance Act 1999

(f) Section 615(6) was amended by paragraph 11 of Schedule 10 to the Finance Act 1999 and has effect in relation to trust-based occupational pension schemes established in respect of persons wholly employed in a trade or undertaking outside of the United Kingdom

(g) 1963 c.xxxii

Sealed with the Official Seal of the Department for Social Development on 25th March 2005.

(L.S.)

*John O'Neill*

A senior officer of the Department for Social Development

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations make further provision relating to the “moral hazard” provisions in Articles 34 and 48 of the Pensions (Northern Ireland) Order 2005 (“the Order”). These Articles provide for two of the powers of the Pensions Regulator known as the “moral hazard” provisions, that is, the Regulator’s power to issue contribution notices and to make restoration orders.

Regulation 2 prescribes those schemes to which Articles 34 and 48 of the Order do not apply.

Regulation 3 prescribes “appropriate persons” who may be involved in a transaction involving scheme assets which is at an undervalue.

The Pensions (2005 Order) (Commencement No. 1 and Consequential and Transitional Provisions) Order (Northern Ireland) 2005 (S.R. 2005 No. 48 (C. 5)) provides for the coming into operation of Article 34(1)(b), 48(1)(b) and (7)(a), some of the enabling provisions under which these Regulations are made, on 25th February 2005 for the purpose only of authorising the making of regulations and on 6th April 2005 for all other purposes.

As these Regulations are made before the end of the period of six months beginning with the coming into operation of the provisions of the Order by virtue of which they are made, the requirement to consult under Article 289(1) of the Order does not apply by virtue of paragraph (2)(c) of that Article.

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