

2021 No. 271 (C. 11)

PENSIONS

**The Pension Schemes Act 2021
(Commencement No. 2 and Transitional and Saving Provisions)
Order (Northern Ireland) 2021**

Made - - - - *28th September 2021*

The Department for Communities makes the following Order in exercise of the powers conferred by section 131(2), (4) and (6) of the Pension Schemes Act 2021(a).

PART 1

Preliminary

Citation and interpretation

1.—(1) This Order may be cited as the Pension Schemes Act 2021 (Commencement No. 2 and Transitional and Saving Provisions) Order (Northern Ireland) 2021.

(2) In this Order—

“the Act” means the Pension Schemes Act 2021;

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

“the Regulator” means the Pensions Regulator.

PART 2

Appointed day

Commencement of provisions

2.—(1) The following provisions of the Act come into operation on the day appointed by this Article.

(2) The day appointed for the coming into operation of paragraph 15(2) of Schedule 11 to the Act (administration charges), and section 129(b) in so far as it relates to it, for the purpose only of authorising the making of regulations is 29th September 2021, and for all other purposes is immediately before 1st October 2021.

(a) 2021 c. 1
(b) S.I. 2005/255 (N.I. 1)

(3) The day appointed for the coming into operation of the following provisions of the Act is 1st October 2021—

- (a) paragraph 3 of Schedule 8 (reasonableness of issuing contribution notice) except—
 - (i) paragraph 3(1) in so far as it relates to paragraph 3(2), and
 - (ii) paragraph 3(2);
- (b) paragraph 4 of Schedule 8 (determination of sum specified in a contribution notice);
- (c) paragraph 5 of Schedule 8 (sanctions for failure to comply with a contribution notice);
- (d) paragraph 6 of Schedule 8 (sanctions for avoidance of employer debt etc);
- (e) paragraph 7 of Schedule 8 (duty to notify the Regulator of certain events);
- (f) paragraph 10 of Schedule 8 (inspection of premises) except—
 - (i) paragraph 10(2)(a);
 - (ii) paragraph 10(2)(b)(ii), and
 - (iii) paragraph 10(1) in so far as it relates to the amendments excepted by heads (i) and (ii);
- (g) paragraph 12 of Schedule 8 (provision of false or misleading information to Regulator) except for the following provisions of inserted Article 75A of the 2005 Order (financial penalty for providing false or misleading information to Regulator)—
 - (i) paragraph (2)(a)(iv), and
 - (ii) paragraph (2)(c)(v);
- (h) paragraph 13 of Schedule 8 (provision of false or misleading information to trustees or managers);
- (i) paragraph 14 of Schedule 8 (financial penalties);
- (j) paragraph 15(3) of Schedule 11;
- (k) section 117(a) (the Pensions Regulator: Northern Ireland) and paragraph 1 of Schedule 8 (amendments of the Pensions (Northern Ireland) Order 2005) in so far as they relate to the provisions specified in sub-paragraphs (a) to (i), and
- (l) section 129(b) (further provision relating to pension schemes: Northern Ireland) in so far as it relates to the provision specified in sub-paragraph (j).

(4) The day appointed for the coming into operation of the following provisions in Schedule 8 to the Act (minor and consequential amendments) is 1st October 2021—

- (a) paragraph 15;
- (b) paragraph 16 except in so far as it relates to the following provisions of Schedule 8—
 - (i) the reference in the amendment made by paragraph 21(3) to Part 2 of the Pension Schemes Act 2021;
 - (ii) paragraph 22(a), and
 - (iii) paragraph 26(2);
- (c) paragraphs 17 to 20;
- (d) paragraph 21 except for the reference in the amendment made by paragraph 21(3) to Part 2 of the Pension Schemes Act 2021;
- (e) paragraph 22 except for paragraph 22(a);
- (f) paragraphs 23 to 25, and
- (g) paragraph 26 except for paragraph 26(2),

and section 117(b) of the Act in so far as it relates to the provisions specified in sub-paragraphs (a) to (g).

(5) The day appointed for the coming into operation of the following provisions of the Act for all remaining purposes is 1st October 2021—

- (a) paragraph 2 of Schedule 8 (grounds for issuing an Article 34 contribution notice);
- (b) paragraph 9 of Schedule 8 (interviews);
- (c) paragraph 11 of Schedule 8 (fixed penalty notices and escalating penalty notices), and
- (d) section 117(a) and paragraph 1 of Schedule 8 in so far as they relate to the provisions specified in sub-paragraphs (a) to (c).

PART 3

Transitional and saving provisions

Transitional provision in respect of the Regulator's powers to impose contribution notices and sanctions for avoidance of employer debt and financial penalties

3.—(1) Paragraphs (2) to (4) apply where—

- (a) an act or failure to act or course of conduct occurred before 1st October 2021;
- (b) in the case of acts or failures to act or courses of conduct which form part of a series, any series where the first act or failure to act or instance of course of conduct occurred before 1st October 2021, or
- (c) in the case of a continuing failure, the failure first occurred before 1st October 2021.

(2) Articles 34(a) (contribution notices where avoidance of employer debt), 35 (the sum specified on an Article 34 contribution notice), 36 (content and effect of an Article 34 contribution notice), and 37 (Article 34 contribution notice: relationship with employer debt) of the 2005 Order continue to apply as if the amendments made by paragraphs 2 to 5 of Schedule 8 to the Act (grounds for issuing an Article 34 contribution notice) have not been brought into operation.

(3) The amendments made by paragraph 5(3) and (4) of Schedule 8 to the Act (sanctions for failure to comply with a contribution notice) do not apply.

(4) The amendments made by paragraph 6 of Schedule 8 to the Act (sanctions for avoidance of employer debt etc) do not apply.

(5) The amendments made by paragraph 14 of Schedule 8 to the Act (financial penalties) do not apply, but where a penalty notice is issued under Article 83A(b) of the 2005 Order (financial penalties) after 1st October 2021, Article 83B of the 2005 Order (financial penalties: time for recovery) applies to contribution notices issued under Article 34 of the 2005 Order before 1st October 2021.

Transitional provision in respect of the duty to notify the Regulator of certain events

4. Where a duty to notify the Regulator of any notifiable event under Article 64(c) of the 2005 Order (duty to notify the Regulator of certain events) arises before 1st October 2021, Articles 64 and 75(d) of the 2005 Order (offences of providing false or misleading information) continue to apply as if the amendments made by paragraph 7 of Schedule 8 of the Act (duty to notify the Regulator of certain events) have not been brought into operation.

(a) Articles 34 to 38 are amended by paragraphs 2 to 5 of Schedule 8 to the Pension Schemes Act 2021

(b) Articles 83A and 83B are inserted by paragraph 14 of Schedule 8 to the Pension Schemes Act 2021

(c) Article 64 is amended by paragraph 7(1) of Schedule 8 to the Pension Schemes Act 2021

(d) Article 75 is amended by paragraphs 7(2) and 21(3) of Schedule 8 to the Pension Schemes Act 2021

Transitional provision in respect of the Regulator’s power to impose fixed and escalating penalty notices

5. The amendments made by paragraph 11 of Schedule 8 to the Act (fixed penalty notices and escalating penalty notices) do not apply in relation to—

- (a) a duty to comply with—
 - (i) a notice issued under Article 67(a) of the 2005 Order (provision of information), or
 - (ii) a requirement under Article 70(b) of the 2005 Order (inspection of premises: powers of inspectors),arising before 1st October 2021, or
- (b) any act occurring before 1st October 2021 which prevented or hindered an inspector exercising any power under Article 68 (inspection of premises), Article 69(c) (inspection of premises in respect of employers’ obligations) or Article 70 of the 2005 Order.

Transitional provision in respect of provision of false or misleading information to the Regulator

6. The amendments made by paragraph 12 of Schedule 8 to the Act (provision of false or misleading information to Regulator) do not apply in so far as they relate to information supplied to the Regulator under the circumstances mentioned at Article 72A(2)(a), (b) or (c) of the 2005 Order (financial penalty for providing false or misleading information to the Regulator) before 1st October 2021.

Transitional provision in respect of provision of false or misleading information to trustees or managers

7. The amendments made by paragraph 13 of Schedule 8 to the Act (provision of false or misleading information to trustees or managers) do not apply in so far as they relate to information provided to a trustee or manager of a scheme under the circumstances mentioned at Article 75B(3)(a) or (b)(d) of the 2005 Order (financial penalty for providing false or misleading information to trustees or managers) before 1st October 2021.

Saving provision in respect of the duty to notify the Regulator of certain events before 1st October 2021

8. Article 64(7) of the 2005 Order continues to have effect as if the amendments made by paragraph 7(1) of Schedule 8 to the Act (duty to notify the Regulator of certain events) have not been brought into operation, in so far as it relates to any duty to notify the Regulator arising before 1st October 2021.

Savings provision in respect of interview notices issued before 1st October 2021

9. Article 67(1A) and (1B) of the 2005 Order continues to have effect, as if the amendments made by paragraph 9(1) and (2) of Schedule 8 to the Act (interviews) have not been brought into operation where—

- (a) a notice has been issued under Article 67(1A) of the 2005 Order before 1st October 2021, and
- (b) the duty imposed on the recipient of such a notice has yet to be discharged.

(a) Article 67(1A) and (1B) is omitted by paragraph 9(2) of Schedule 8 to the Pension Schemes Act 2021. There are other amendments made by other legislation but none is relevant

(b) Article 70 is amended by paragraph 18 of Schedule 8 to the Pension Schemes Act 2021. There are other amendments made by other legislation but none is relevant

(c) Article 69 is amended by section 60 of the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.))

(d) Article 72A is amended by paragraph 13 of Schedule 8 to the Pension Schemes Act 2021

Savings provision in respect of the definition of “administration charge”

10.—(1) Subject to paragraph (2), the meaning given to “administration charge” in section 39 of the Pension Schemes Act (Northern Ireland) 2021^(a) (interpretation of Part 1) has effect as if the amendments made by paragraph 15(2) of Schedule 11 to the Act (administration charges) have not been brought into operation.

(2) The saving in paragraph (1) ceases to have effect on 5th April 2022.

Sealed with the Official Seal of the Department for Communities on 28th September 2021

(L.S.)

Anne McCleary
A senior officer of the Department for Communities

^(a) 2021 c. 6 (N.I.)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the coming into operation of certain provisions of the Pension Schemes Act 2021 (“the Act”). This Order also contains transitional and saving provisions in relation to the provisions of the Act being brought into operation by this Order.

Article 2(2) appoints the day for the coming into operation of paragraph 15(2) of Schedule 11 to the Act (administration charges) for the purpose only of authorising the making of regulations by the Department for Communities as 29th September 2021 and for all other purposes is immediately before 1st October 2021.

In addition, Article 2 appoints the day for the coming into operation of the following provisions of the Act as 1st October 2021 subject to prescribed exceptions: paragraphs 3 (reasonableness of issuing a contribution notice), 4 (determination of a sum specified in a contribution notice), 5 (sanctions for failure to comply with a contribution notice), 6 (sanctions for avoidance of employer debt etc), 7 (duty to notify the Regulator of certain events), 10 (inspection of premises), 12 (provision of false or misleading information to the Regulator), 13 (provision of false or misleading information to trustees or managers), 14 (financial penalties) and 15 to 26 (minor and consequential amendments) of Schedule 8 and paragraph 15(3) of Schedule 11. It also commences paragraphs 2 (grounds for issuing an Article 34 contribution notice), 9 (interviews) and 11 (fixed penalty notices and escalating penalty notices) of Schedule 8 for all remaining purposes.

Paragraph 2 of Schedule 8 to the Act amends Article 34 of the 2005 Order and inserts Articles 34C to 34F which introduce the new employer insolvency test and employer resources test in connection with the contribution notice regime set out at Articles 34 to 38 of the 2005 Order.

Paragraph 3 of Schedule 8 (reasonableness of issuing a contribution notice) to the Act amends Article 34 of the 2005 Order by inserting additional matters the Pensions Regulator (“the Regulator”) can consider when deciding whether to impose a liability on a person to pay a contribution notice issued under Article 34 of the 2005 Order (“contribution notice”).

Paragraph 4 of Schedule 8 (determination of a sum specified in a contribution notice) to the Act amends Article 35 of the 2005 Order by substituting the relevant time for the purpose of determining the sum specified in a contribution notice.

Paragraph 5 of Schedule 8 (sanctions for failure to comply with a contribution notice) to the Act amends Article 36 and 37 of the 2005 Order and inserts Articles 38A and 38B which introduce a new offence and financial penalty for failure to comply with a contribution notice.

Paragraph 6 of Schedule 8 (sanctions for avoidance of employer debt etc.) to the Act inserts Articles 54A to 54D into the 2005 Order which introduce two new offences and two new financial penalties for avoidance of employer debt and conduct risking accrued scheme benefits.

Paragraph 7 of Schedule 8 (duty to notify the Regulator of certain events) to the Act amends Article 64 of the 2005 Order and substitutes the existing financial penalty the Regulator may issue under Article 10 of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) with the new financial penalty at Article 83A of the 2005 Order. It also amends Article 75 of the 2005 Order to create an offence for providing false or misleading information to the Regulator in relation to the duty to notify the Regulator under Article 64 of the 2005 Order.

Paragraph 9 of Schedule 8 (interviews) to the Act inserts Article 67A into the 2005 Order and introduces a power to enable the Pensions Regulator to require individuals to attend an interview. It also repeals the existing Article 67(1A) and (1B) which enables the Regulator to require persons to provide information or attend an interview in relation to matters relating to automatic enrolment or Master Trusts. It also amends Article 72 of the 2005 Order to create an offence for neglecting or refusing to attend an interview before the Regulator without a reasonable excuse.

Paragraph 10 of Schedule 8 (inspection of premises) to the Act amends Article 68 of the 2005 Order to enable the Regulator to inspect premises, including the premises of a sponsoring employer of a pension scheme, for a wider range of purposes.

Paragraph 11 of Schedule 8 (fixed penalty notices and escalating penalty notices) to the Act inserts Articles 72A (fixed penalty notices) and 72B (escalating penalty notices) into the 2005 Order, which introduce powers to enable the Pensions Regulator to impose fixed penalty notices and escalating penalty notices for failures to comply with any of the obligations under Article 67, 67A 68, 69 (inspection of premises in respect of employer’s obligations) or 70 (inspection of premises: powers of inspectors) of the 2005 Order.

Paragraph 12 of Schedule 8 (provision of false or misleading information to the Regulator) inserts Article 75A (financial penalty for providing false or misleading information to the Regulator) into the 2005 Order which introduces a new financial penalty for providing false or misleading information to the Regulator where the information is provided in purported compliance with a specific requirement.

Paragraph 13 of Schedule 8 (provision of false or misleading information to trustees or managers) inserts Article 75B (financial penalty for providing false or misleading information to trustees or managers) into the 2005 Order which introduces a new financial penalty for providing false or misleading information to the trustees or managers of a scheme where the information is provided in purported compliance in specified circumstances.

Paragraph 14 of Schedule 8 (financial penalties) inserts Articles 83A, 83B (financial penalties: time for recovery) and 83C (financial penalties: recovery) into the 2005 Order which introduce a power for the Regulator to impose a financial penalty. It also provides that where a financial penalty is issued under Article 83B and at that time, the person on which the penalty is being imposed is also subject to one or more contribution notices, the Regulator may not seek to recover the financial penalty until such time as when the contribution notice has been paid, the specified date for payment of the contribution notice has past or, if earlier, the date on which the recipient of the financial penalty experiences a qualifying insolvency event.

Paragraph 15(2) of Schedule 11 to the Act (administration charges) amends the definition of “administration charges” in paragraph 1(5) of Schedule 18 to the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)) (power to restrict charges or impose requirements in relation to schemes) to clarify its scope. Paragraph 15(3) of Schedule 11 to the Act amends section 109 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (disclosure of information about schemes to members, etc.) to make it clear that transaction costs are a form of administration charge.

Schedule 8 to the Act also makes minor and consequential amendments to other legislation.

Articles 3 to 7 make transitional provisions setting out how Articles 34 to 37, Articles 54A to 54D, Article 64, Articles 72A and 72B and Articles 83A to 83C of the 2005 Order and paragraphs 12 and 13 of Schedule 8 to the Act apply where the act, failure to act or course of conduct in question occurred before 1st October 2021.

Article 8 contains a saving measure to enable Article 10 of the Pensions (Northern Ireland) Order 1995 to continue to apply in relation to any non-compliance with the duty to notify the Regulator of any notifiable events pursuant to Article 64 of the 2005 Order arising before 1st October 2021.

Article 9 contains a saving measure to enable Article 67(1A) and (1B) of the 2005 Order to continue to have effect after the repeal of these provisions where a notice to attend an interview has been issued and the duty imposed has not yet been discharged.

Article 10 contains a saving measure to ensure that the meaning of “administration charge” in section 39 of the Pension Schemes Act (Northern Ireland) 2021 (prior to the commencement of the amendments made by paragraph 15(2) of Schedule 11 to the Act) continues to have effect. This measure will cease to have effect on 5th April 2022.

NOTE AS TO EARLIER COMMENCEMENT ORDER

(This note is not part of the Order)

The following provisions of the Pension Schemes Act 2021 have been brought into operation by an earlier commencement order as from the date shown.

<i>Provision</i>		<i>Date of Commencement</i>	<i>S.R. No.</i>
Section 117	(partially)	1st October 2021	2021 No. 240 (C. 8)
Section 129	(partially)	1st October 2021	2021 No. 240 (C. 8)
Schedule 8	(partially)	1st October 2021	2021 No. 240 (C. 8)
Schedule 11	(partially)	1st October 2021	2021 No. 240 (C. 8)

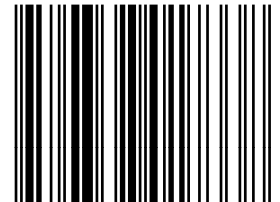
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