



# Pension Schemes Act 1993

## 1993 CHAPTER 48

### PART VII

#### INSOLVENCY OF EMPLOYERS

#### CHAPTER I

##### INDEPENDENT TRUSTEES

#### **119 Requirement for independent trustee where employer becomes insolvent etc**

- (1) This section applies in relation to an occupational pension scheme which is constituted by trust deed—
  - (a) if a person (“the practitioner”) commences to act as an insolvency practitioner in relation to a company which, or an individual who, is the employer of persons in the description or category of employment to which the scheme relates; or
  - (b) if the official receiver becomes—
    - (i) the liquidator or provisional liquidator of a company which is the employer of any such persons, or
    - (ii) the receiver and the manager, or the trustee, of the estate of a bankrupt who is the employer of any such persons.
- (2) If and so long as this section applies to a scheme, subject to subsection (5), it shall be the duty of the practitioner or official receiver—
  - (a) to satisfy himself that at all times at least one of the trustees of the scheme is an independent person; and
  - (b) if at any time he is not so satisfied, to appoint under this paragraph, or to secure the appointment of, an independent person as a trustee of the scheme.
- (3) For the purposes of subsection (2) a person is “independent” only if—
  - (a) he has no interest in the assets of the employer or of the scheme, otherwise than as trustee of the scheme;

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- (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 subsection (1)(b) in relation to the employer; and
  - (c) he satisfies such other requirements as may be prescribed;
- and any reference in this section or sections 120 to 122 to an “independent trustee” shall be construed accordingly.
- (4) Sections 249 and 435 of the Insolvency Act 1986 (connected and associated persons) shall apply for the purposes of paragraph (b) of subsection (3) as they apply for the purposes of that Act; and section 74 of the Bankruptcy (Scotland) Act 1985 (associated persons) shall apply for the purposes of that paragraph as it applies for the purposes of that Act of 1985.
  - (5) Where, apart from this subsection, the duties imposed by subsection (2) in relation to a scheme would fall to be discharged at the same time by two or more persons acting in different capacities, those duties shall be discharged—
    - (a) if the employer is a company, by the person or persons acting as the company’s liquidator, provisional liquidator or administrator; or
    - (b) if the employer is an individual, by the person or persons acting as his trustee in bankruptcy or interim receiver of his property or as permanent or interim trustee in the sequestration of his estate.
  - (6) Where this section applies in relation to a scheme, it shall cease to do so—
    - (a) if some person other than the employer mentioned in subsection (1) becomes the employer of persons in the description or category of employment to which the scheme relates; or
    - (b) if at any time neither the practitioner nor the official receiver is acting in relation to the employer.
  - (7) Nothing in subsection (6) affects the application of this section in relation to the scheme on any subsequent occasion when the conditions specified in subsection (1) (a) or (b) are satisfied in relation to it.
  - (8) In this section—
    - “acting as an insolvency practitioner” and “official receiver” shall be construed in accordance with sections 388 and 399 of the Insolvency Act 1986;
    - “bankrupt” has the meaning given by section 381 of the Insolvency Act 1986;
    - “company” means a company within the meaning given by section 735(1) of the Companies Act 1985 or a company which may be wound up under Part V of the Insolvency Act 1986 (unregistered companies);
    - “interim trustee” and “permanent trustee” have the same meanings as they have in the Bankruptcy (Scotland) Act 1985.
  - (9) References in this section to an individual include, except where the context otherwise requires, references to a partnership and to any debtor within the meaning of the Bankruptcy (Scotland) Act 1985.

## **120 Members' powers to apply to court to enforce duty under s. 119**

- (1) If—
- (a) section 119 applies in relation to a scheme; but
  - (b) the practitioner or official receiver neglects or refuses to discharge any duty imposed on him by subsection (2) of that section in relation to the scheme,
- any member of the scheme may apply to the appropriate court for an order requiring him to discharge his duties under that subsection.
- (2) In subsection (1) “the appropriate court” means—
- (a) if the employer in question is a company—
    - (i) where a winding-up order has been made or a provisional liquidator appointed, the court which made the order or appointed the liquidator;
    - (ii) in any other case, any court having jurisdiction to wind up the company; and
  - (b) in any other case—
    - (i) in England and Wales, the court (as defined in section 385 of the Insolvency Act 1986); or
    - (ii) in Scotland, where a sequestration has been awarded or, by virtue of the proviso to section 13(1) of the Bankruptcy (Scotland) Act 1985 (petition presented by creditor or trustee acting under trust deed) an interim trustee has been appointed, the court which made the award or appointment and, if no such award or appointment has been made, any court having jurisdiction under section 9 of that Act.
- (3) In this section “interim trustee” and “company” have the same meanings as in section 119.

## **121 Further provisions as to appointment and powers of independent trustees**

- (1) If, immediately before the appointment of an independent trustee under subsection (2) (b) of section 119, there is no trustee of the scheme other than the employer, the employer shall cease to be a trustee upon the appointment of the independent trustee.
- (2) If and so long as section 119 applies in relation to a scheme—
- (a) any power vested in the trustees or managers of the scheme and exercisable at their discretion shall be exercisable only by the independent trustee; and
  - (b) any power—
    - (i) which the scheme confers on the employer (otherwise than as trustee or manager of the scheme), and
    - (ii) which is exercisable by him at his discretion but only as trustee of the power,shall be exercisable only by the independent trustee;
- but if, in either case, there is more than one independent trustee, the power shall also be exercisable with the consent of at least half of those trustees by any person who could exercise it apart from this subsection.
- (3) If and so long as section 119 applies in relation to a scheme, no independent trustee of the scheme shall be removed from being a trustee by virtue only of any provision of the scheme.

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- (4) If a trustee appointed under subsection (2)(b) of section 119 ceases to be an independent trustee, then—
  - (a) he shall immediately give written notice of that fact to the practitioner or official receiver by whom the duties under that provision fall to be discharged; and
  - (b) subject to subsection (5), he shall cease to be a trustee of the scheme.
- (5) If, in a case where subsection (4) applies, there is no other trustee of the scheme than the former independent trustee, he shall not cease by virtue of that subsection to be a trustee until such time as another trustee is appointed.
- (6) A trustee appointed under subsection (2)(b) of section 119 shall be entitled to be paid out of the scheme's resources his reasonable fees for acting in that capacity and any expenses reasonably incurred by him in doing so, and to be so paid in priority to all other claims falling to be met out of the scheme's resources.

## **122 Duty of insolvency practitioner or official receiver to give information to scheme trustees**

- (1) Notwithstanding anything in section 155 of the Insolvency Act 1986 (court orders for inspection etc.), if and so long as section 119 applies in relation to a scheme, it shall be the duty of the practitioner or official receiver to provide the trustees of the scheme, as soon as practicable after the receipt of a request, with any information which the trustees may reasonably require for the purposes of the scheme.
- (2) Any expenses incurred by the practitioner or official receiver in complying with a request under subsection (1) shall be recoverable by him as part of the expenses incurred by him in discharge of his duties.
- (3) The practitioner or official receiver shall not be required under subsection (1) to take any action which involves expenses that cannot be so recovered, unless the trustees of the scheme undertake to meet them.