



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 1

#### THE PENSIONS REGULATOR

##### *Applications under the Insolvency Act 1986*

#### **58 Regulator's right to apply under section 423 of Insolvency Act 1986**

- (1) In this section “section 423” means section 423 of the Insolvency Act 1986 (transactions defrauding creditors).
- (2) The Regulator may apply for an order under section 423 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 [<sup>F1</sup>a determination made, or actuarial valuation obtained, in respect of the scheme by the Board of the Pension Protection Fund under section 143(2)] indicates that the value of the assets of the scheme at the relevant time, as defined by [<sup>F2</sup>section 143] , was less than the amount of the protected liabilities, as defined by section 131, at that time.
- (4) Condition B is that an actuarial valuation, as defined by section 224(2), obtained by the trustees or managers of the scheme indicates that the statutory funding objective in section 222 is not met.
- (5) In a case where the debtor—
  - (a) has been [<sup>F3</sup>made] 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,subsection (2) does not enable an application to be made under section 423 except with the permission of the court.

*Status: Point in time view as at 06/04/2016.*

**Changes to legislation:** Pensions Act 2004, Cross Heading: Applications under the Insolvency Act 1986 is up to date with all changes known to be in force on or before 23 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) An application made under this section 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 section does not apply where the valuation mentioned in subsection (3) or (4) is made by reference to a date that falls before the commencement of this section.
- (8) Expressions which are defined by section 423 for the purposes of that section have the same meaning when used in this section.

#### Textual Amendments

- F1** Words in s. 58(3) substituted (23.7.2012) by Pensions Act 2011 (c. 19), s. 38(4), **Sch. 4 para. 2(a)**; S.I. 2012/1681, art. 3(b)(ii)
- F2** Words in s. 58(3) substituted (23.7.2012) by Pensions Act 2011 (c. 19), s. 38(4), **Sch. 4 para. 2(b)**; S.I. 2012/1681, art. 3(b)(ii)
- F3** Word in s. 58(5)(a) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 18**

#### Commencement Information

- I1** S. 58 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), **Sch. Pt. 7**

**Status:**

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