



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 5

#### OCCUPATIONAL AND PERSONAL PENSION SCHEMES: MISCELLANEOUS PROVISIONS

##### *Payment of surplus to employer*

#### **250 Payment of surplus to employer**

For section 37 of the Pensions Act 1995 (payment of surplus to employer) substitute—

##### **“37 Payment of surplus to employer**

- (1) This section applies to a trust scheme if—
  - (a) apart from this section power is conferred on the employer or any other person to make payments to the employer out of funds held for the purposes of the scheme, and
  - (b) the scheme is not being wound up.
- (2) Where the power referred to in subsection (1)(a) is conferred by the scheme on a person other than the trustees—
  - (a) it cannot be exercised by that person but may instead be exercised by the trustees, and
  - (b) any restriction imposed by the scheme on the exercise of the power shall, so far as capable of doing so, apply to its exercise by the trustees.
- (3) The power referred to in subsection (1)(a) may only be exercised if—
  - (a) the trustees have obtained a written valuation of the scheme's assets and liabilities prepared and signed by a prescribed person;
  - (b) there is a certificate in force—
    - (i) stating that in the opinion of that person the prescribed requirements are met as at the date by reference to which the assets are valued and the liabilities are calculated, and

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*Status: This is the original version (as it was originally enacted).*

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- (ii) specifying what in the opinion of that person is the maximum amount of payment that may be made to the employer;
  - (c) the payment does not exceed the maximum amount specified in the certificate;
  - (d) the trustees are satisfied that it is in the interests of the members that the power is exercised in the manner proposed;
  - (e) where the power is conferred by the scheme on the employer, the employer has asked for the power to be exercised, or consented to its being exercised, in the manner proposed;
  - (f) there is no freezing order in force in relation to the scheme under section 23 of the Pensions Act 2004; and
  - (g) notice of the proposal to exercise the power has been given, in accordance with prescribed requirements, to the members of the scheme.
- (4) Provision may be made by regulations as to—
- (a) the requirements (which may be alternative requirements) that must be met, in relation to any proposed payment to the employer out of funds held for the purposes of a scheme, with respect to the value of the scheme's assets and the amount of its liabilities;
  - (b) the assets and liabilities to be taken into account for that purpose and the manner in which their value or amount is to be determined, calculated and verified;
  - (c) the maximum amount of the payment that may be made to the employer, having regard to the value of the scheme's assets and the amount of its liabilities;
  - (d) the giving of a certificate as to the matters mentioned in paragraphs (a) and (c); and
  - (e) the period for which such a certificate is to be in force.
- (5) The trustees must also comply with any other prescribed requirements in connection with the making of a payment under this section.
- (6) If the trustees—
- (a) purport to exercise the power referred to in subsection (1)(a) without complying with the requirements of this section, or
  - (b) fail to comply with any requirement of regulations under subsection (5),
- section 10 applies to any of them who has failed to take all reasonable steps to secure compliance.
- (7) If a person other than the trustees purports to exercise the power referred to in subsection (1)(a), section 10 applies to him.
- (8) Regulations may provide that in prescribed circumstances this section does not apply, or applies with prescribed modifications, to schemes of a prescribed description.”

## **251 Payment of surplus to employer: transitional power to amend scheme**

(1) This section applies to a scheme which immediately before the commencement of section 250 was one to which section 37 of the Pensions Act 1995 (c. 26) applied (see subsection (1) of that section, as it then had effect).

(2) No payment to the employer may be made out of funds held for the purposes of the scheme except by virtue of a resolution of the trustees under this section.

This applies even if the payment is one proposed to be made in fulfilment of an agreement or arrangement entered into before the commencement of this section.

(3) Where the scheme was so expressed as (apart from section 37, as it then applied) to confer power to make payments to the employer out of funds held for the purposes of the scheme otherwise than in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Income and Corporation Taxes Act 1988 (c. 1), the trustees may resolve that the power—

- (a) shall become exercisable according to its terms, or
- (b) shall become so exercisable, but only in such circumstances and subject to such conditions as may be specified in the resolution.

(4) Where the scheme was so expressed as to confer power to make payments to the employer out of funds held for the purposes of the scheme only in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Income and Corporation Taxes Act 1988, the trustees may resolve that the power shall instead be exercisable in such circumstances and subject to such conditions as may be specified in the resolution.

(5) In either case the trustees must be satisfied that it is in the interests of the members of the scheme that the power is exercised in the manner proposed.

(6) The power conferred by subsection (3) or (4)—

- (a) may not be exercised unless notice of the proposal to exercise it has been given, in accordance with prescribed requirements, to the employer and to the members of the scheme,
- (b) may only be exercised once, and
- (c) ceases to be exercisable five years after the commencement of this section.

(7) The exercise of any power to make payments to the employer by virtue of a resolution under this section is subject to section 37 of the Pensions Act 1995 (c. 26) as substituted by section 250.