



Pensions Act 1995

1995 CHAPTER 26

PART I

OCCUPATIONAL PENSIONS

Winding up

[^{F1}73] **Preferential liabilities on winding up.**

- (1) This section applies where an occupational pension scheme to which this section applies is being wound up to determine the order in which the assets of the scheme are to be applied towards satisfying the liabilities of the scheme in respect of pensions and other benefits.
- (2) This section applies to an occupational pension scheme other than a scheme which is—
 - (a) a money purchase scheme, or
 - (b) a prescribed scheme or a scheme of a prescribed description.
- (3) The assets of the scheme must be applied first towards satisfying the amounts of the liabilities mentioned in subsection (4) and, if the assets are insufficient to satisfy those amounts in full, then—
 - (a) the assets must be applied first towards satisfying the amounts of the liabilities mentioned in earlier paragraphs of subsection (4) before the amounts of the liabilities mentioned in later paragraphs, and
 - (b) where the amounts of the liabilities mentioned in one of those paragraphs cannot be satisfied in full, those amounts must be satisfied in the same proportions.
- (4) The liabilities referred to in subsection (3) are—
 - (a) where—
 - (i) the trustees or managers of the scheme are entitled to benefits under a relevant pre-1997 contract of insurance entered into in relation to the scheme, and

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- (ii) either that contract may not be surrendered or the amount payable on surrender does not exceed the liability secured by the contract, the liability so secured;
 - (b) any liability for pensions or other benefits to the extent that the amount of the liability does not exceed the corresponding PPF liability, other than a liability within paragraph (a);
 - (c) any liability for pensions or other benefits which, in the opinion of the trustees or managers, are derived from the payment by any member of voluntary contributions, other than a liability within paragraph (a) or (b);
 - (d) any other liability in respect of pensions or other benefits.
- (5) For the purposes of subsection (4)—
- “corresponding PPF liability” in relation to any liability for pensions or other benefits means—
- (a) where the liability is to a member of the scheme, the cost of securing benefits for or in respect of the member corresponding to the compensation which would be payable to or in respect of the member in accordance with the pension compensation provisions if the Board of the Pension Protection Fund assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection), and
 - (b) where the liability is to another person in respect of a member of the scheme, the cost of securing benefits for that person corresponding to the compensation which would be payable to that person in respect of the member in accordance with the pension compensation provisions if the Board assumed responsibility for the scheme in accordance with that Chapter;
- “relevant pre-1997 contract of insurance” means a contract of insurance which was entered into before 6th April 1997 with a view to securing the whole or part of the scheme’s liability for—
- (a) any pension or other benefit payable to or in respect of one particular person whose entitlement to payment of a pension or other benefit has arisen, and
 - (b) any benefit which will be payable in respect of that person on his death.
- (6) For the purposes of this section, when determining the corresponding PPF liability in relation to any liability of a scheme to, or in respect of, a member for pensions or other benefits, the pension compensation provisions apply with such modifications as may be prescribed.
- (7) Regulations may modify subsection (4).
- (8) For the purposes of that subsection—
- (a) regulations may prescribe how it is to be determined whether a liability for pensions or other benefits which, in the opinion of the trustees or managers of the scheme, are derived from the payment by any member of voluntary contributions falls within paragraph (a) or (b) of that subsection;
 - (b) no pension or other benefit which is attributable (directly or indirectly) to a pension credit is to be regarded for the purposes of paragraph (c) of that subsection as derived from the payment of voluntary contributions.

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- (9) Where, on the commencement of the winding up period, a member becomes a person to whom Chapter 5 of Part 4 of the Pension Schemes Act 1993 (early leavers: cash transfer sums and contribution refunds) applies, that Chapter applies in relation to him with such modifications as may be prescribed.
- (10) For the purposes of this section—
- “assets” of a scheme to which this section applies do not include any assets representing the value of any rights in respect of money purchase benefits under the scheme rules;
 - “liabilities” of such a scheme do not include any liabilities in respect of money purchase benefits under the scheme rules;
 - “the pension compensation provisions” has the same meaning as in Part 2 of the Pensions Act 2004 (see section 162 of that Act);
 - “scheme rules” has the same meaning as in the Pensions Act 2004 (see section 318 of that Act);
 - “winding up period”, in relation to an occupational pension scheme to which this section applies, means the period which—
 - (a) begins with the day on which the time immediately after the beginning of the winding up of the scheme falls, and
 - (b) ends when the winding up of the scheme is completed.

Textual Amendments

- F1** Ss. 73-73B substituted for s. 73 (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 270(1), 322(1)** (with s. 313); [S.I. 2005/275](#), art. 2(3)(a)(b), [Sch. Pt. 3](#) (with art. 2(8)(9))

Modifications etc. (not altering text)

- C1** Ss. 73-74 applied (with modifications) by [The Occupational Pension Schemes \(Winding Up\) Regulations 1996 \(S.I. 1996/3126\)](#), regs. 1(1), **12** (as amended (6.4.2005) by [S.I. 2005/706](#), reg. 1(2), [Sch. paras. 6, 7](#))
- C2** Ss. 73-73B modified in part (6.4.2005) by [The Occupational Pension Schemes \(Winding up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), regs. 1(2), **10(2)**
- C3** S. 73 excluded (6.4.2005) by [The Occupational Pension Schemes \(Winding up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), regs. 1(2), **3** (with reg. 1(3))
- C4** S. 73 modified (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **11(2)**
- C5** S. 73 modified (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **13(2)**
- C6** S. 73 applied (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **14(2)**
- C7** S. 73 applied (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **15(5)**
- C8** S. 73 applied (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **16(4)**

Commencement Information

- I1** S. 73 in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664](#), art. 2(3), **Sch. Pt. 3** (with art. 11(1))

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73A Operation of scheme during winding up period

- (1) This section applies where an occupational pension scheme to which section 73 applies is being wound up.
- (2) During the winding up period, the trustees or managers of the scheme—
 - (a) must secure that any pensions or other benefits (other than money purchase benefits) paid to or in respect of a member are reduced, so far as necessary, to reflect the liabilities of the scheme to or in respect of the member which will be satisfied in accordance with section 73, and
 - (b) may, for the purposes of paragraph (a), take such steps as they consider appropriate (including steps adjusting future payments) to recover any overpayment or pay any shortfall.
- (3) During the winding up period—
 - (a) no benefits may accrue under the scheme rules to, or in respect of, members of the scheme, and
 - (b) no new members of any class may be admitted to the scheme.
- (4) Subsection (3) does not prevent any increase, in a benefit, which would otherwise accrue in accordance with the scheme or any enactment.
- (5) Subsection (3) does not prevent the accrual of money purchase benefits to the extent that they are derived from income or capital gains arising from the investment of payments which are made by, or in respect of, a member of the scheme.
- (6) Where a person is entitled to a pension credit derived from another person's shareable rights under the scheme, subsection (3) does not prevent the trustees or managers of the scheme discharging their liability in respect of the credit under Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 (sharing of rights under pension arrangements) by conferring appropriate rights under the scheme on that person.
- (7) Regulations may require the trustees or managers of the scheme, in prescribed circumstances—
 - (a) to adjust the entitlement of a person to a pension or other benefit under the scheme rules where the entitlement arises as a result of a discretionary award which takes effect during the winding up period;
 - (b) to adjust the entitlement of a person ("the survivor") to a pension or other benefit under the scheme rules where—
 - (i) a member of the scheme, or a person who was (or might have become) entitled to a pension or other benefit in respect of a member, dies during the winding up period, and
 - (ii) the survivor's entitlement is to a pension or other benefit in respect of the member (whether arising on the date of that death or subsequently).
- (8) Regulations under subsection (7) may, in particular—
 - (a) prescribe how the required adjustments to entitlement are to be determined and the manner in which they are to be made;
 - (b) in a case where the commencement of the winding up of the scheme is backdated (whether in accordance with section 154 of the Pensions Act 2004 (requirement to wind up schemes with sufficient assets to meet protected liabilities) or otherwise), require any adjustment to a person's entitlement to be made with effect from the time the award takes effect;

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- (c) without prejudice to sections 10(3) to (9), 73B(2) and 116, make provision about the consequences of breaching the requirements of the regulations.
- (9) If the scheme confers power on any person other than the trustees or managers of the scheme to apply the assets of the scheme in respect of pensions or other benefits (including increases in pensions or benefits), it cannot be exercised by that person but may, subject to the provisions made by or by virtue of this section and sections 73 and 73B, be exercised instead by the trustees or managers.
- (10) For the purposes of this section—
- “appropriate rights” has the same meaning as in paragraph 5 of Schedule 5 to the Welfare Reform and Pensions Act 1999 (pension credits: mode of discharge);
- “discretionary award” means an award of a prescribed description;
- “shareable rights” has the same meaning as in Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 (sharing of rights under pension arrangements);
- and subsection (10) of section 73 applies as it applies for the purposes of that section.

Textual Amendments

- F1** Ss. 73-73B substituted for s. 73 (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 270(1), 322(1)** (with s. 313); [S.I. 2005/275](#), art. 2(3)(a)(b), [Sch. Pt. 3](#) (with art. 2(8)(9))

Modifications etc. (not altering text)

- C1** Ss. 73-74 applied (with modifications) by [The Occupational Pension Schemes \(Winding Up\) Regulations 1996 \(S.I. 1996/3126\)](#), regs. 1(1), **12** (as amended (6.4.2005) by [S.I. 2005/706](#), reg. 1(2), [Sch. paras. 6, 7](#))
- C2** Ss. 73-73B modified in part (6.4.2005) by [The Occupational Pension Schemes \(Winding up etc.\) Regulations 2005 \(S.I. 2005/706\)](#), regs. 1(2), **10(2)**
- C9** S. 73A(2)(a)(b) applied (with modifications) (31.8.2005) by [The Occupational Pension Schemes \(Winding Up\) \(Modification for Multi-employer Schemes and Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2159\)](#), regs. 1(2), **2(4)(5)**

73B Sections 73 and 73A: supplementary

- (1) Any action taken in contravention of section 73A(3) is void.
- (2) If any provision made by or by virtue of the winding up provisions is not complied with in relation to a scheme to which section 73 applies, section 10 applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.
- (3) For the purposes of subsection (2), when determining whether section 73A(3) has been complied with subsection (1) of this section is to be disregarded.
- (4) Regulations may—
- (a) prescribe how, for the purposes of the winding up provisions—
- (i) the assets and liabilities of a scheme to which section 73 applies, and
- (ii) their value or amount,

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- are to be determined, calculated and verified;
- (b) modify any of the winding up provisions as it applies—
- (i) to prescribed schemes or prescribed descriptions of schemes;
 - (ii) in relation to a scheme where only part of the scheme is being wound up;
 - (iii) in relation to a case where any liability of the scheme in respect of a member has been discharged by virtue of regulations under section 135(4) of the Pensions Act 2004 (power to make regulations permitting discharge of scheme's liabilities during an assessment period).
- (5) Without prejudice to the generality of subsection (4), regulations under paragraph (b) (i) of that subsection may, in particular, modify any of the winding up provisions as it applies in relation to a scheme in relation to which there is more than one employer.
- (6) The winding up provisions do not apply—
- (a) in relation to any liability for an amount by way of pensions or other benefits which a person became entitled to payment of, under the scheme rules, before commencement of the winding up period,
 - (b) in prescribed circumstances, in relation to any liability in respect of rights of a prescribed description to which a member of the scheme became entitled under the scheme rules by reason of his pensionable service under the scheme terminating before the commencement of the winding up period,
 - (c) in relation to any liability in respect of rights of prescribed descriptions to which a member of the scheme had become entitled under the scheme rules before the commencement of the winding up period, or
 - (d) in relation to any liability the discharge of which is validated under section 136 of the Pensions Act 2004 (power to validate actions taken during an assessment period to discharge liabilities of a scheme).
- (7) But nothing in subsection (6) prevents the winding up provisions applying in relation to a liability under Chapter 4 of Part 4 of the Pension Schemes Act 1993 (transfer values) which—
- (a) arose before the commencement of the winding up of the scheme, and
 - (b) was not discharged before the commencement of the winding up period.
- (8) Regulations may provide that, in prescribed circumstances, where—
- (a) an occupational pension scheme to which section 73 applies is being wound up,
 - (b) a member of the scheme died before the winding up began, and
 - (c) during the winding up period a person becomes entitled under the scheme rules to a benefit of a prescribed description in respect of the member,
- his entitlement to payment of all or part of the benefit is, for the purposes of subsection (6), to be treated as having arisen immediately before the commencement of the winding up period.
- (9) If, immediately before the winding up period in relation to an occupational pension scheme to which section 73 applies, a person is entitled to an amount but has postponed payment of it, he is not, for the purposes of subsection (6), to be regarded as having become entitled to payment of the amount before that period.
- (10) For the purposes of this section—

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- (a) “winding up provisions” means this section and sections 73, 73A and 74, and
- (b) subsection (10) of section 73 applies as it applies for the purposes of that section.]

Textual Amendments

- F1** Ss. 73-73B substituted for s. 73 (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 270(1), 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(8)(9))

Modifications etc. (not altering text)

- C1** Ss. 73-74 applied (with modifications) by The Occupational Pension Schemes (Winding Up) Regulations 1996 (S.I. 1996/3126), regs. 1(1), 12 (as amended (6.4.2005) by S.I. 2005/706, reg. 1(2), Sch. paras. 6, 7)
- C2** Ss. 73-73B modified in part (6.4.2005) by The Occupational Pension Schemes (Winding up etc.) Regulations 2005 (S.I. 2005/706), regs. 1(2), 10(2)

74 Discharge of liabilities by insurance, etc.

- (1) [^{F2}This section applies where an occupational pension scheme to which section 73 applies is being wound up.]
- (2) A liability to or in respect of a member of the scheme in respect of pensions or other benefits ^{F3}... is to be treated as discharged (to the extent that it would not be so treated apart from this section) if the trustees or managers of the scheme have, in accordance with prescribed arrangements, provided for the discharge of the liability in one or more of the ways mentioned in subsection (3).
- (3) The ways referred to in subsection (2) are—
 - (a) by acquiring transfer credits allowed under the rules of another occupational pension scheme which satisfies prescribed requirements and the trustees or managers of which are able and willing to accept payment in respect of the member,
 - (b) by acquiring rights allowed under the rules of a personal pension scheme which satisfies prescribed requirements and the trustees or managers of which are able and willing to accept payment in respect of the member’s accrued rights [^{F4}or pension credit rights],
 - (c) by purchasing one or more annuities which satisfy prescribed requirements from one or more [^{F5}insurers], being companies willing to accept payment in respect of the member from the trustees or managers,
 - (d) by subscribing to other pension arrangements which satisfy prescribed requirements,
 - [^{F6}(e) by the payment of a cash sum in circumstances where prescribed requirements are met.]
- (4) If the assets of the scheme are insufficient to satisfy in full the liabilities, as calculated in accordance with the [^{F7}scheme rules], in respect of pensions and other benefits ^{F8}... , the reference in subsection (2) to providing for the discharge of any liability in one or more of the ways mentioned in subsection (3) is to applying any amount available, in accordance with section 73, in one or more of those ways.
- (5) Regulations may provide for this section—

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- (a) to have effect in relation to so much of any liability as may be determined in accordance with the regulations,^{F9} ...

^{F9}(b)

[^{F10}(6) For the purposes of this section—

- (a) references to assets of the scheme do not include any assets representing the value of any rights in respect of money purchase benefits under the scheme rules, and
(b) references to liabilities of the scheme do not include any liabilities in respect of money purchase benefits under the scheme rules;

and “scheme rules” has the same meaning as in the Pensions Act 2004 (see section 318 of that Act).]

Textual Amendments

- F2** S. 74(1) substituted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\), ss. 270\(2\)\(a\), 322\(1\)](#) (with s. 313); S.I. 2005/275, art. 2(3), Sch. Pt. 3 (with art. 2(8)(9)) (with savings in S.I. 2005/695, art. 6A)
- F3** Words in s. 74(2) repealed (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\), ss. 270\(2\)\(b\), 322\(1\), Sch. 13](#) (with s. 313); S.I. 2005/275, art. 2(3), Sch. Pt. 3 (with art. 2(8)(9)) (with savings in S.I. 2005/695, art. 6A)
- F4** Words in s. 74(3)(b) inserted (1.12.2000) by [Welfare Reform and Pensions Act 1999 \(c. 30\), s. 89\(1\), Sch. 12 para. 56](#); S.I. 2000/1047, art. 2(2)(d), [Sch. Pt. IV](#)
- F5** Word in s. 74(3)(c) substituted (1.12.2001) by [The Financial Services and Markets Act 2000 \(Consequential Amendments and Repeals\) Order 2001 \(S.I. 2001/3649\), arts. 1, 144](#)
- F6** S. 74(3)(e) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\), ss. 270\(2\)\(c\), 322\(1\)](#) (with s. 313); S.I. 2005/275, art. 2(3), Sch. Pt. 3 (with art. 2(8)(9)) (with savings in S.I. 2005/695, art. 6A)
- F7** Words in s. 74(4) substituted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\), ss. 270\(2\)\(d\)\(i\), 322\(1\)](#) (with s. 313); S.I. 2005/275, art. 2(3), Sch. Pt. 3 (with art. 2(8)(9)) (with savings in S.I. 2005/695, art. 6A)
- F8** Words in s. 74(4) repealed (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\), ss. 270\(2\)\(d\)\(ii\), 322\(1\), Sch. 13](#) (with s. 313); S.I. 2005/275, art. 2(3), Sch. Pt. 3 (with art. 2(8)(9)) (with savings in S.I. 2005/695, art. 6A)
- F9** S. 74(5)(b) and preceding word repealed (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\), ss. 270\(2\)\(e\), 322\(1\), Sch. 13](#) (with s. 313); S.I. 2005/275, art. 2(3), Sch. Pt. 3 (with art. 2(8)(9)) (with savings in S.I. 2005/695, art. 6A)
- F10** S. 74(6) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\), ss. 270\(2\)\(f\), 322\(1\)](#) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(8)(9))

Modifications etc. (not altering text)

- C1** Ss. 73-74 applied (with modifications) by [The Occupational Pension Schemes \(Winding Up\) Regulations 1996 \(S.I. 1996/3126\), regs. 1\(1\), 12](#) (as amended (6.4.2005) by S.I. 2005/706, reg. 1(2), Sch. paras. 6, 7)
- C10** S. 74 excluded (temp.) (6.3.1997) by [The Pensions Act 1995 \(Commencement No. 10\) Order 1997 \(S.I. 1997/664\), art. 11\(1\)](#)
- C11** S. 74(2) modified (6.4.2005) by [The Occupational Pension Schemes \(Winding up etc.\) Regulations 2005 \(S.I. 2005/706\), regs. 1\(2\), 10\(3\)](#)
- C12** S. 74(4) modified (6.4.2005) by [The Occupational Pension Schemes \(Winding up etc.\) Regulations 2005 \(S.I. 2005/706\), regs. 1\(2\), 10\(3\)](#)

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Commencement Information

- I2** S. 74 in force at 6.4.1997 in so far as not already in force by [S.I. 1997/664, art. 2\(3\)](#), [Sch. Pt. 3](#) (with [art. 11\(1\)](#))
- I3** S. 74(1) in force at 16.10.1996 for specified purposes by [S.I. 1996/2637, art. 3](#)
- I4** S. 74(2)(3) in force at 6.4.1996 for specified purposes by [S.I. 1996/778, art. 2\(5\)\(a\)](#), [Sch. Pt. V](#)
- I5** S. 74(5)(a) in force at 16.10.1996 for specified purposes by [S.I. 1996/2637, art. 3](#)
- I6** S. 74(5)(b) in force at 6.4.1996 for specified purposes by [S.I. 1996/778, art. 2\(5\)\(a\)](#), [Sch. Pt. V](#)

75 Deficiencies in the assets.

[^{F11}(1) This section applies in relation to an occupational pension scheme other than a scheme which is—

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(2) If—

- (a) at any time which falls—
 - (i) when a scheme is being wound up, but
 - (ii) before any relevant event in relation to the employer which occurs while the scheme is being wound up, the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme, and
- (b) the trustees or managers of the scheme designate that time for the purposes of this subsection (before the occurrence of an event within paragraph (a)(ii)), an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

This is subject to subsection (3).

(3) Subsection (2) applies only if—

- (a) either—
 - (i) no relevant event within subsection (6A)(a) or (b) occurred in relation to the employer during the period beginning with the appointed day and ending with the commencement of the winding up of the scheme, or
 - (ii) during the period—
 - (a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in subparagraph (i), and
 - (b) ending with the commencement of the winding up of the scheme, a cessation notice was issued in relation to the scheme and became binding, and
- (b) no relevant event within subsection (6A)(c) has occurred in relation to the employer during the period mentioned in paragraph (a)(i).

(4) Where—

- (a) immediately before a relevant event (“the current event”) occurs in relation to the employer the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme,

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- (b) the current event—
 - (i) occurred on or after the appointed day, and
 - (ii) did not occur in prescribed circumstances,
 - (c) if the scheme was being wound up immediately before that event, subsection (2) has not applied in relation to the scheme to treat an amount as a debt due from the employer to the trustees or managers of the scheme,
 - (d) if the current event is within subsection (6A)(a) or (b), either—
 - (i) no relevant event within subsection (6A)(a) or (b) occurred in relation to the employer during the period beginning with the appointed day and ending immediately before the current event, or
 - (ii) a cessation event has occurred in relation to the scheme in respect of a cessation notice issued during the period—
 - (a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in subparagraph (i), and
 - (b) ending immediately before the current event, and
 - (e) no relevant event within subsection (6A)(c) has occurred in relation to the employer during the period mentioned in paragraph (d)(i),
- an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.
- (4A) Where the current event is within subsection (6A)(a) or (b), the debt under subsection (4) is to be taken, for the purposes of the law relating to insolvency as it applies to the employer, to arise immediately before the occurrence of the current event.
- (4B) Subsection (4C) applies if, in a case within subsection (4)—
- (a) the current event is within subsection (6A)(a) or (b), and
 - (b) the scheme was not being wound up immediately before that event.
- (4C) Where this subsection applies, the debt due from the employer under subsection (4) is contingent upon—
- (a) a scheme failure notice being issued in relation to the scheme after the current event and the following conditions being satisfied—
 - (i) the scheme failure notice is binding,
 - (ii) no relevant event within subsection (6A)(c) has occurred in relation to the employer before the scheme failure notice became binding, and
 - (iii) a cessation event has not occurred in relation to the scheme in respect of a cessation notice issued during the period—
 - (a) beginning with the occurrence of the current event, and
 - (b) ending immediately before the issuing of the scheme failure notice,
 and the occurrence of such a cessation event in respect of a cessation notice issued during that period is not a possibility, or
 - (b) the commencement of the winding up of the scheme before—
 - (i) any scheme failure notice or cessation notice issued in relation to the scheme becomes binding, or
 - (ii) any relevant event within subsection (6A)(c) occurs in relation to the employer.]

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- (5) For the purposes of [^{F12}subsections (2) and (4)], the liabilities and assets to be taken into account, and their amount or value, must be determined, calculated and verified by a prescribed person and in the prescribed manner.
- (6) In calculating the value of any liabilities for those purposes, a provision of the scheme [^{F13}rules] which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded.
- [^{F14}In this subsection “scheme rules” has the same meaning as in the Pensions Act 2004 (“the 2004 Act”) (see section 318 of that Act).]
- [^{F15}(6A) For the purposes of this section, a relevant event occurs in relation to the employer in relation to an occupational pension scheme if and when—
- (a) an insolvency event occurs in relation to the employer,
 - (b) the trustees or managers of the scheme make an application under subsection (1) of section 129 of the 2004 Act or receive a notice from the Board of the Pension Protection Fund under subsection (5)(a) of that section, or
 - (c) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under section 89 of the Insolvency Act 1986 (members' voluntary winding up).
- (6B) For the purposes of this section—
- (a) a “cessation notice”, in the case of a relevant event within subsection (6A) (a), means—
 - (i) a withdrawal notice issued under section 122(2)(b) of the 2004 Act (scheme rescue has occurred),
 - (ii) a withdrawal notice issued under section 148 of that Act (no insolvency event has occurred or is likely to occur),
 - (iii) a notice issued under section 122(4) of that Act (inability to confirm status of scheme) in a case where the notice has become binding and section 148 of that Act does not apply,
 - (b) a “cessation notice” in the case of a relevant event within subsection (6A) (b), means a withdrawal notice issued under section 130(3) of the 2004 Act (scheme rescue has occurred),
 - (c) a cessation event occurs in relation to a scheme when a cessation notice in relation to the scheme becomes binding,
 - (d) the occurrence of a cessation event in relation to a scheme in respect of a cessation notice issued during a particular period (“the specified period”) is a possibility until each of the following are no longer reviewable—
 - (i) any cessation notice which has been issued in relation to the scheme during the specified period,
 - (ii) any failure to issue such a cessation notice during the specified period,
 - (iii) any notice which has been issued by the Board under Chapter 2 or 3 of Part 2 of the 2004 Act which is relevant to the issue of a cessation notice in relation to the scheme during the specified period or to such a cessation notice which has been issued during that period becoming binding,
 - (iv) any failure to issue such a notice as is mentioned in subparagraph (iii),
 - (e) the issue or failure to issue a notice is to be regarded as reviewable—

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- (i) during the period within which it may be reviewed by virtue of Chapter 6 of Part 2 of the 2004 Act, and
 - (ii) if the matter is so reviewed, until—
 - (a) the review and any reconsideration,
 - (b) any reference to the Ombudsman for the Board of the Pension Protection Fund in respect of the matter, and
 - (c) any appeal against his determination or directions,
 has been finally disposed of, and
 - (f) a “scheme failure notice” means a scheme failure notice issued under section 122(2)(a) or 130(2) of the 2004 Act (scheme rescue not possible).
- (6C) For the purposes of this section—
- (a) section 121 of the 2004 Act applies for the purposes of determining if and when an insolvency event has occurred in relation to the employer,
 - (b) “appointed day” means the day appointed under section 126(2) of the 2004 Act (no pension protection under Chapter 3 of Part 2 of that Act if the scheme begins winding up before the day appointed by the Secretary of State),
 - (c) references to a relevant event in relation to an employer do not include a relevant event which occurred in relation to him before he became the employer in relation to the scheme,
 - (d) references to a cessation notice becoming binding are to the notice in question mentioned in subsection (6B)(a) or (b) and issued under Part 2 of the 2004 Act becoming binding within the meaning given by that Part of that Act, and
 - (e) references to a scheme failure notice becoming binding are to the notice in question mentioned in subsection (6B)(f) and issued under Part 2 of the 2004 Act becoming binding within the meaning given by that Part of that Act.
- (6D) Where—
- (a) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under section 89 of the Insolvency Act 1986 (members' voluntary winding up), and
 - (b) either—
 - (i) the voluntary winding up of the employer is stayed other than in prescribed circumstances, or
 - (ii) a meeting of creditors is held in relation to the employer under section 95 of that Act (creditors' meeting which has the effect of converting a members' voluntary winding up into a creditors' voluntary winding up),
 this section has effect as if that resolution had never been passed and any debt which arose under this section by virtue of the passing of that resolution shall be treated as if it had never arisen.]
- (7) This section does not prejudice any other right or remedy which the trustees or managers may have in respect of a deficiency in the scheme's assets.
- (8) A debt due by virtue only of this section shall not be regarded—
- (a) as a preferential debt for the purposes of the ^{M1}Insolvency Act 1986, or
 - (b) as a preferred debt for the purposes of the ^{M2}Bankruptcy (Scotland) Act 1985.

^{F16}(9)

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(10) Regulations may modify this section as it applies in prescribed circumstances.

Textual Amendments

- F11** S. 75(1)-(4C) substituted for s. 75(1)-(4) (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 271(2)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))
- F12** Words in s. 75(5) substituted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 271(3)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))
- F13** Word in s. 75(6) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 271(4)(a)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))
- F14** Words in s. 75(6) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 271(4)(b)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))
- F15** S. 75(6A)-(6D) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), **ss. 271(5)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))
- F16** S. 75(9) repealed (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [Pensions Act 2004 \(c. 35\)](#), ss. 271(6), 322(1), **Sch. 13** (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))

Modifications etc. (not altering text)

- C13** S. 75 modified (1.4.1997) by [The Occupational and Personal Pension Schemes \(Levy\) Regulations 1997 \(S.I. 1997/666\)](#), regs. 1(1), **11**
- C14** S. 75 modified (6.4.1997) by [The Occupational Pension Schemes \(Deficiency on Winding Up etc.\) Regulations 1996 \(S.I. 1996/3128\)](#), regs. 1, **4** (as amended by S.I. 1997/786, reg. 1, Sch. 1 para. 19(3))
- C15** S. 75 modified (6.4.1997) by [The Occupational Pension Schemes \(Deficiency on Winding Up etc.\) Regulations 1996 \(S.I. 1996/3128\)](#), regs. 1, **7-9**
- C16** S. 75 excluded (6.4.1997) by [The Occupational Pension Schemes \(Deficiency on Winding Up etc.\) Regulations 1996 \(S.I. 1996/3128\)](#), regs. 1(3), **10**
- C17** S. 75 modified (6.4.1997) by [The Occupational Pension Schemes \(Deficiency on Winding Up etc.\) Regulations 1996 \(S.I. 1996/3128\)](#), regs. 1, 11, **Sch. 2** (as amended by S.I. 1997/786, reg. 1, Sch. 1 para. 19(4), Sch. 2)
- C18** S. 75 excluded (31.12.2000) by [The Occupational Pension Schemes \(Republic of Ireland Schemes Exemption\) Regulations 2000 \(S.I. 2000/3198\)](#), regs. 1(1), 2, **Sch.**
- C19** S. 75 modified (6.4.2005) by [The Occupational Pension Schemes \(Employer Debt\) Regulations 2005 \(S.I. 2005/678\)](#), regs. 1(2), **6-15** (with reg. 1(3)) (as amended by S.I. 2005/2224, reg. 2(3)(4); S.I. 2008/731, regs. 6-11)
- C20** S. 75 excluded (6.4.2005) by [The Occupational Pension Schemes \(Employer Debt\) Regulations 2005 \(S.I. 2005/678\)](#), regs. 1(2), **4** (with reg. 1(3)) (as amended by S.I. 2005/2224, reg. 4(1))
- C21** S. 75 excluded (29.9.2008) by [The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), Sch. 3 paras. 6(b), **11(b)(i)**
- C22** S. 75 excluded (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **20**
- C23** S. 75 applied (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **21(4)**
- C24** S. 75 applied (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **22(3)**
- C25** S. 75 applied (24.7.2014) by [The Pensions Act 2011 \(Transitional, Consequential and Supplementary Provisions\) Regulations 2014 \(S.I. 2014/1711\)](#), regs. 1(1), **24(2)**

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C26 S. 75(2)(4) modified (6.4.2005) by Pensions Act 2004 (c. 35), ss. 49(10), 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/275, art. 2(7), Sch. Pt. 7

C27 S. 75(2)(4) modified (6.4.2005) by Pensions Act 2004 (c. 35), ss. 40(10), 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/275, art. 2(7), Sch. Pt. 7

Commencement Information

I7 S. 75 in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), Sch. Pt. V

I8 S. 75 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), Sch. Pt. 3

Marginal Citations

M1 1986 c. 45.

M2 1985 c. 66.

[^{F17}75A Deficiencies in the assets: multi-employer schemes

- (1) Regulations may modify section 75 (deficiencies in the assets) as it applies in relation to multi-employer schemes.
- (2) The regulations may in particular provide for the circumstances in which a debt is to be treated as due under section 75 from an employer in relation to a multi-employer scheme (a “multi-employer debt”).
- (3) Those circumstances may include circumstances other than those in which the scheme is being wound up or a relevant event occurs (within the meaning of section 75).
- (4) For the purposes of regulations under this section, regulations under section 75(5) may prescribe alternative manners for determining, calculating and verifying—
 - (a) the liabilities and assets of the scheme to be taken into account, and
 - (b) their amount or value.
- (5) The regulations under this section may in particular—
 - (a) provide for the application of each of the prescribed alternative manners under section 75(5) to depend upon whether prescribed requirements are met;
 - (b) provide that, where in a particular case a prescribed alternative manner under section 75(5) is applied, the Authority may in prescribed circumstances issue a direction—
 - (i) that any resulting multi-employer debt is to be unenforceable for such a period as the Authority may specify, and
 - (ii) that the amount of the debt is to be re-calculated applying a different prescribed manner under section 75(5) if prescribed requirements are met within that period.
- (6) The prescribed requirements mentioned in subsection (5) may include a requirement that a prescribed arrangement, the details of which are approved in a notice issued by the Authority, is in place.
- (7) The regulations may provide that the Authority may not approve the details of such an arrangement unless prescribed conditions are met.
- (8) Those prescribed conditions may include a requirement that—
 - (a) the arrangement identifies one or more persons to whom the Authority may issue a contribution notice under the regulations, and

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- (b) the Authority are satisfied of prescribed matters in respect of each of those persons.
- (9) For the purposes of subsection (8) a “contribution notice” is a notice stating that the person to whom it is issued is under a liability to pay the sum specified in the notice—
- (a) to the trustees of the multi-employer scheme in question, or
 - (b) where the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection), to the Board.
- (10) The regulations may provide for the Authority to have power to issue a contribution notice to a person identified in an arrangement as mentioned in subsection (8) if—
- (a) the arrangement ceases to be in place or the Authority consider that the arrangement is no longer appropriate, and
 - (b) the Authority are of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice.
- (11) Where a contribution notice is issued to a person under the regulations as mentioned in subsection (8), the sum specified in the notice is to be treated as a debt due from that person to the person to whom it is to be paid as specified in the notice.
- (12) Where the regulations provide for the issuing of a contribution notice by the Authority as mentioned in subsection (8)—
- (a) the regulations must—
 - (i) provide for how the sum specified by the Authority in a contribution notice is to be determined,
 - (ii) provide for the circumstances (if any) in which a person to whom a contribution notice is issued is jointly and severally liable for the debt,
 - (iii) provide for the matters which the notice must contain, and
 - (iv) provide for who may exercise the powers to recover the debt due by virtue of the contribution notice, and
 - (b) the regulations may apply with or without modifications some or all of the provisions of sections 47 to 51 of the Pensions Act 2004 (contribution notices where non-compliance with financial support direction) in relation to contribution notices issued under the regulations.
- (13) In this section “multi-employer scheme” means a trust scheme which applies to earners in employments under different employers.
- (14) This section is without prejudice to the powers conferred by—
- section 75(5) (power to prescribe the manner of determining, calculating and verifying assets and liabilities etc),
 - section 75(10) (power to modify section 75 as it applies in prescribed circumstances),
 - section 118(1)(a) (power to modify any provisions of this Part in their application to multi-employer trust schemes), and
 - section 125(3) (power to extend for the purposes of this Part the meaning of “employer”).]

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Textual Amendments

- F17** S. 75A inserted (10.2.2005 for specified purposes, 15.3.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 272, 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a), Sch. Pt. 3; S.I. 2005/695, art. 2(2)

76 Excess assets on winding up.

- (1) This section applies to a trust scheme in any circumstances if—
- [^{F18}(a) it is a registered pension scheme under section 153 of the Finance Act 2004,]
 - (b) the scheme is being wound up, and
 - (c) in those circumstances power is conferred on the employer or the trustees to distribute assets to the employer on a winding up.
- (2) The power referred to in subsection (1)(c) cannot be exercised unless the requirements of subsections (3) and (in prescribed circumstances) (4), and any prescribed requirements, are satisfied.
- (3) The requirements of this subsection are that—
- (a) the liabilities of the scheme have been fully discharged,
 - (b) where there is any power under the scheme, after the discharge of those liabilities, to distribute assets to any person other than the employer, the power has been exercised or a decision has been made not to exercise it,
 - (c) ^{F19}... and
 - (d) notice has been given in accordance with prescribed requirements to the members of the scheme of the proposal to exercise the power.
- (4) The requirements of this subsection are that the Authority are of the opinion that—
- (a) any requirements prescribed by virtue of subsection (2) are satisfied, and
 - (b) the requirements of subsection (3) are satisfied.
- ^{F20}(5)
- (6) If, where this section applies to any trust scheme, the trustees purport to exercise the power referred to in subsection (1)(c) without complying with the requirements of this section, [^{F21}section 10 applies] to any of them who have failed to take all such steps as are reasonable to secure compliance.
- (7) If, where this section applies to any trust scheme, any person other than the trustees purports to exercise the power referred to in subsection (1)(c) without complying with the requirements of this section, section 10 applies to him.
- (8) Regulations may provide that, in prescribed circumstances, this section does not apply to schemes falling within a prescribed class or description, or applies to them with prescribed modifications.

Textual Amendments

- F18** S. 76(1)(a) substituted (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, 10(5)
- F19** S. 76(3)(c) repealed (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 62(a), Sch. 13; S.I. 2006/560, art. 2(3), Sch. Pt. 3

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F20 S. 76(5) repealed (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), Sch. 12 para. 62(b), **Sch. 13**; S.I. 2006/560, art. 2(3), Sch. Pt. 3

F21 Words in s. 76(6) substituted (6.4.2006) by Pensions Act 2004 (c. 35), s. 322(1), **Sch. 12 para. 62(c)**; S.I. 2005/3331, art. 2(6), Sch. Pt. 6

Modifications etc. (not altering text)

C28 S. 76 excluded (31.12.2000) by The Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations 2000 (S.I. 2000/3198), regs. 1(1), 2, **Sch.**

C29 S. 76 excluded (6.4.2006) by The Occupational Pension Schemes (Payments to Employer) Regulations 2006 (S.I. 2006/802), regs. 1, **12(1)**

C30 S. 76 modified (6.4.2006) by The Occupational Pension Schemes (Payments to Employer) Regulations 2006 (S.I. 2006/802), regs. 1, **18(6)**

C31 S. 76 excluded (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **37(1)(b)**

Commencement Information

I9 S. 76 in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**

I10 S. 76 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

F22⁷⁷ **Excess assets remaining after winding up: power to distribute.**

.....

Textual Amendments

F22 S. 77 repealed (6.4.2006) by The Taxation of Pension Schemes (Consequential Amendments) Order 2006 (S.I. 2006/745), arts. 1, **10(6)**

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