



Pensions Act 2004

2004 CHAPTER 35

PART 1

THE PENSIONS REGULATOR

Transactions at an undervalue

52 Restoration orders where transactions at an undervalue

- (1) This section applies in relation to an occupational pension scheme other than—
 - (a) a money purchase scheme, or
 - (b) a prescribed scheme or a scheme of a prescribed description.
- (2) The Regulator may make a restoration order in respect of a transaction involving assets of the scheme if—
 - (a) a relevant event has occurred in relation to the employer in relation to the scheme, and
 - (b) the transaction is a transaction at an undervalue entered into with a person at a time which—
 - (i) is on or after 27th April 2004, but
 - (ii) is not more than two years before the occurrence of the relevant event in relation to the employer.
- (3) A restoration order in respect of a transaction involving assets of a scheme is such an order as the Regulator thinks fit for restoring the position to what it would have been if the transaction had not been entered into.
- (4) For the purposes of this section a relevant event occurs in relation to the employer in relation to a scheme if and when on or after the appointed day—
 - (a) an insolvency event occurs in relation to the employer, or
 - (b) the trustees or managers of the scheme make an application under subsection (1) of section 129 or receive a notice from the Board of the Pension

Status: Point in time view as at 30/11/2016.

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Protection Fund under subsection (5)(a) of that section (applications and notifications prior to the Board assuming responsibility for a scheme).

- (5) For the purposes of subsection (4)—
- (a) the “appointed day” means the day appointed under section 126(2) (no pension protection under Chapter 3 of Part 2 if the scheme begins winding up before the day appointed by the Secretary of State),
 - (b) section 121 (meaning of “insolvency event”) applies for the purposes of determining if and when an insolvency event has occurred in relation to the employer, and
 - (c) the reference to an insolvency event in relation to the employer does not include an insolvency event which occurred in relation to him before he became the employer in relation to the scheme.
- (6) For the purposes of this section and section 53, a transaction involving assets of a scheme is a transaction at an undervalue entered into with a person (“P”) if the trustees or managers of the scheme or appropriate persons in relation to the scheme—
- (a) make a gift to P or otherwise enter into a transaction with P on terms that provide for no consideration to be provided towards the scheme, or
 - (b) enter into a transaction with P for a consideration the value of which, in money or money’s worth, is significantly less than the value, in money or money’s worth, of the consideration provided by or on behalf of the trustees or managers of the scheme.
- (7) In subsection (6) “appropriate persons” in relation to a scheme means a person who, or several persons each of whom is a person who, at the time at which the transaction in question is entered into, is—
- (a) a person of a prescribed description, and
 - (b) entitled to exercise powers in relation to the scheme.
- (8) For the purposes of this section and section 53—
- “assets” includes future assets;
- “transaction” includes a gift, agreement or arrangement and references to entering into a transaction are to be construed accordingly.
- (9) The provisions of this section apply without prejudice to the availability of any other remedy, even in relation to a transaction where the trustees or managers of the scheme or appropriate persons in question had no power to enter into the transaction.

Modifications etc. (not altering text)

- C1** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C2** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, 16
- C3** S. 52 excluded (29.9.2008 at 8.00 a.m.) by [The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 \(S.I. 2008/2546\)](#), **Sch. 3 para. 11(b)(ii)**

Commencement Information

- I1** S. 52(1)(a)(2)-(6)(7)(b)(8)(9) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

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- 12** S. 52(1)(b)(7)(a) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by S.I. 2005/275, art. 2(3), **Sch. Pt. 3**

53 Restoration orders: supplementary

- (1) This section applies in relation to a restoration order under section 52 in respect of a transaction involving assets of a scheme (“the transaction”).
- (2) The restoration order may in particular—
 - (a) require any assets of the scheme (whether money or other property) which were transferred as part of the transaction to be transferred back—
 - (i) to the trustees or managers of the scheme, or
 - (ii) where the Board of the Pension Protection Fund has assumed responsibility for the scheme, to the Board;
 - (b) require any property to be transferred to the trustees or managers of the scheme or, where the Board has assumed responsibility for the scheme, to the Board if it represents in any person’s hands—
 - (i) any of the assets of the scheme which were transferred as part of the transaction, or
 - (ii) property derived from any such assets so transferred;
 - (c) require such property as the Regulator may specify in the order, in respect of any consideration for the transaction received by the trustees or managers of the scheme, to be transferred—
 - (i) by the trustees or managers of the scheme, or
 - (ii) where the Board has assumed responsibility for the scheme, by the Board,
to such persons as the Regulator may specify in the order;
 - (d) require any person to pay, in respect of benefits received by him as a result of the transaction, such sums (not exceeding the value of the benefits received by him) as the Regulator may specify in the order—
 - (i) to the trustees or managers of the scheme, or
 - (ii) where the Board has assumed responsibility for the scheme, to the Board.
- (3) A restoration order is of no effect to the extent that it prejudices any interest in property which was acquired in good faith and for value or any interest deriving from such an interest.
- (4) Nothing in subsection (3) prevents a restoration order requiring a person to pay a sum of money if the person received a benefit as a result of the transaction otherwise than in good faith and for value.
- (5) Where a person has acquired an interest in property from a person or has received a benefit as a result of the transaction and—
 - (a) he is one of the trustees or managers or appropriate persons who entered into the transaction as mentioned in subsection (6) of section 52, or
 - (b) at the time of the acquisition or receipt—
 - (i) he has notice of the fact that the transaction was a transaction at an undervalue,

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(ii) he is a trustee or manager, or the employer, in relation to the scheme,
or

(iii) he is connected with, or an associate of, any of the persons mentioned
in paragraph (a) or (b)(ii),

then, unless the contrary is shown, it is to be presumed for the purposes of subsections
(3) and (4) that the interest was acquired or the benefit was received otherwise than
in good faith.

(6) For the purposes of this section—

- (a) section 249 of the Insolvency Act 1986 (c. 45) (connected persons) applies
as it applies for the purposes of any provision of the first Group of Parts of
that Act,
- (b) section 435 of that Act (associated persons) applies as it applies for the
purposes of that Act, and
- (c) section [F1229 of the Bankruptcy (Scotland) Act 2016] (associated persons)
applies as it applies for the purposes of that Act.

(7) For the purposes of this section “property” includes—

- (a) money, goods, things in action, land and every description of property
wherever situated, and
- (b) obligations and every description of interest, whether present or future or
vested or contingent, arising out of, or incidental to, property.

(8) References in this section to where the Board has assumed responsibility for a scheme
are to where the Board has assumed responsibility for the scheme in accordance with
Chapter 3 of Part 2 (pension protection).

Textual Amendments

F1 Words in s. 53(6)(c) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 26(4)**

Modifications etc. (not altering text)

C1 Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**

C2 Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, 16

Commencement Information

I3 S. 53 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

54 Content and effect of a restoration order

- (1) This section applies where a restoration order is made under section 52 in respect of a transaction involving assets of a scheme.
- (2) Where the restoration order imposes an obligation on a person to do something, the order must specify the period within which the obligation must be complied with.

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- (3) Where the restoration order imposes an obligation on a person (“A”) to transfer or pay a sum of money to a person specified in the order (“B”), the sum is to be treated as a debt due from A to B.
- (4) Where the trustees or managers of the scheme are the persons to whom the debt is due, the Regulator may on their behalf, exercise such powers as the trustees or managers have to recover the debt.
- (5) But during any assessment period (within the meaning of section 132) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a restoration order are exercisable by the Board of the Pension Protection Fund to the exclusion of the trustees or managers and the Regulator.
- (6) Where, by virtue of subsection (5), any amount is transferred or paid to the Board in respect of a debt due by virtue of a restoration order, the Board must pay the amount to the trustees or managers of the scheme.

Modifications etc. (not altering text)

- C1** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C2** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, **16**

Commencement Information

- I4** S. 54 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

55 Contribution notice where failure to comply with restoration order

- (1) This section applies where—
 - (a) a restoration order is made under section 52 in respect of a transaction involving assets of a scheme (“the transaction”), and
 - (b) a person fails to comply with an obligation imposed on him by the order which is not an obligation to transfer or pay a sum of money.
- (2) The Regulator may issue a notice to the person stating that the person is under a liability to pay the sum specified in the notice (a “contribution notice”)—
 - (a) to the trustees or managers of the scheme, or
 - (b) where the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 (pension protection), to the Board.
- (3) The sum specified by the Regulator in a contribution notice may be either the whole or a specified part of the shortfall sum in relation to the scheme.
- (4) The shortfall sum in relation to the scheme is the amount which the Regulator estimates to be the amount of the decrease in the value of the assets of the scheme as a result of the transaction having been entered into.

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Modifications etc. (not altering text)

- C1** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C2** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, 16

Commencement Information

- I5** S. 55 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

56 Content and effect of a section 55 contribution notice

- (1) This section applies where a contribution notice is issued to a person under section 55.
- (2) The contribution notice must—
 - (a) contain a statement of the matters which it is asserted constitute the failure to comply with the restoration order under section 52 in respect of which the notice is issued, and
 - (b) specify the sum which the person is stated to be under a liability to pay.
- (3) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the trustees or managers of the scheme, the sum is to be treated as a debt due from the person to the trustees or managers of the scheme.
- (4) In such a case, the Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover the debt.
- (5) But during any assessment period (within the meaning of section 132) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a contribution notice, are exercisable by the Board of the Pension Protection Fund to the exclusion of the trustees or managers and the Regulator.
- (6) Where, by virtue of subsection (5), any amount is paid to the Board in respect of a debt due by virtue of a contribution notice, the Board must pay the amount to the trustees or managers of the scheme.
- (7) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the Board, the sum is to be treated as a debt due from the person to the Board.

Modifications etc. (not altering text)

- C1** Pt. 1 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**
- C2** Ss. 38-56 modified (1.9.2005) by [The Pensions Regulator \(Financial Support Directions etc.\) Regulations 2005 \(S.I. 2005/2188\)](#), regs. 1, **15**, 16

Commencement Information

- I6** S. 56 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

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