



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 5

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

#### *Winding up*

#### **270 Winding up**

- (1) For section 73 of the Pensions Act 1995 (c. 26) (preferential liabilities on winding up) substitute—

#### **“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.

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- (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
    - (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—

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- (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.
- (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.

### **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.

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- (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;
  - (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);

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“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.

### **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,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

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- 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—
- (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.”
- (2) In section 74 of the Pensions Act 1995 (c. 26) (discharge of liabilities by insurance, etc on winding up)—
- (a) for subsection (1) substitute—
- “(1) This section applies where an occupational pension scheme to which section 73 applies is being wound up.”,
- (b) in subsection (2) omit “(including increases in pensions)”,
- (c) in subsection (3), after paragraph (d) insert—
- “(e) by the payment of a cash sum in circumstances where prescribed requirements are met.”,
- (d) in subsection (4)—
- (i) for “rules of the scheme” substitute “scheme rules”, and
- (ii) omit “(including increases in pensions)”,
- (e) omit subsection (5)(b) and the word “or” immediately preceding it, and
- (f) after subsection (5) insert—

“(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).”