



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 6

#### FINANCIAL ASSISTANCE SCHEME FOR MEMBERS OF CERTAIN PENSION SCHEMES

#### **286 Financial assistance scheme for members of certain pension schemes**

(1) The Secretary of State must make provision, by regulations, for a scheme for making payments to, or in respect of, qualifying members of qualifying pension schemes (“the financial assistance scheme”).

[<sup>F1</sup>(1A) The Secretary of State must, in particular, make provision for securing that (subject to any relevant restriction) the aggregate amount of—

- (a) any annual payment payable to a qualifying member of such a scheme, and
- (b) the member's actual pension (if any),

is not less than 80% of the member's expected pension, irrespective of the date of his attaining normal retirement age (or the date when he would have attained that age if he dies before attaining it).

(1B) A “relevant restriction” means any provision of the regulations which—

- (a) operates to restrict the amount of an annual payment by means of a cap on the product of the calculation of a specified fraction of the member's expected pension, or
- (b) provides for an annual payment not to be payable where the member's actual pension exceeds any specified amount.]

(2) For the purposes of this section—

[<sup>F2</sup>“ actual pension ” and “ expected pension ”, in relation to a qualifying member of a qualifying pension scheme, mean the amounts which, in accordance with regulations under subsection (1), are to be taken into account as the member's actual pension and expected pension, respectively, in determining the amount of any annual payment payable to the member;

“annual payment” has the meaning given by regulations under subsection (1);]

*Status: Point in time view as at 15/12/2008.*

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“qualifying member”, in relation to a qualifying pension scheme, means a person—

- (a) who, at such time as may be prescribed, is a member of the scheme in respect of whom the scheme’s pension liabilities are unlikely to be satisfied in full because the scheme has insufficient assets, or
- (b) who, at such time as may be prescribed, had ceased to be a member of the scheme and in respect of whom the scheme’s pension liabilities were not satisfied in full, before he ceased to be such a member, because the scheme had insufficient assets,

and in respect of whom prescribed conditions are satisfied at such time as may be prescribed;

“qualifying pension scheme” means an occupational pension scheme (including such a scheme which has been fully wound up)—

- (a) which, at such time as may be prescribed, is not—
  - (i) a money purchase scheme, or
  - (ii) a scheme of a prescribed description,
- (b) the winding up of which began [<sup>F3</sup>, subject to any prescribed exception,] during the prescribed period ending immediately before the day appointed under section 126(2),
- (c) the employer in relation to which satisfies such conditions as may be prescribed at such time as may be prescribed, and
- (d) prescribed details of which have been notified to such person as may be prescribed by a person of a prescribed description—
  - (i) in the prescribed form and manner, and
  - (ii) before the prescribed date;

“scheme’s pension liabilities”, in respect of a member of a qualifying pension scheme, means the liabilities of the scheme to, or in respect of, the member in respect of pensions or other benefits (including increases in pensions);

and a qualifying pension scheme has, or had, insufficient assets if the assets of the scheme are, or were, insufficient to satisfy in full the liabilities of the scheme calculated in the prescribed manner.

(3) Regulations under subsection (1) may, in particular, make provision—

- (a) for the financial assistance scheme to be managed by the Secretary of State, a body established by or for the purposes of the regulations or such other person as may be prescribed;
- (b) for the person who manages the financial assistance scheme (“the scheme manager”) to hold (whether on trust or otherwise), manage and apply a fund in accordance with the regulations or, where the fund is held on trust, the deed of trust;
- (c) for the property, rights and liabilities of qualifying pension schemes to be transferred to the scheme manager in prescribed circumstances and for the trustees or managers of a qualifying pension scheme in respect of which such a transfer has occurred to be discharged from prescribed liabilities;
- (d) prescribing the circumstances in which payments are to be made by the scheme manager to, or in respect of, qualifying members of qualifying pension schemes and the manner in which the amount of any payment is to be determined, and, where the fund is held by the fund manager on trust, the circumstances and manner may be prescribed by reference to the deed of trust;

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- (e) authorising the Secretary of State—
  - (i) where he is not the scheme manager, to pay grants to the scheme manager;
  - (ii) where he is the scheme manager, to pay amounts into the fund held by him in accordance with the regulations;
  - (iii) to pay grants to other prescribed persons in connection with the financial assistance scheme;
- (f) prescribing the circumstances in which amounts are to be paid into or out of the fund held by the scheme manager;
- (g) for or in connection with—
  - (i) the review of, or appeals against, any determination, or failure to make a determination, in connection with the financial assistance scheme, or
  - (ii) the investigation of complaints relating to the financial assistance scheme,and for the establishment of a body or the appointment of a person or persons to hear such appeals or conduct such investigations;
- (h) conferring functions in relation to the financial assistance scheme on the Pensions Regulator or the Board of the Pension Protection Fund;
- (i) providing for a person to exercise a discretion in dealing with any matter in relation to the financial assistance scheme;
- (j) applying any provision of Part 1 or 2 with such modifications as may be prescribed;

and such regulations may make different provision for different cases or descriptions of case and include such incidental, supplementary, consequential or transitional provision as appears to the Secretary of State to be expedient.

- (4) Any amount which, by virtue of subsection (3)(e), the Secretary of State pays under regulations under subsection (1) is to be paid out of money provided by Parliament.
- (5) Regulations under subsection (1) may not make provision for the imposition of a levy or charge on any person for the purpose of funding, directly or indirectly, the financial assistance scheme.
- (6) Regulations under subsection (1) may not require any income or capital of a qualifying member of a qualifying pension scheme (other than income or capital which derives, directly or indirectly, from that scheme) to be taken into account when determining whether the member is entitled to a payment under the financial assistance scheme or the amount of any payment to which the member is entitled.
- (7) For the purposes of subsection (6), regulations may prescribe the circumstances in which a qualifying member of a qualifying pension scheme is to be regarded as having income or capital which derives, directly or indirectly, from that scheme.
- (8) A time or period prescribed under subsection (2) may fall (or, in the case of a period, wholly or partly fall) at a time before the passing of this Act.
- (9) Nothing in this section prejudices the operation of section 315 (subordinate legislation (general provisions)).

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#### Textual Amendments

- F1** S. 286(1A)(1B) inserted (14.12.2007) by [Pensions Act 2007 \(c. 22\)](#), **ss. 18(2)**, 30(2)(d); S.I. 2007/3512, **art. 2**
- F2** Words in s. 286(2) inserted (14.12.2007) by [Pensions Act 2007 \(c. 22\)](#), **ss. 18(3)**, 30(2)(d); S.I. 2007/3512, **art. 2**
- F3** Words in s. 286(2) inserted (26.11.2008) by [Pensions Act 2008 \(c. 30\)](#), **ss. 124(3)**, 149(2)

#### Modifications etc. (not altering text)

- C1** S. 286 modified (1.6.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), **regs. 1(1)(b)**, **76**; S.I. 2005/1436 art. 2(5)
- C2** S. 286 excluded by S.I. 2005/255 (N.I. 1), art. 34A(9)(b) (as inserted (N.I.) (for specified purposes and with effect in accordance with Sch. 8 para. 15(1) of the amending Act and 29.6.2009 so far as not already in force) by [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13\)](#), s. 118(3), **Sch. 8 para. 2(2)** (with s. 73); S.R. 2009/249, art. 2(b)(ii)

#### Commencement Information

- I1** S. 286 in force at 1.6.2005 by [S.I. 2005/1436](#), **art. 2(5)**

### [<sup>F4</sup>286A Restriction on purchase of annuities

- (1) This section applies to any qualifying pension scheme which has not been fully wound up.
- (2) The trustees of the scheme must not purchase or agree to purchase annuities on behalf of qualifying members unless—
  - (a) before 26 September 2007 the trustees entered into a binding commitment to purchase the annuities, or
  - (b) the purchase of the annuities is approved by the scheme manager on the application of the trustees and any condition imposed under subsection (4)(b) is satisfied.
- (3) An application under subsection (2)(b) must be in writing and must set out the trustees' reasons for applying.
- (4) An approval under subsection (2)(b)—
  - (a) may be given if the scheme manager thinks it appropriate to do so, and
  - (b) may be made subject to such conditions (if any) as the scheme manager thinks appropriate.
- (5) If the trustees fail to comply with subsection (2), the purchase or agreement to purchase is void if the scheme manager so determines.
- (6) A determination under subsection (5) may be made if the scheme manager thinks it appropriate to do so.
- (7) When making a decision under this section as to whether something is appropriate, the scheme manager may take into account such factors as are in the scheme manager's opinion relevant.
- (8) An application under the Financial Assistance Scheme (Halting Annuitisation) Regulations 2007 (S.I. 2007/2533) that has not been determined before 26 June 2008 has effect as if made under subsection (2)(b).

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- (9) An approval given under those regulations has effect for the purposes of subsection (2) (b) as if given under this section.
- (10) In this section “qualifying pension scheme”, “qualifying member” and “scheme manager” have the same meaning as in section 286.
- (11) Regulations may provide that references in this section to the scheme manager have effect as references to such person as may be prescribed.]

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**Textual Amendments**

**F4** S. 286A inserted (retrospective to 26.6.2008) by [Pensions Act 2008 \(c. 30\), s. 125\(1\)\(2\), 149\(2\)](#)

**Status:**

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