

PENSIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – the Pensions Regulator

New powers in respect of occupational and personal pension schemes

Section 19: Pension liberation: court’s power to order restitution

72. This section is concerned with the court’s power to order restitution where pension liberation has occurred. It applies where there is recoverable property. *Subsection (2)* defines ‘recoverable property’ as being all or some of the money liberated from the pension scheme or as being property which directly or indirectly represents all or some of the money liberated from the pension scheme.
73. *Subsection (3)* sets out an exception so that recoverable property will not include property where the beneficial interest in the property has been acquired in good faith and for value. In addition it must have been acquired without notice as to the fact that it represents money liberated from a pension scheme. Property which subsequently represents excepted property will also not fall within the definition.
74. If the Regulator makes an application, under *subsection (4)*, the court can make any order that it thinks just and convenient for securing that recoverable property or money representing its value or proceeds of sale is transferred to a pension scheme, to an annuity or insurance policy or to the liberated member.
75. *Subsection (5)* provides that the court may also order a person who holds recoverable property or has control over it to take steps to ensure that the recoverable property is transferred as directed by the court e.g. he may be directed to sell the property.
76. *Subsection (6)* provides that when an order is made under *subsection (4)* to transfer the recoverable property to a pension scheme, the court may by order direct the trustees or managers of the scheme in question to take steps for that purpose and to apply the property or money transferred in the manner that the court directs for the purpose of providing benefits under that scheme for the liberated member.
77. *Subsection (7)* allows for regulations to be made to modify the provisions of the Pension Schemes Act 1993 as they would apply to cases where the court directs trustees or managers of a pension scheme in the manner laid out in *subsection (6)*.