



Pensions Act 2004

2004 CHAPTER 35

PART 5

OCCUPATIONAL AND PERSONAL PENSION SCHEMES: MISCELLANEOUS PROVISIONS

Payment of surplus to employer

251 Payment of surplus to employer: transitional power to amend scheme

- (1) This section applies to a scheme which immediately before the commencement of section 250 was one to which section 37 of the Pensions Act 1995 (c. 26) applied (see subsection (1) of that section, as it then had effect).
- (2) No payment to the employer may be made out of funds held for the purposes of the scheme except by virtue of a resolution of the trustees under this section.

This applies even if the payment is one proposed to be made in fulfilment of an agreement or arrangement entered into before the commencement of this section.

- (3) Where the scheme was so expressed as (apart from section 37, as it then applied) to confer power to make payments to the employer out of funds held for the purposes of the scheme otherwise than in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Income and Corporation Taxes Act 1988 (c. 1), the trustees may resolve that the power—
 - (a) shall become exercisable according to its terms, or
 - (b) shall become so exercisable, but only in such circumstances and subject to such conditions as may be specified in the resolution.
- (4) Where the scheme was so expressed as to confer power to make payments to the employer out of funds held for the purposes of the scheme only in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Income and Corporation Taxes Act 1988, the trustees may resolve that the power shall instead be exercisable in such circumstances and subject to such conditions as may be specified in the resolution.

Status: This is the original version (as it was originally enacted).

- (5) In either case the trustees must be satisfied that it is in the interests of the members of the scheme that the power is exercised in the manner proposed.
- (6) The power conferred by subsection (3) or (4)—
 - (a) may not be exercised unless notice of the proposal to exercise it has been given, in accordance with prescribed requirements, to the employer and to the members of the scheme,
 - (b) may only be exercised once, and
 - (c) ceases to be exercisable five years after the commencement of this section.
- (7) The exercise of any power to make payments to the employer by virtue of a resolution under this section is subject to section 37 of the Pensions Act 1995 (c. 26) as substituted by section 250.