



Pensions Act 2004

2004 CHAPTER 35

PART 1

THE PENSIONS REGULATOR

Contribution notices where avoidance of employer debt

39 The sum specified in a section 38 contribution notice

- (1) The sum specified by the Regulator in a contribution notice under section 38 may be either the whole or a specified part of the shortfall sum in relation to the scheme.
- (2) Subject to subsection (3), the shortfall sum in relation to a scheme is—
 - (a) in a case where, at the relevant time, a debt was due from the employer to the trustees or managers of the scheme under section 75 of the Pensions Act 1995 (c. 26) (“the 1995 Act”) (deficiencies in the scheme assets), the amount which the Regulator estimates to be the amount of that debt at that time, and
 - (b) in a case where, at the relevant time, no such debt was due, the amount which the Regulator estimates to be the amount of the debt under section 75 of the 1995 Act which would become due if—
 - (i) subsection (2) of that section applied, and
 - (ii) the time designated by the trustees or managers of the scheme for the purposes of that subsection were the relevant time.
- (3) Where the Regulator is satisfied that the act or failure to act falling within section 38(5) resulted—
 - (a) in a case falling within paragraph (a) of subsection (2), in the amount of the debt which became due under section 75 of the 1995 Act being less than it would otherwise have been, or
 - (b) in a case falling within paragraph (b) of subsection (2), in the amount of any such debt calculated for the purposes of that paragraph being less than it would otherwise have been,

Status: Point in time view as at 26/11/2008. This version of this provision has been superseded.

Changes to legislation: Pensions Act 2004, Section 39 is up to date with all changes known to be in force on or before 10 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

the Regulator may increase the amounts calculated under subsection (2)(a) or (b) by such amount as the Regulator considers appropriate.

(4) For the purposes of this section “the relevant time” means [^{F1}(subject to subsection (4A))] —

- (a) in the case of an act falling within subsection (5) of section 38, the time of the act, or
- (b) in the case of a failure to act falling within that subsection—
 - (i) the time when the failure occurred, or
 - (ii) where the failure continued for a period of time, the time which the Regulator determines and which falls within that period.

[^{F2}(4A) In the case of a series of acts or failures to act, “the relevant time” is determined by reference to whichever of the acts or failures in the series is, in the Regulator's opinion, most appropriate.]

(5) For the purposes of this section—

- (a) references to a debt due under section 75 of the 1995 Act include a contingent debt under that section, and
- (b) references to the amount of such a debt include the amount of such a contingent debt.

Textual Amendments

- F1** Words in s. 39(4) inserted (for specified purposes and with effect in accordance with Sch. 9 para. 15(2) of the amending Act and 29.6.2009 so far as not already in force) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), [Sch. 9 para. 8\(2\)\(a\)](#); S.I. 2009/1566, art. 2(1)(b)(ii)
- F2** S. 39(4A) inserted (for specified purposes and with effect in accordance with Sch. 9 para. 15(2) of the amending Act and 29.6.2009 so far as not already in force) by [Pensions Act 2008 \(c. 30\)](#), s. 149(2)(3), [Sch. 9 para. 8\(2\)\(b\)](#); S.I. 2009/1566, art. 2(1)(b)(ii)

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

- I1** S. 39 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), [Sch. Pt. 7](#)

Status:

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