



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 1

#### THE PENSIONS REGULATOR

##### *Transactions at an undervalue*

## 52 Restoration orders where transactions at an undervalue

- (1) This section applies in relation to an occupational pension scheme other than—
  - (a) a money purchase scheme, or
  - (b) a prescribed scheme or a scheme of a prescribed description.
- (2) The Regulator may make a restoration order in respect of a transaction involving assets of the scheme if—
  - (a) a relevant event has occurred in relation to the employer in relation to the scheme, and
  - (b) the transaction is a transaction at an undervalue entered into with a person at a time which—
    - (i) is on or after 27th April 2004, but
    - (ii) is not more than two years before the occurrence of the relevant event in relation to the employer.
- (3) A restoration order in respect of a transaction involving assets of a scheme is such an order as the Regulator thinks fit for restoring the position to what it would have been if the transaction had not been entered into.
- (4) For the purposes of this section a relevant event occurs in relation to the employer in relation to a scheme if and when on or after the appointed day—
  - (a) an insolvency event occurs in relation to the employer, or
  - (b) the trustees or managers of the scheme make an application under subsection (1) of section 129 or receive a notice from the Board of the Pension

*Status: Point in time view as at 10/02/2005. This version of this provision has been superseded.*

*Changes to legislation: Pensions Act 2004, Section 52 is up to date with all changes known to be in force on or before 04 June 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)*

Protection Fund under subsection (5)(a) of that section (applications and notifications prior to the Board assuming responsibility for a scheme).

- (5) For the purposes of subsection (4)—
- (a) the “appointed day” means the day appointed under section 126(2) (no pension protection under Chapter 3 of Part 2 if the scheme begins winding up before the day appointed by the Secretary of State),
  - (b) section 121 (meaning of “insolvency event”) applies for the purposes of determining if and when an insolvency event has occurred in relation to the employer, and
  - (c) the reference to an insolvency event in relation to the employer does not include an insolvency event which occurred in relation to him before he became the employer in relation to the scheme.
- (6) For the purposes of this section and section 53, a transaction involving assets of a scheme is a transaction at an undervalue entered into with a person (“P”) if the trustees or managers of the scheme or appropriate persons in relation to the scheme—
- (a) make a gift to P or otherwise enter into a transaction with P on terms that provide for no consideration to be provided towards the scheme, or
  - (b) enter into a transaction with P for a consideration the value of which, in money or money’s worth, is significantly less than the value, in money or money’s worth, of the consideration provided by or on behalf of the trustees or managers of the scheme.
- (7) In subsection (6) “appropriate persons” in relation to a scheme means a person who, or several persons each of whom is a person who, at the time at which the transaction in question is entered into, is—
- (a) a person of a prescribed description, and
  - (b) entitled to exercise powers in relation to the scheme.
- (8) For the purposes of this section and section 53—
- “assets” includes future assets;
- “transaction” includes a gift, agreement or arrangement and references to entering into a transaction are to be construed accordingly.
- (9) The provisions of this section apply without prejudice to the availability of any other remedy, even in relation to a transaction where the trustees or managers of the scheme or appropriate persons in question had no power to enter into the transaction.

#### **Commencement Information**

- II** S. 52(1)(b)(7)(a) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by S.I. 2005/275, art. 2(3), **Sch. Pt. 3**

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