



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 1

#### THE PENSIONS REGULATOR

##### *Transactions at an undervalue*

#### **53 Restoration orders: supplementary**

- (1) This section applies in relation to a restoration order under section 52 in respect of a transaction involving assets of a scheme (“the transaction”).
- (2) The restoration order may in particular—
  - (a) require any assets of the scheme (whether money or other property) which were transferred as part of the transaction to be transferred back—
    - (i) to the trustees or managers of the scheme, or
    - (ii) where the Board of the Pension Protection Fund has assumed responsibility for the scheme, to the Board;
  - (b) require any property to be transferred to the trustees or managers of the scheme or, where the Board has assumed responsibility for the scheme, to the Board if it represents in any person’s hands—
    - (i) any of the assets of the scheme which were transferred as part of the transaction, or
    - (ii) property derived from any such assets so transferred;
  - (c) require such property as the Regulator may specify in the order, in respect of any consideration for the transaction received by the trustees or managers of the scheme, to be transferred—
    - (i) by the trustees or managers of the scheme, or
    - (ii) where the Board has assumed responsibility for the scheme, by the Board,to such persons as the Regulator may specify in the order;

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*Status: This is the original version (as it was originally enacted).*

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- (d) require any person to pay, in respect of benefits received by him as a result of the transaction, such sums (not exceeding the value of the benefits received by him) as the Regulator may specify in the order—
  - (i) to the trustees or managers of the scheme, or
  - (ii) where the Board has assumed responsibility for the scheme, to the Board.
  
- (3) A restoration order is of no effect to the extent that it prejudices any interest in property which was acquired in good faith and for value or any interest deriving from such an interest.
  
- (4) Nothing in subsection (3) prevents a restoration order requiring a person to pay a sum of money if the person received a benefit as a result of the transaction otherwise than in good faith and for value.
  
- (5) Where a person has acquired an interest in property from a person or has received a benefit as a result of the transaction and—
  - (a) he is one of the trustees or managers or appropriate persons who entered into the transaction as mentioned in subsection (6) of section 52, or
  - (b) at the time of the acquisition or receipt—
    - (i) he has notice of the fact that the transaction was a transaction at an undervalue,
    - (ii) he is a trustee or manager, or the employer, in relation to the scheme, or
    - (iii) he is connected with, or an associate of, any of the persons mentioned in paragraph (a) or (b)(ii),

then, unless the contrary is shown, it is to be presumed for the purposes of subsections (3) and (4) that the interest was acquired or the benefit was received otherwise than in good faith.
  
- (6) For the purposes of this section—
  - (a) section 249 of the Insolvency Act 1986 (c. 45) (connected persons) applies as it applies for the purposes of any provision of the first Group of Parts of that Act,
  - (b) section 435 of that Act (associated persons) applies as it applies for the purposes of that Act, and
  - (c) section 74 of the Bankruptcy (Scotland) Act 1985 (c. 66) (associated persons) applies as it applies for the purposes of that Act.
  
- (7) For the purposes of this section “property” includes—
  - (a) money, goods, things in action, land and every description of property wherever situated, and
  - (b) obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property.
  
- (8) References in this section to where the Board has assumed responsibility for a scheme are to where the Board has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 (pension protection).