Pensions Act 1995

1995 CHAPTER 26

PART I

OCCUPATIONAL PENSIONS

Winding up

73 Preferential liabilities on winding up

(1) This section applies, where a salary related occupational pension scheme to which section 56 applies is being wound up, to determine the order in which the assets of the scheme are to be applied towards satisfying the liabilities in respect of pensions and other benefits (including increases in pensions).

(2) The assets of the scheme must be applied first towards satisfying the amounts of the liabilities mentioned in subsection (3) and, if the assets are insufficient to satisfy those amounts in full, then—

(a) the assets must be applied first towards satisfying the amounts of the liabilities mentioned in earlier paragraphs of subsection (3) before the amounts of the liabilities mentioned in later paragraphs, and

(b) where the amounts of the liabilities mentioned in one of those paragraphs cannot be satisfied in full, those amounts must be satisfied in the same proportions.

(3) The liabilities referred to in subsection (2) are—

(a) any liability for pensions or other benefits which, in the opinion of the trustees, are derived from the payment by any member of the scheme of voluntary contributions,

(b) where a person's entitlement to payment of pension or other benefit has arisen, liability for that pension or benefit and for any pension or other benefit which will be payable to dependants of that person on his death (but excluding increases to pensions),

(c) any liability for—

(i) pensions or other benefits which have accrued to or in respect of any members of the scheme (but excluding increases to pensions), or

(ii) (in respect of members with less than two years pensionable service) the return of contributions,

(d) any liability for increases to pensions referred to in paragraphs (b) and (c);

and, for the purposes of subsection (2), the amounts of the liabilities mentioned in paragraphs (b) to (d) are to be taken to be the amounts calculated and verified in the prescribed manner.

(4) To the extent that any liabilities, as calculated in accordance with the rules of the scheme, have not been satisfied under subsection (2), any remaining assets of the scheme must then be applied towards satisfying those liabilities (as so calculated) in the order provided for in the rules of the scheme.

(5) If the scheme confers power on any person other than the trustees or managers to apply the assets of the scheme in respect of pensions or other benefits (including increases in pensions), it cannot be exercised by that person but may be exercised instead by the trustees or managers.

(6) If this section is not complied with—

(a) section 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance, and

(b) section 10 applies to any trustee or manager who has failed to take all such steps.

(7) Regulations may modify subsection (3).

(8) This section does not apply to an occupational pension scheme falling within a prescribed class or description.

(9) This section shall have effect with prescribed modifications in cases where part of a salary related occupational pension scheme to which section 56 applies is being wound up.

74 Discharge of liabilities by insurance, etc

(1) This section applies where a salary related occupational pension scheme to which section 56 applies, other than a scheme falling within a prescribed class or description, is being wound up.

(2) A liability to or in respect of a member of the scheme in respect of pensions or other benefits (including increases in pensions) is to be treated as discharged (to the extent that it would not be so treated apart from this section) if the trustees or managers of the scheme have, in accordance with prescribed arrangements, provided for the discharge of the liability in one or more of the ways mentioned in subsection (3).

(3) The ways referred to in subsection (2) are—

(a) by acquiring transfer credits allowed under the rules of another occupational pension scheme which satisfies prescribed requirements and the trustees or managers of which are able and willing to accept payment in respect of the member,

(b) by acquiring rights allowed under the rules of a personal pension scheme which satisfies prescribed requirements and the trustees or managers of which are able and willing to accept payment in respect of the member's accrued rights,

(c) by purchasing one or more annuities which satisfy prescribed requirements from one or more insurance companies, being companies willing to accept payment in respect of the member from the trustees or managers,

(d) by subscribing to other pension arrangements which satisfy prescribed requirements.

(4) If the assets of the scheme are insufficient to satisfy in full the liabilities, as calculated in accordance with the rules of the scheme, in respect of pensions and other benefits (including increases in pensions), the reference in subsection (2) to providing for the discharge of any liability in one or more of the ways mentioned in subsection (3) is to applying any amount available, in accordance with section 73, in one or more of those ways.

(5) Regulations may provide for this section—

(a) to have effect in relation to so much of any liability as may be determined in accordance with the regulations, or

(b) to have effect with prescribed modifications in relation to schemes falling within a prescribed class or description.

75 Deficiencies in the assets

(1) If, in the case of an occupational pension scheme which is not a money purchase scheme, the value at the applicable time of the assets of the scheme is less than the amount at that time of the liabilities of the scheme, an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

(2) If in the case of an occupational pension scheme which is not a money purchase scheme—

(a) a relevant insolvency event occurs in relation to the employer, and

(b) a debt due from the employer under subsection (1) has not been discharged at the time that event occurs,

the debt in question shall be taken, for the purposes of the law relating to winding up, bankruptcy or sequestration as it applies in relation to the employer, to arise immediately before that time.

(3) In this section "the applicable time" means —

(a) if the scheme is being wound up before a relevant insolvency event occurs in relation to the employer, any time when it is being wound up before such an event occurs, and

(b) otherwise, immediately before the relevant insolvency event occurs.

(4) For the purposes of this section a relevant insolvency event occurs in relation to the employer—

(a) in England and Wales—

(i) where the employer is a company, when it goes into liquidation, within the meaning of section 247(2) of the Insolvency Act 1986, or

(ii) where the employer is an individual, at the commencement of his bankruptcy, within the meaning of section 278 of that Act, or

(b) in Scotland—

(i) where the employer is a company, at the commencement of its winding up, within the meaning of section 129 of that Act, or

(ii) where the employer is a debtor within the meaning of the Bankruptcy (Scotland) Act 1985, on the date of sequestration as defined in section 12(4) of that Act.

(5) For the purposes of subsection (1), the liabilities and assets to be taken into account, and their amount or value, must be determined, calculated and verified by a prescribed person and in the prescribed manner.

(6) In calculating the value of any liabilities for those purposes, a provision of the scheme which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded.

(7) This section does not prejudice any other right or remedy which the trustees or managers may have in respect of a deficiency in the scheme's assets.

(8) A debt due by virtue only of this section shall not be regarded—

(a) as a preferential debt for the purposes of the Insolvency Act 1986, or

(b) as a preferred debt for the purposes of the Bankruptcy (Scotland) Act 1985.

(9) This section does not apply to an occupational pension scheme falling within a prescribed class or description.

(10) Regulations may modify this section as it applies in prescribed circumstances.

76 Excess assets on winding up

(1) This section applies to a trust scheme in any circumstances if—

(a) it is an exempt approved scheme, within the meaning given by section 592(1) of the Taxes Act 1988,

(b) the scheme is being wound up, and

(c) in those circumstances power is conferred on the employer or the trustees to distribute assets to the employer on a winding up.

(2) The power referred to in subsection (1)(c) cannot be exercised unless the requirements of subsections (3) and (in prescribed circumstances) (4), and any prescribed requirements, are satisfied.

(3) The requirements of this subsection are that—

(a) the liabilities of the scheme have been fully discharged,

(b) where there is any power under the scheme, after the discharge of those liabilities, to distribute assets to any person other than the employer, the power has been exercised or a decision has been made not to exercise it,

(c) the annual rates of the pensions under the scheme which commence or have commenced are increased by the appropriate percentage, and

(d) notice has been given in accordance with prescribed requirements to the members of the scheme of the proposal to exercise the power.

(4) The requirements of this subsection are that the Authority are of the opinion that—

(a) any requirements prescribed by virtue of subsection (2) are satisfied, and

(b) the requirements of subsection (3) are satisfied.

(5) In subsection (3)—

(a) "annual rate" and "appropriate percentage" have the same meaning as in section 54, and
(b) "pension" does not include—
(i) any guaranteed minimum pension (as defined in section 8(2) of the Pension Schemes Act 1993) or any increase in such a pension under section 109 of that Act, or
(ii) any money purchase benefit (as defined in section 181(1) of that Act).

(6) If, where this section applies to any trust scheme, the trustees purport to exercise the power referred to in subsection (1)(c) without complying with the requirements of this section, sections 3 and 10 apply to any of them who have failed to take all such steps as are reasonable to secure compliance.

(7) If, where this section applies to any trust scheme, any person other than the trustees purports to exercise the power referred to in subsection (1)(c) without complying with the requirements of this section, section 10 applies to him.

(8) Regulations may provide that, in prescribed circumstances, this section does not apply to schemes falling within a prescribed class or description, or applies to them with prescribed modifications.

77 Excess assets remaining after winding up: power to distribute

(1) This section applies to a trust scheme in any circumstances if—
(a) it is an exempt approved scheme, within the meaning given by section 592(1) of the Taxes Act 1988,
(b) the scheme is being wound up,
(c) the liabilities of the scheme have been fully discharged,
(d) where there is any power under the scheme, after the discharge of those liabilities, to distribute assets to any person other than the employer, the power has been exercised or a decision has been made not to exercise it,
(e) any assets remain undistributed, and
(f) the scheme prohibits the distribution of assets to the employer in those circumstances.

(2) The annual rates of the pensions under the scheme which commence or have commenced must be increased by the appropriate percentage, so far as the value of the undistributed assets allows.

(3) In subsection (2)—
(a) "annual rate" and "appropriate percentage" have the same meaning as in section 54, and
(b) "pension" does not include—
(i) any guaranteed minimum pension (as defined in section 8(2) of the Pension Schemes Act 1993) or any increase in such a pension under section 109 of that Act, or
(ii) any money purchase benefit (as defined in section 181(1) of that Act).

(4) Where any assets remain undistributed after the discharge of the trustees' duty under subsection (2)—

(a) the trustees must use those assets for the purpose of providing additional benefits or increasing the value of any benefits, but subject to prescribed limits, and

(b) the trustees may then distribute those assets (so far as undistributed) to the employer.

(5) If, where this section applies to a trust scheme, the requirements of this section are not complied with, section 3 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance.

(6) Regulations may modify this section as it applies in prescribed circumstances.