



Pensions Act 1995

1995 CHAPTER 26

PART I

OCCUPATIONAL PENSIONS

Functions of trustees

37 Payment of surplus to employer

- (1) This section applies to a trust scheme if—
- (a) apart from this section, power is conferred on any person (including the employer) to make payments to the employer out of funds which are held for the purposes of the scheme,
 - (b) the scheme is one to which Schedule 22 to the Taxes Act 1988 (reduction of pension fund surpluses in certain exempt approved schemes) applies, and
 - (c) the scheme is not being wound up.
- (2) Where the power referred to in subsection (1)(a) is conferred by the scheme on a person other than the trustees, it cannot be exercised by that person but may be exercised instead by the trustees; and any restriction imposed by the scheme on the exercise of the power shall, so far as capable of doing so, apply to its exercise by the trustees.
- (3) The power referred to in subsection (1)(a) cannot be exercised unless the requirements of subsection (4) and (in prescribed circumstances) (5), and any prescribed requirements, are satisfied.
- (4) The requirements of this subsection are that—
- (a) the power is exercised in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Taxes Act 1988,
 - (b) the trustees are satisfied that it is in the interests of the members that the power be exercised in the manner so proposed,
 - (c) where the power is conferred by the scheme on the employer, the employer has asked for the power to be exercised, or consented to it being exercised, in the manner so proposed,

Status: This is the original version (as it was originally enacted).

- (d) the annual rates of the pensions under the scheme which commence or have commenced are increased by the appropriate percentage, and
 - (e) notice has been given in accordance with prescribed requirements to the members of the scheme of the proposal to exercise the power.
- (5) The requirements of this subsection are that the Authority are of the opinion that—
 - (a) any requirements prescribed by virtue of subsection (3) are satisfied, and
 - (b) the requirements of subsection (4) are satisfied.
- (6) In subsection (4)—
 - (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).
- (7) This section does not apply to any payment to which, by virtue of section 601(3) of the Taxes Act 1988, section 601(2) of that Act does not apply.
- (8) If, where this section applies to any trust scheme, the trustees purport to exercise the power referred to in subsection (1)(a) by making a payment to which this section applies without complying with the requirements of this section, sections 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.
- (9) 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)(a) by making a payment to which this section applies, section 10 applies to him.
- (10) 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.