



# Pensions Act 1995

## 1995 CHAPTER 26

### PART I

#### OCCUPATIONAL PENSIONS

##### *Winding up*

#### 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—

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*Status: This is the original version (as it was originally enacted).*

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- (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.