



Pensions Act 2004

2004 CHAPTER 35

PART 5

OCCUPATIONAL AND PERSONAL PENSION SCHEMES: MISCELLANEOUS PROVISIONS

Payment of surplus to employer

251 Payment of surplus to employer: transitional power to amend scheme

- (1) This section applies to a scheme
- ^[F1](a) which is one to which section 37 of the Pensions Act 1995 applies, and
 - (b) which immediately before the commencement of section 250 was one to which section 37 of the Pensions Act 1995 (c. 26) applied (see subsection (1) of that section, as it then had effect).

- (2) No payment to the employer may be made out of funds held for the purposes of the scheme except by virtue of a resolution of the trustees under this section.

This applies even if the payment is one proposed to be made in fulfilment of an agreement or arrangement entered into before the commencement of this section.

^[F2](2A) But subsection (2) does not apply in the case of any of the payments listed in paragraphs (c) to (f) of section 175 of the Finance Act 2004 (authorised employer payments other than public service scheme payments or authorised surplus payments).]

- (3) Where the scheme was so expressed as (apart from section 37, as it ^[F3]applied immediately before the commencement of section 250) to confer power to make payments to the employer out of funds held for the purposes of the scheme otherwise than in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Income and Corporation Taxes Act 1988 (c. 1), the trustees may resolve that the power—
- (a) shall become exercisable according to its terms, or

Changes to legislation: *Pensions Act 2004, Section 251 is up to date with all changes known to be in force on or before 13 April 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) View outstanding changes*

- (b) shall become so exercisable, but only in such circumstances and subject to such conditions as may be specified in the resolution.
- (4) Where the scheme was so expressed as to confer power to make payments to the employer out of funds held for the purposes of the scheme only in pursuance of proposals approved under paragraph 6(1) of Schedule 22 to the Income and Corporation Taxes Act 1988, the trustees may resolve that the power shall instead be exercisable in such circumstances and subject to such conditions as may be specified in the resolution.
- (5) In either case the trustees must be satisfied that it is in the interests of the members of the scheme that the power is exercised in the manner proposed.
- (6) The power conferred by subsection (3) or (4)—
- (a) may not be exercised unless notice of the proposal to exercise it has been given, in accordance with prescribed requirements, to the employer and to the members of the scheme,
 - ^{F4}(aa) may be exercised even if the payments to which it relates are, to any extent, payments to which subsection (2) does not apply,]
 - (b) may ^{F5}be exercised, after the commencement of section 25 of the Pensions Act 2011, only once (whether or not also exercised before 6 April 2011)], and
 - (c) ceases to be exercisable ^{F6}on 6 April 2016].
- ^{F7}(6A) A resolution passed under this section after the commencement of section 25 of the Pensions Act 2011 may amend or revoke a resolution passed under this section before 6 April 2011.]
- (7) The exercise of any power to make payments to the employer by virtue of a resolution under this section is subject to section 37 of the Pensions Act 1995 (c. 26) as substituted by section 250.

Textual Amendments

- F1** Words in s. 251(1) inserted (3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), **ss. 25(2)**, 38(3)(b) (with s. 25(7))
- F2** S. 251(2A) inserted (3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), **ss. 25(3)**, 38(3)(b) (with s. 25(7))
- F3** Words in s. 251(3) substituted (3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), **ss. 25(4)**, 38(3)(b) (with s. 25(7))
- F4** S. 251(6)(aa) inserted (3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), **ss. 25(5)(a)**, 38(3)(b) (with s. 25(7))
- F5** Words in s. 251(6)(b) substituted (3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), **ss. 25(5)(b)**, 38(3)(b) (with s. 25(7))
- F6** Words in s. 251(6)(c) substituted (3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), **ss. 25(5)(c)**, 38(3)(b) (with s. 25(7))
- F7** S. 251(6A) inserted (3.1.2012) by [Pensions Act 2011 \(c. 19\)](#), **ss. 25(6)**, 38(3)(b) (with s. 25(7))

Commencement Information

- I1** S. 251 in force at 9.3.2006 for specified purposes and 6.4.2006 in so far as not already in force by [S.I. 2006/560](#), art. 2(1), [Sch. Pt. 1](#)

Changes to legislation:

Pensions Act 2004, Section 251 is up to date with all changes known to be in force on or before 13 April 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.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 18(5A) inserted by [2014 c. 19 s. 52\(2\)](#)
- s. 18(6) words inserted by [2014 c. 19 s. 52\(3\)](#)
- s. 18(8) words inserted by [2014 c. 19 s. 52\(3\)](#)
- s. 23(1A) inserted by [2015 c. 8 Sch. 2 para. 26\(3\)](#)
- s. 23(10A) inserted by [2015 c. 8 Sch. 2 para. 26\(5\)](#)
- s. 38(1)-(1B) substituted for s. 38(1) by [2015 c. 8 Sch. 2 para. 27](#)
- s. 38(7)(da) inserted by [2021 c. 1 s. 104\(2\)](#)
- s. 43(1)-(1B) substituted for s. 43(1) by [2015 c. 8 Sch. 2 para. 28\(2\)](#)
- s. 52(1)-(1B) substituted for s. 52(1) by [2015 c. 8 Sch. 2 para. 29](#)
- s. 80(1)(a)(iib) inserted by [2021 c. 1 s. 109\(3\)](#)
- s. 102(2)(a) words in s. 102(2) renumbered as s. 102(2)(a) by [2008 c. 30 s. 44\(5\)\(a\)](#)
- s. 102(2)(b) inserted by [2008 c. 30 s. 44\(5\)\(b\)](#)
- s. 103(1A) inserted by [2008 c. 30 s. 44\(6\)](#)
- s. 117A inserted by [2008 c. 30 Sch. 10 para. 3](#)
- s. 126(1)-(1B) substituted for s. 126(1) by [2015 c. 8 Sch. 2 para. 31](#)
- s. 188(1)(ba) inserted by [2008 c. 30 Sch. 10 para. 6](#)
- s. 189A inserted by [2008 c. 30 Sch. 10 para. 7](#)
- s. 209(9) added by [2008 c. 30 Sch. 10 para. 8](#)
- s. 291(4)(f) and word inserted by [2021 c. 1 Sch. 3 para. 19\(b\)](#)
- s. 318(3)(a)(viii)-(x) inserted by [2015 c. 8 Sch. 2 para. 38\(3\)\(a\)](#)
- s. 318(3)(b)(vi)-(viii) inserted by [2015 c. 8 Sch. 2 para. 38\(3\)\(b\)](#)
- Sch. 4 para. 7(5)(b) inserted by [2008 c. 30 s. 44\(8\)\(b\)](#)
- Sch. 4 para. 13(3) inserted by [2008 c. 30 s. 44\(9\)\(b\)](#)
- Sch. 4 para. 7(5)(a) words in Sch. 4 para. 7(5) renumbered as Sch. 4 para. 7(5)(a) by [2008 c. 30 s. 44\(8\)\(a\)](#)
- Sch. 7 para. 21(2)(c)-(cc) substituted for Sch. 7 para. 21(2)(b)(c) by [2008 c. 30 Sch. 8 para. 11](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 8 para. 10 (3.1.2012) omitted without ever being in force by virtue of [2011 c. 19](#), Sch. 4 para. 20; [S.I. 2011/3034 art. 3\(i\)\(iv\)](#))