



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 1

#### THE PENSIONS REGULATOR

##### *Contribution notices where avoidance of employer debt*

#### **40 Content and effect of a section 38 contribution notice**

- (1) This section applies where a contribution notice is issued to a person under section 38.
- (2) The contribution notice must—
  - (a) contain a statement of the matters which it is asserted constitute the act or failure to act which falls within subsection (5) of section 38,
  - (b) specify the sum which the person is stated to be under a liability to pay, and
  - (c) identify any other persons to whom contribution notices have been or are issued as a result of the act or failure to act in question and the sums specified in each of those notices.
- (3) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the trustees or managers of the scheme, the sum is to be treated as a debt due from the person to the trustees or managers of the scheme.
- (4) In such a case, the Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover the debt.
- (5) But during any assessment period (within the meaning of section 132) in relation to the scheme, the rights and powers of the trustees or managers of the scheme in relation to any debt due to them by virtue of a contribution notice are exercisable by the Board of the Pension Protection Fund to the exclusion of the trustees or managers and the Regulator.
- (6) Where, by virtue of subsection (5), any amount is paid to the Board in respect of a debt due by virtue of a contribution notice, the Board must pay the amount to the trustees or managers of the scheme.

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*Status: This is the original version (as it was originally enacted).*

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- (7) Where the contribution notice states that the person is under a liability to pay the sum specified in the notice to the Board, the sum is to be treated as a debt due from the person to the Board.
- (8) Where the contribution notice so specifies, the person to whom the notice is issued (“P”) is to be treated as jointly and severally liable for the debt with any persons specified in the notice who are persons to whom corresponding contribution notices are issued.
- (9) For the purposes of subsection (8), a corresponding contribution notice is a notice which—
  - (a) is issued as a result of the same act or failure to act falling within subsection (5) of section 38 as the act or failure as a result of which P’s contribution notice is issued,
  - (b) specifies the same sum as is specified in P’s contribution notice, and
  - (c) specifies that the person to whom the contribution notice is issued is jointly and severally liable with P, or with P and other persons, for the debt in respect of that sum.
- (10) A debt due by virtue of a contribution notice is not to be taken into account for the purposes of section 75(2) and (4) of the Pensions Act 1995 (c. 26) (deficiencies in the scheme assets) when ascertaining the amount or value of the assets or liabilities of a scheme.