



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 1

#### THE PENSIONS REGULATOR

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

#### **41 Section 38 contribution notice: relationship with employer debt**

- (1) This section applies where a contribution notice is issued to a person (“P”) under section 38 and condition A or B is met.
- (2) Condition A is met if, at the time at which the contribution notice is issued, there is a debt due under section 75 of the Pensions Act 1995 (“the 1995 Act”) (deficiencies in the scheme assets) from the employer—
  - (a) to the trustees or managers of the scheme, or
  - (b) where the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 (pension protection), to the Board.
- (3) Condition B is met if, after the contribution notice is issued but before the whole of the debt due by virtue of the notice is recovered, a debt becomes due from the employer to the trustees or managers of the scheme under section 75 of the 1995 Act.
- (4) The Regulator may issue a direction to the trustees or managers of the scheme not to take any or any further steps to recover the debt due to them under section 75 of the 1995 Act pending the recovery of all or a specified part of the debt due to them by virtue of the contribution notice.
- (5) If the trustees or managers fail to comply with a direction issued to them under subsection (4), section 10 of the 1995 Act (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (6) Any sums paid—

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*Status: This is the original version (as it was originally enacted).*

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- (a) to the trustees or managers of the scheme in respect of any debt due to them by virtue of the contribution notice, or
  - (b) to the Board in respect of any debt due to it by virtue of the contribution notice,are to be treated as reducing the amount of the debt due to the trustees or managers or, as the case may be, to the Board under section 75 of the 1995 Act.
- (7) Where a sum is paid to the trustees or managers of the scheme or, as the case may be, to the Board in respect of the debt due under section 75 of the 1995 Act, P may make an application under this subsection to the Regulator for a reduction in the amount of the sum specified in P's contribution notice.
- (8) An application under subsection (7) must be made as soon as reasonably practicable after the sum is paid to the trustees or managers or, as the case may be, to the Board in respect of the debt due under section 75 of the 1995 Act.
- (9) Where such an application is made to the Regulator, the Regulator may, if it is of the opinion that it is appropriate to do so—
  - (a) reduce the amount of the sum specified in P's contribution notice by an amount which it considers reasonable, and
  - (b) issue a revised contribution notice specifying the revised sum.
- (10) For the purposes of subsection (9), the Regulator must have regard to such matters as the Regulator considers relevant including, where relevant, the following matters—
  - (a) the amount paid in respect of the debt due under section 75 of the 1995 Act since the contribution notice was issued,
  - (b) any amounts paid in respect of the debt due by virtue of that contribution notice,
  - (c) whether contribution notices have been issued to other persons 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 was issued,
  - (d) where such contribution notices have been issued, the sums specified in each of those notices and any amounts paid in respect of the debt due by virtue of those notices,
  - (e) whether P's contribution notice specifies that P is jointly and severally liable for the debt with other persons, and
  - (f) such other matters as may be prescribed.
- (11) Where—
  - (a) P's contribution notice specifies that P is jointly and severally liable for the debt with other persons, and
  - (b) a revised contribution notice is issued to P under subsection (9) specifying a revised sum,the Regulator must also issue revised contribution notices to those other persons specifying the revised sum and their joint and several liability with P for the debt in respect of that sum.
- (12) For the purposes of this section—
  - (a) references to a debt due under section 75 of the 1995 Act include a contingent debt under that section, and
  - (b) references to the amount of such a debt include the amount of such a contingent debt.