



# Pensions Act 1995

## 1995 CHAPTER 26

### PART I

#### OCCUPATIONAL PENSIONS

##### *Winding up*

#### **75 Deficiencies in the assets.**

<sup>F1</sup>(1) This section applies in relation to an occupational pension scheme other than a scheme which is—

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

[ Where a pension scheme is divided into sections, each section that is a collective <sup>F2</sup>(1A) money purchase scheme for the purposes of Part 1 of the Pension Schemes Act 2021 (see section 1(2)(b) of that Act) is to be treated for the purposes of this section as a separate occupational pension scheme which is a money purchase scheme.]

(2) If—

- (a) at any time which falls—
    - (i) when a scheme is being wound up, but
    - (ii) before any relevant event in relation to the employer which occurs while the scheme is being wound up,the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme, and
  - (b) the trustees or managers of the scheme designate that time for the purposes of this subsection (before the occurrence of an event within paragraph (a)(ii)),
- an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.

This is subject to subsection (3).

(3) Subsection (2) applies only if—

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- (a) either—
    - (i) no relevant event within subsection (6A)(a) or (b) occurred in relation to the employer during the period beginning with the appointed day and ending with the commencement of the winding up of the scheme, or
    - (ii) during the period—
      - (a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in subparagraph (i), and
      - (b) ending with the commencement of the winding up of the scheme,
        - a cessation notice was issued in relation to the scheme and became binding, and
  - (b) no relevant event within subsection (6A)(c) has occurred in relation to the employer during the period mentioned in paragraph (a)(i).
- (4) Where—
- (a) immediately before a relevant event (“the current event”) occurs in relation to the employer the value of the assets of the scheme is less than the amount at that time of the liabilities of the scheme,
  - (b) the current event—
    - (i) occurred on or after the appointed day, and
    - (ii) did not occur in prescribed circumstances,
  - (c) if the scheme was being wound up immediately before that event, subsection (2) has not applied in relation to the scheme to treat an amount as a debt due from the employer to the trustees or managers of the scheme,
  - (d) if the current event is within subsection (6A)(a) or (b), either—
    - (i) no relevant event within subsection (6A)(a) or (b) occurred in relation to the employer during the period beginning with the appointed day and ending immediately before the current event, or
    - (ii) a cessation event has occurred in relation to the scheme in respect of a cessation notice issued during the period—
      - (a) beginning with the occurrence of the last such relevant event which occurred during the period mentioned in subparagraph (i), and
      - (b) ending immediately before the current event, and
  - (e) no relevant event within subsection (6A)(c) has occurred in relation to the employer during the period mentioned in paragraph (d)(i),
- an amount equal to the difference shall be treated as a debt due from the employer to the trustees or managers of the scheme.
- (4A) Where the current event is within subsection (6A)(a) or (b), the debt under subsection (4) is to be taken, for the purposes of the law relating to insolvency as it applies to the employer, to arise immediately before the occurrence of the current event.
- (4B) Subsection (4C) applies if, in a case within subsection (4)—
- (a) the current event is within subsection (6A)(a) or (b), and
  - (b) the scheme was not being wound up immediately before that event.

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- (4C) Where this subsection applies, the debt due from the employer under subsection (4) is contingent upon—
- (a) a scheme failure notice being issued in relation to the scheme after the current event and the following conditions being satisfied—
    - (i) the scheme failure notice is binding,
    - (ii) no relevant event within subsection (6A)(c) has occurred in relation to the employer before the scheme failure notice became binding, and
    - (iii) a cessation event has not occurred in relation to the scheme in respect of a cessation notice issued during the period—
      - (a) beginning with the occurrence of the current event, and
      - (b) ending immediately before the issuing of the scheme failure notice,
 and the occurrence of such a cessation event in respect of a cessation notice issued during that period is not a possibility, or
  - (b) the commencement of the winding up of the scheme before—
    - (i) any scheme failure notice or cessation notice issued in relation to the scheme becomes binding, or
    - (ii) any relevant event within subsection (6A)(c) occurs in relation to the employer.]
- (5) For the purposes of [<sup>F3</sup>subsections (2) and (4)], 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 [<sup>F4</sup>rules] which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded.
- [<sup>F5</sup>In this subsection “scheme rules” has the same meaning as in the Pensions Act 2004 (“the 2004 Act”) (see section 318 of that Act).]
- [<sup>F6</sup>(6A) For the purposes of this section, a relevant event occurs in relation to the employer in relation to an occupational pension scheme if and when—
- (a) an insolvency event occurs in relation to the employer,
  - (b) the trustees or managers of the scheme make an application under subsection (1) of section 129 of the 2004 Act or receive a notice from the Board of the Pension Protection Fund under subsection (5)(a) of that section, or
  - (c) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under section 89 of the Insolvency Act 1986 (members' voluntary winding up).
- (6B) For the purposes of this section—
- (a) a “cessation notice”, in the case of a relevant event within subsection (6A) (a), means—
    - (i) a withdrawal notice issued under section 122(2)(b) of the 2004 Act (scheme rescue has occurred),
    - (ii) a withdrawal notice issued under section 148 of that Act (no insolvency event has occurred or is likely to occur),

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- (iii) a notice issued under section 122(4) of that Act (inability to confirm status of scheme) in a case where the notice has become binding and section 148 of that Act does not apply,
  - (b) a “cessation notice” in the case of a relevant event within subsection (6A)(b), means a withdrawal notice issued under section 130(3) of the 2004 Act (scheme rescue has occurred),
  - (c) a cessation event occurs in relation to a scheme when a cessation notice in relation to the scheme becomes binding,
  - (d) the occurrence of a cessation event in relation to a scheme in respect of a cessation notice issued during a particular period (“the specified period”) is a possibility until each of the following are no longer reviewable—
    - (i) any cessation notice which has been issued in relation to the scheme during the specified period,
    - (ii) any failure to issue such a cessation notice during the specified period,
    - (iii) any notice which has been issued by the Board under Chapter 2 or 3 of Part 2 of the 2004 Act which is relevant to the issue of a cessation notice in relation to the scheme during the specified period or to such a cessation notice which has been issued during that period becoming binding,
    - (iv) any failure to issue such a notice as is mentioned in subparagraph (iii),
  - (e) the issue or failure to issue a notice is to be regarded as reviewable—
    - (i) during the period within which it may be reviewed by virtue of Chapter 6 of Part 2 of the 2004 Act, and
    - (ii) if the matter is so reviewed, until—
      - (a) the review and any reconsideration,
      - (b) any reference to the Ombudsman for the Board of the Pension Protection Fund in respect of the matter, and
      - (c) any appeal against his determination or directions,
 has been finally disposed of, and
  - (f) a “scheme failure notice” means a scheme failure notice issued under section 122(2)(a) or 130(2) of the 2004 Act (scheme rescue not possible).
- (6C) For the purposes of this section—
- (a) section 121 of the 2004 Act applies for the purposes of determining if and when an insolvency event has occurred in relation to the employer,
  - (b) “appointed day” means the day appointed under section 126(2) of the 2004 Act (no pension protection under Chapter 3 of Part 2 of that Act if the scheme begins winding up before the day appointed by the Secretary of State),
  - (c) references to a relevant event in relation to an employer do not include a relevant event which occurred in relation to him before he became the employer in relation to the scheme,
  - (d) references to a cessation notice becoming binding are to the notice in question mentioned in subsection (6B)(a) or (b) and issued under Part 2 of the 2004 Act becoming binding within the meaning given by that Part of that Act, and
  - (e) references to a scheme failure notice becoming binding are to the notice in question mentioned in subsection (6B)(f) and issued under Part 2 of the 2004 Act becoming binding within the meaning given by that Part of that Act.
- (6D) Where—

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- (a) a resolution is passed for a voluntary winding up of the employer in a case where a declaration of solvency has been made under section 89 of the Insolvency Act 1986 (members' voluntary winding up), and
- [<sup>F7</sup>(b) the voluntary winding up of the employer—
- (i) is stayed other than in prescribed circumstances, or
  - (ii) becomes a creditors' voluntary winding up under section 96 of that Act (conversion to creditors' voluntary winding up),]

this section has effect as if that resolution had never been passed and any debt which arose under this section by virtue of the passing of that resolution shall be treated as if it had never arisen.]

(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 <sup>M1</sup>Insolvency Act 1986, or
    - (b) as a preferred debt for the purposes of the <sup>M2</sup>Bankruptcy (Scotland) Act [<sup>F8</sup>2016].

<sup>F9</sup>(9) .....

(10) Regulations may modify this section as it applies in prescribed circumstances.

#### Textual Amendments

- F1** S. 75(1)-(4C) substituted for s. 75(1)-(4) (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 271(2), 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))
- F2** S. 75(1A) inserted (11.2.2021 for specified purposes, 1.8.2022 in so far as not already in force) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(a), Sch. 3 para. 8; S.I. 2022/721, regs. 1(2), 3(a)
- F3** Words in s. 75(5) substituted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 271(3), 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))
- F4** Word in s. 75(6) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 271(4)(a), 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))
- F5** Words in s. 75(6) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 271(4)(b), 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))
- F6** S. 75(6A)-(6D) inserted (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 271(5), 322(1) (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))
- F7** S. 75(6D)(b) substituted (6.4.2017) by The Deregulation Act 2015 and Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) (Savings) Regulations 2017 (S.I. 2017/540), reg. 1, Sch. 1 para. 3(2) (with reg. 4)
- F8** Word in s. 75(8)(b) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 13(3)
- F9** S. 75(9) repealed (10.2.2005 for specified purposes, 6.4.2005 in so far as not already in force) by Pensions Act 2004 (c. 35), ss. 271(6), 322(1), Sch. 13 (with s. 313); S.I. 2005/275, art. 2(3)(a)(b), Sch. Pt. 3 (with art. 2(10)(11))

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#### Modifications etc. (not altering text)

- C1** S. 75 modified (1.4.1997) by The Occupational and Personal Pension Schemes (Levy) Regulations 1997 (S.I. 1997/666), regs. 1(1), **11**
- C2** S. 75 modified (6.4.1997) by The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 (S.I. 1996/3128), regs. 1, **4** (as amended by S.I. 1997/786, reg. 1, Sch. 1 para. 19(3))
- C3** S. 75 modified (6.4.1997) by The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 (S.I. 1996/3128), regs. 1, **7-9**
- C4** S. 75 modified (6.4.1997) by The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 (S.I. 1996/3128), regs. 1, **11**, **Sch. 2** (as amended by S.I. 1997/786, reg. 1, Sch. 1 para. 19(4), Sch. 2)
- C5** S. 75 excluded (31.12.2000) by The Occupational Pension Schemes (Republic of Ireland Schemes Exemption) Regulations 2000 (S.I. 2000/3198), regs. 1(1), 2, **Sch.**
- C6** S. 75 modified (6.4.2005) by The Occupational Pension Schemes (Employer Debt) Regulations 2005 (S.I. 2005/678), regs. 1(2), **6-15** (with reg. 1(3)) (as amended by S.I. 2005/2224, reg. 2(3)(4); S.I. 2008/731, regs. 6-11)
- C7** S. 75 excluded (6.4.2005) by The Occupational Pension Schemes (Employer Debt) Regulations 2005 (S.I. 2005/678), regs. 1(2), **4** (with reg. 1(3)) (as amended by S.I. 2005/2224, reg. 4(1))
- C8** S. 75 excluded (29.9.2008) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), Sch. 3 paras. 6(b), **11(b)(i)**
- C9** S. 75 excluded (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **20**
- C10** S. 75 applied (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **21(4), 22(3), 24(2)**
- C11** S. 75 excluded (6.4.1997) by The Occupational Pension Schemes (Deficiency on Winding Up etc.) Regulations 1996 (S.I. 1996/3128), regs. 1(3), **10** (as amended (6.4.2016) by S.I. 2016/200, arts. 1(2), 10)
- C12** S. 75(2)(4) modified (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 49(10)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/275, art. 2(7), Sch. Pt. 7
- C13** S. 75(2)(4) modified (6.4.2005) by Pensions Act 2004 (c. 35), **ss. 40(10)**, 322(1) (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7; S.I. 2005/275, art. 2(7), Sch. Pt. 7

#### Commencement Information

- I1** S. 75 in force at 6.4.1996 for specified purposes by S.I. 1996/778, art. 2(5)(a), **Sch. Pt. V**
- I2** S. 75 in force at 6.4.1997 in so far as not already in force by S.I. 1997/664, art. 2(3), **Sch. Pt. 3**

#### Marginal Citations

- M1** 1986 c. 45.
- M2** 1985 c. 66.

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[View outstanding changes](#)

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

- Blanket amendment words substituted by [S.I. 2011/1043 art. 36](#)

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

- s. 37(1A)(b) inserted by [2015 c. 8 Sch. 2 para. 7\(b\)](#)
- s. 51(5A)-(5C) inserted by [2015 c. 8 s. 43\(1\)](#)
- s. 51(7A) inserted by [2015 c. 8 s. 41\(1\)\(b\)](#)
- s. 51(9)(10) inserted by [2015 c. 8 s. 42\(3\)](#)
- s. 67A(3)(aa)-(ac) inserted by [2015 c. 8 s. 45\(3\)](#)
- s. 67A(9)(a)(viii)-(x) inserted by [2015 c. 8 s. 45\(6\)\(a\)](#)
- s. 67A(9)(b)(vi)-(viii) inserted by [2015 c. 8 s. 45\(6\)\(b\)](#)
- s. 73(2)(2A) substituted for s. 73(2) by [2015 c. 8 Sch. 2 para. 11](#)
- s. 75(1)-(1B) substituted for s. 75(1) by [2015 c. 8 Sch. 2 para. 12](#)
- s. 175(2)(ca) inserted by [2004 c. 35 s. 240\(2\)](#)
- s. 175(2)(za) inserted by [2015 c. 8 s. 43\(2\)](#)