Pensions Act 2004

2004 CHAPTER 35

PART 3 E+W+S

SCHEME FUNDING

Modifications etc. (not altering text)

C1 Pt. 3 excluded by S.I. 2000/3198 Sch. (as inserted (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), reg. 1, **Sch. 3 para. 13(4)**)

C2 Pt. 3 applied (30.12.2005) by The Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S.I. 2005/3381), regs. 1, **15(1)**

C3 Pt. 3 modified (30.12.2005) by The Occupational Pension Schemes (Regulatory Own Funds) Regulations 2005 (S.I. 2005/3380), regs. 1, **5(1)**

C4 Pt. 3 excluded (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), regs. 1, **17**

C5 Pt. 3 modified (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), regs. 1, 19, **Sch. 2**

C6 Pt. 3 extended by S.I. 1996/1172 reg. 49(4)(a)(i) (as substituted (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), reg. 1, **Sch. 3 para. 1(5)(a)**)

C7 Pt. 3 excluded (29.9.2008 at 8.00 a.m.) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), **Sch. 3 para. 11(b)(iii)**

C8 Pt. 3 excluded (29.9.2008) by The Bradford & Bingley plc Transfer of Securities and Property etc. Order 2008 (S.I. 2008/2546), **Sch. 3 para. 11(b)(iii)**

C9 Pt. 3 applied (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **64** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c. 19 - see S.I. 2014/1683, art. 2

C10 Pt. 3 excluded (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **63** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c. 19 - see S.I. 2014/1683, art. 2

C11 Pt. 3 modified by S.I. 2005/3377, Sch. 2 paras. 3B, 3C (as inserted (6.4.2018) by The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2018 (S.I. 2018/237), regs. 1(2), **12(2)**)

Changes to legislation: *Pensions Act 2004, Part 3 is up to date with all changes known to be in force on or before 24 June 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*

Introductory

221 Pension schemes to which this Part applies E+W+S

(1) The provisions of this Part apply to every occupational pension scheme other than—

(a) a money purchase scheme, or

(b) a prescribed scheme or a scheme of a prescribed description.

(2) Regulations under subsection (1)(b) may provide for exemptions from all or any of the provisions of this Part.

Commencement Information

I1 S. 221 in force at 4.12.2005 for specified purposes by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

I2 S. 221 in force at 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

Scheme funding

[F1 221A Funding and investment strategy E+W+S

(1) The trustees or managers must determine, and from time to time review and if necessary revise, a strategy for ensuring that pensions and other benefits under the scheme can be provided over the long term.

This is referred to in this Part as a "funding and investment strategy".

(2) The strategy must, in particular, specify—

(a) the funding level the trustees or managers intend the scheme to have achieved as at the relevant date or relevant dates, and

(b) the investments the trustees or managers intend the scheme to hold on the relevant date or relevant dates.

(3) In subsection (2)—

(a) "funding level" means the ratio of the scheme's assets to its liabilities;

(b) "relevant date" means a date determined in accordance with regulations.

(4) Provision may be made by regulations—

(a) requiring the trustees or managers of a scheme, in determining or revising a funding and investment strategy, to take into account prescribed matters and follow prescribed principles;

(b) as to the level of detail required in a funding and investment strategy;

(c) as to the period within which a funding and investment strategy must be determined;

(d) requiring a funding and investment strategy to be reviewed, and if necessary revised, at such intervals and on such occasions as may be prescribed.

(5) The provision that may be made by virtue of subsection (4)(a) includes provision requiring the trustees or managers, in specifying a funding level for the purposes of subsection (2)(a), to adopt prescribed actuarial methods or assumptions.

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(6) Where any requirement of this section is not complied with, section 10 of the Pensions Act 1995 (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

Textual Amendments

F1 Ss. 221A, 221B inserted (11.2.2021 for specified purposes, 6.4.2024 in so far as not already in force) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(b), **Sch. 10 para. 2**; S.I. 2024/451, reg. 2(b)

221B Statement of strategy E+W+S

(1) The trustees or managers must, as soon as reasonably practicable after determining or revising the scheme's funding and investment strategy, prepare a written statement of—

(a) the scheme's funding and investment strategy, and

(b) the supplementary matters set out in subsection (2).

(2) The supplementary matters are—

(a) the extent to which, in the opinion of the trustees or managers, the funding and investment strategy is being successfully implemented and, where it is not, the steps they propose to take to remedy the position (including details as to timing);

(b) the main risks faced by the scheme in implementing the funding and investment strategy and how the trustees or managers intend to mitigate or manage them;

(c) reflections of the trustees or managers on any significant decisions taken by them in the past that are relevant to the funding and investment strategy (including any lessons learned that have affected other decisions or may do so in the future);

(d) such other matters as may be prescribed.

(3) In this Part—

(a) a statement under subsection (1) is referred to as a “statement of strategy”;

(b) the text included in a statement of strategy by virtue of subsection (1)(a) is referred to as “Part 1” of the statement;

(c) the text included in a statement of strategy by virtue of subsection (1)(b) is referred to as “Part 2” of the statement.

(4) The trustees or managers must from time to time, and at such times and on such occasions as may be prescribed—

(a) review Part 2 of the scheme's statement of strategy, and

(b) if necessary in the light of that review, revise that Part and prepare a replacement statement of strategy incorporating it.

(5) The trustees or managers must consult the employer when preparing or revising Part 2 of a statement of strategy.

(6) A statement of strategy prepared for a trust scheme must be signed on behalf of the trustees by a person who—

(a) is the chair of the trustees, and

(b) meets such other conditions as may be prescribed.

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(7) Where subsection (6) cannot be complied with because the trustees of a trust scheme do not have a chair, they must appoint one.

(8) Provision may be made by regulations—

(a) requiring the trustees or managers of a scheme, in preparing or revising Part 2 of a statement of strategy, to take into account prescribed matters and follow prescribed principles;

(b) as to the level of detail required in Part 2 of a statement of strategy;

(c) as to the form of a statement of strategy;

(d) requiring the trustees or managers of a scheme to send a statement of strategy to the Regulator at such times and on such occasions as may be prescribed.

(9) Where any requirement of this section is not complied with, section 10 of the Pensions Act 1995 (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.**]**

Textual Amendments

F1 Ss. 221A, 221B inserted (11.2.2021 for specified purposes, 6.4.2024 in so far as not already in force) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(b), **Sch. 10 para. 2**; S.I. 2024/451, reg. 2(b)

222 The statutory funding objective E+W+S

(1) Every scheme is subject to a requirement ("the statutory funding objective") that it must have sufficient and appropriate assets to cover its technical provisions.

(2) A scheme's "technical provisions" means the amount required, on an actuarial calculation, to make provision for the scheme's liabilities.

[[F2](2A) The scheme's technical provisions shall be calculated in a way that is consistent with the scheme's funding and investment strategy, as set out in the scheme's statement of strategy.**]**

(3) For the purposes of this Part—

(a) the assets to be taken into account and their value shall be determined, calculated and verified in a prescribed manner, and

(b) the liabilities to be taken into account shall be determined in a prescribed manner and **[**[F3], subject to subsection (2A),**]** the scheme's technical provisions shall be calculated in accordance with any prescribed methods and assumptions.

(4) Regulations may—

(a) provide for alternative prescribed methods and assumptions,

(b) provide that it is for the trustees or managers to determine which methods and assumptions are to be used in calculating a scheme's technical provisions, and

(c) require the trustees or managers, in making their determination, to take into account prescribed matters and follow prescribed principles.

(5) Any provision of the scheme rules that limits the amount of the scheme's liabilities by reference to the value of its assets shall be disregarded.

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Textual Amendments

F2 S. 222(2A) inserted (11.2.2021 for specified purposes, 6.4.2024 in so far as not already in force) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(b), **Sch. 10 para. 3(2)**; S.I. 2024/451, reg. 2(b) (with reg. 3)

F3 Words in s. 222(3)(b) inserted (11.2.2021 for specified purposes, 6.4.2024 in so far as not already in force) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(b), **Sch. 10 para. 3(3)**; S.I. 2024/451, reg. 2(b) (with reg. 3)

Commencement Information

I3 S. 222 in force at 4.12.2005 for specified purposes by S.I. 2005/3331, art. 2(1), Sch. Pt. 1

I4 S. 222 in force at 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

223 Statement of funding principles E+W+S

(1) The trustees or managers must prepare, and from time to time review and if necessary revise, a written statement of—

(a) their policy for securing that the statutory funding objective is met, and

(b) such other matters as may be prescribed.

This is referred to in this Part as a "statement of funding principles".

(2) The statement must, in particular, record any decisions by the trustees or managers as to—

(a) the methods and assumptions to be used in calculating the scheme's technical provisions, and

(b) the period within which, and manner in which, any failure to meet the statutory funding objective is to be remedied.

(3) Provision may be made by regulations—

(a) as to the period within which a statement of funding principles must be prepared, and

(b) requiring it to be reviewed, and if necessary revised, at such intervals, and on such occasions, as may be prescribed.

(4) Where any requirement of this section is not complied with, section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

Commencement Information

I5 S. 223 in force at 4.12.2005 for specified purposes by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

I6 S. 223 in force at 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

224 Actuarial valuations and reports E+W+S

(1) The trustees or managers must obtain actuarial valuations—

(a) at intervals of not more than one year or, if they obtain actuarial reports for the intervening years, at intervals of not more than three years, and

(b) in such circumstances and on such other occasions as may be prescribed.

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(2) In this Part—

(a) an "actuarial valuation" means a written report, prepared and signed by the actuary, valuing the scheme's assets and calculating its technical provisions,

(b) the effective date of an actuarial valuation is the date by reference to which the assets are valued and the technical provisions calculated,

(c) an "actuarial report" means a written report, prepared and signed by the actuary, on developments affecting the scheme's technical provisions since the last actuarial valuation was prepared, and

(d) the effective date of an actuarial report is the date by reference to which the information in the report is stated.

(3) The intervals referred to in subsection (1)(a) are between effective dates of the valuations, and—

(a) the effective date of the first actuarial valuation must be not more than one year after the establishment of the scheme, and

(b) the effective date of any actuarial report must be not more than one year after the effective date of the last actuarial valuation, or, if more recent, the last actuarial report.

(4) The trustees or managers must ensure that a valuation or report obtained by them is received by them within the prescribed period after its effective date.

(5) Nothing in this section affects any power or duty of the trustees or managers to obtain actuarial valuations or reports at more frequent intervals or in other circumstances or on other occasions.

(6) An actuarial valuation or report (whether obtained under this section or in pursuance of any other power or duty) must be prepared in such a manner, give such information, contain such statements and satisfy such other requirements as may be prescribed.

(7) The trustees or managers must secure that any actuarial valuation or report obtained by them (whether obtained under this section or in pursuance of any other power or duty) is made available to the employer within seven days of their receiving it.

[[F4](7A) As soon as reasonably practicable after receiving an actuarial valuation, the trustees or managers must send a copy of it to the Regulator, together with such other information as may be prescribed.**]**

(8) Where subsection (1), (4) **[**[F5]or (7)**][**[F5], (7) or (7A)**]** is not complied with, section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

Textual Amendments

F4 S. 224(7A) inserted (11.2.2021 for specified purposes, 6.4.2024 in so far as not already in force) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(b), **Sch. 10 para. 4(2)**; S.I. 2024/451, reg. 2(b) (with reg. 4)

F5 Words in s. 224(8) substituted (11.2.2021 for specified purposes, 6.4.2024 in so far as not already in force) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(b), **Sch. 10 para. 4(3)**; S.I. 2024/451, reg. 2(b) (with reg. 4)

Modifications etc. (not altering text)

C12 S. 224 applied (with modifications) (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), reg. 1, **Sch. 4 para. 2**

C13 Ss. 224-231 modified (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), reg. 1, **Sch. 4 para. 7**

C14 S. 224(3)(a) modified (24.7.2014) by The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (S.I. 2014/1711), regs. 1(1), **65** (with regs. 6, 41, 44(1), 47(1), 69(2), 72(1), 76(1)); coming into force immediately after s. 29 of 2011 c. 19 - see S.I. 2014/1683, art. 2

Commencement Information

I7 S. 224 in force at 4.12.2005 for specified purposes by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

I8 S. 224 in force 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

225 Certification of technical provisions E+W+S

(1) When an actuarial valuation is carried out, the calculation of the technical provisions must be certified by the actuary.

(2) The certificate must state that in the opinion of the actuary the calculation is made in accordance with regulations under section 222.

(3) If the actuary cannot give the certificate required by subsection (2) he must report the matter in writing to the Regulator within a reasonable period after the end of the period within which the valuation must be received by the trustees or managers.

Section 10 of the Pensions Act 1995 (civil penalties) applies to the actuary if he fails without reasonable excuse to comply with this subsection.

Modifications etc. (not altering text)

C13 Ss. 224-231 modified (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), reg. 1, **Sch. 4 para. 7**

Commencement Information

I9 S. 225 in force at 4.12.2005 for specified purposes by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

I10 S. 225 in force at 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

226 Recovery plan E+W+S

(1) If having obtained an actuarial valuation it appears to the trustees or managers of a scheme that the statutory funding objective was not met on the effective date of the valuation, they must, within the prescribed time—

(a) if there is no existing recovery plan in force, prepare a recovery plan;

(b) if there is an existing recovery plan in force, review and if necessary revise it.

(2) A recovery plan must set out—

(a) the steps to be taken to meet the statutory funding objective, and

(b) the period within which that is to be achieved.

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(3) A recovery plan must comply with any prescribed requirements and must be appropriate having regard to the nature and circumstances of the scheme.

[[F6](3A) Provision may be made by regulations as to the matters to be taken into account, or the principles to be followed, in determining for the purposes of subsection (3) whether a recovery plan is appropriate having regard to the nature and circumstances of the scheme.**]**

(4) In preparing or revising a recovery plan the trustees or managers must take account of prescribed matters.

(5) Provision may be made by regulations as to other circumstances in which a recovery plan may or must be reviewed and if necessary revised.

(6) The trustees or managers must, except in prescribed circumstances, send a copy of any recovery plan to the Regulator within a reasonable period after it is prepared or, as the case may be, revised.

The copy of any recovery plan sent to the Regulator must be accompanied by the prescribed information.

(7) Where any requirement of this section is not complied with, section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

Textual Amendments

F6 S. 226(3A) inserted (11.2.2021 for specified purposes, 6.4.2024 in so far as not already in force) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(b), **Sch. 10 para. 5**; S.I. 2024/451, reg. 2(b)

Modifications etc. (not altering text)

C13 Ss. 224-231 modified (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), reg. 1, **Sch. 4 para. 7**

Commencement Information

I11 S. 226 in force at 4.12.2005 for specified purposes by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

I12 S. 226 in force at 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

227 Schedule of contributions E+W+S

(1) The trustees or managers must prepare, and from time to time review and if necessary revise, a schedule of contributions.

(2) A "schedule of contributions" means a statement showing—

(a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme, and

(b) the dates on or before which such contributions are to be paid.

(3) Provision may be made by regulations—

(a) as to the period within which, after the establishment of a scheme, a schedule of contributions must be prepared,

(b) requiring the schedule of contributions to be reviewed, and if necessary revised, at such intervals, and on such occasions, as may be prescribed, and

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(c) as to the period for which a schedule of contributions is to be in force.

(4) The schedule of contributions must satisfy prescribed requirements.

(5) The schedule of contributions must be certified by the actuary and—

(a) the duty to prepare or revise the schedule is not fulfilled, and

(b) the schedule shall not come into force,

until it has been so certified.

(6) The certificate must state that, in the opinion of the actuary—

(a) the schedule of contributions is consistent with the statement of funding principles, and

(b) the rates shown in the schedule are such that—

(i) where the statutory funding objective was not met on the effective date of the last actuarial valuation, the statutory funding objective can be expected to be met by the end of the period specified in the recovery plan, or

(ii) where the statutory funding objective was met on the effective date of the last actuarial valuation, the statutory funding objective can be expected to continue to be met for the period for which the schedule is to be in force.

(7) Where the statutory funding objective was not met on the effective date of the last actuarial valuation, the trustees or managers must send a copy of the schedule of contributions to the Regulator within a reasonable period after it is prepared or, as the case may be, revised.

(8) Where any requirement of the preceding provisions of this section is not complied with, section 10 of the Pensions Act 1995 (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

(9) If the actuary is unable to give the certificate required by subsection (6), he must report the matter in writing to the Regulator within a reasonable period after the end of the period within which the schedule is required to be prepared or, as the case may be, revised.

Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to the actuary if he fails without reasonable excuse to comply with this subsection.

(10) The provisions of subsections (1), (3) and (5) to (9) above do not apply in relation to a schedule of contributions imposed by the Regulator under section 231 or, as the case may be, where such a schedule of contributions is in force.

Modifications etc. (not altering text)

C13 Ss. 224-231 modified (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), reg. 1, **Sch. 4 para. 7**

C15 S. 227 applied (with modifications) (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), reg. 1, **Sch. 4 para. 5**

Commencement Information

I13 S. 227 in force at 4.12.2005 for specified purposes by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

I14 S. 227 in force at 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

Changes to legislation: *Pensions Act 2004, Part 3 is up to date with all changes known to be in force on or before 24 June 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*

228 Failure to make payments E+W+S

(1) This section applies where an amount payable in accordance with the schedule of contributions by or on behalf of the employer or an active member of a scheme is not paid on or before the due date.

(2) If the trustees or managers have reasonable cause to believe that the failure is likely to be of material significance in the exercise by the Regulator of any of its functions, they must, except in prescribed circumstances, give notice of the failure to the Regulator and to the members within a reasonable period.

(3) The amount unpaid (whether payable by the employer or not), if not a debt due from the employer to the trustees or managers apart from this subsection, shall be treated as such a debt.

(4) Section 10 of the Pensions Act 1995 (civil penalties) applies—

(a) where subsection (2) above is not complied with, to a trustee or manager who has failed to take all reasonable steps to secure compliance with that subsection;

(b) to the employer if he fails without reasonable excuse to make a payment required of him—

(i) in accordance with the schedule of contributions, or

(ii) by virtue of subsection (3) above.

(5) This section applies in relation to a schedule of contributions imposed by the Regulator under section 231 as in relation to one agreed between the trustees or managers and the employer.

Modifications etc. (not altering text)

C13 Ss. 224-231 modified (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), reg. 1, **Sch. 4 para. 7**

Commencement Information

I15 S. 228 in force at 4.12.2005 for specified purposes by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

I16 S. 228 in force at 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

229 Matters requiring agreement of the employer E+W+S

(1) The trustees or managers must obtain the agreement of the employer to—

[[F7](za) the scheme's funding and investment strategy, as set out in the scheme's statement of strategy;**]**

(a) any decision as to the methods and assumptions to be used in calculating the scheme's technical provisions (see section 222(4));

(b) any matter to be included in the statement of funding principles (see section 223);

(c) any provisions of a recovery plan (see section 226);

(d) any matter to be included in the schedule of contributions (see section 227).

(2) If it appears to the trustees or managers that it is not otherwise possible to obtain the employer's agreement within the prescribed time to any such matter, they may (if the

employer agrees) by resolution modify the scheme as regards the future accrual of benefits.

(3) No modification may be made under subsection (2) that on taking effect would or might adversely affect any subsisting right of—
  (a) any member of the scheme, or
  (b) any survivor of a member of the scheme.

For this purpose "subsisting right" and "survivor" have the meanings given by section 67A of the Pensions Act 1995 (c. 26).

(4) Any such modification must be—
  (a) recorded in writing by the trustees or managers, and
  (b) notified to the active members within one month of the modification taking effect.

(5) If the trustees or managers are unable to reach agreement with the employer within the prescribed time on any such matter as is mentioned in subsection (1), they must report the failure in writing to the Regulator within a reasonable period.

(6) Where subsection (1), (4) or (5) is not complied with, section 10 of the Pensions Act 1995 (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

Textual Amendments

F7 S. 229(1)(za) inserted (11.2.2021 for specified purposes, 6.4.2024 in so far as not already in force) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(b), **Sch. 10 para. 6**; S.I. 2024/451, reg. 2(b)

Modifications etc. (not altering text)

C13 Ss. 224-231 modified (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), reg. 1, **Sch. 4 para. 7**

Commencement Information

I17 S. 229 in force at 4.12.2005 for specified purposes by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

I18 S. 229 in force at 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

230 Matters on which advice of actuary must be obtained E+W+S

(1) The trustees or managers must obtain the advice of the actuary before doing any of the following—
  (a) making any decision as to the methods and assumptions to be used in calculating the scheme's technical provisions (see section 222(4));
  (b) preparing or revising the statement of funding principles (see section 223);
  (c) preparing or revising a recovery plan (see section 226);
  (d) preparing or revising the schedule of contributions (see section 227);
  (e) modifying the scheme as regards the future accrual of benefits under section 229(2).

(2) Regulations may require the actuary to comply with any prescribed requirements when advising the trustees or managers of a scheme on any such matter.

(3) The regulations may require the actuary to have regard to prescribed guidance.

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"Prescribed guidance" means guidance that is prepared and from time to time revised by a prescribed body [F8]....

(4) Where subsection (1) is not complied with, section 10 of the Pensions Act 1995 (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

Textual Amendments

F8 Words in s. 230(3) repealed (1.11.2007) by Pensions Act 2007 (c. 22), s. 30(2), Sch. 5 para. 9, **Sch. 7 Pt. 8**; S.I. 2007/3063, art. 2(b)(c)

Modifications etc. (not altering text)

C13 Ss. 224-231 modified (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), reg. 1, **Sch. 4 para. 7**

Commencement Information

I19 S. 230 in force at 4.12.2005 for specified purposes by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

I20 S. 230 in force at 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

231 Powers of the Regulator E+W+S

(1) The powers conferred by this section are exercisable where it appears to the Regulator with respect to a scheme (as a result of a report made to it or otherwise)—

[[F9](zza) that the trustees or managers have failed to comply with any of the requirements of section 221A (funding and investment strategy) or regulations under that section;**]**

[[F10](za) that the trustees or managers, when determining the methods and assumptions to be used in calculating the scheme's technical provisions, have failed to comply with a requirement imposed under section 222(4)(c);**]**

(a) that the trustees or managers have failed to comply with the requirements of section 223 with respect to the preparation or revision of a statement of funding principles;

(b) that the trustees or managers have failed to obtain an actuarial valuation as required by section 224(1);

(c) that the actuary is unable, on an actuarial valuation required by section 224(1), to certify the calculation of the scheme's technical provisions;

(d) that the trustees or managers have failed to comply with the requirements of section 226 with respect to the preparation or revision of a recovery plan;

(e) that the trustees or managers have failed to comply with the requirements of section 227 with respect to the preparation or revision of a schedule of contributions;

(f) that the actuary is unable to certify a schedule of contributions (see section 227(6));

(g) that the employer has failed to make payments in accordance with the schedule of contributions, or that are required of him by virtue of section 228(3), and the failure is of material significance;

(h) that the trustees or managers have been unable to reach agreement with the employer within the prescribed time as to a matter in relation to which such agreement is required (see section 229(5)).

(2) In any of those circumstances the Regulator may by order exercise all or any of the following powers—

(a) it may modify the scheme as regards the future accrual of benefits;

[[F11](aa) it may give a direction requiring the trustees or managers to revise the scheme's funding and investment strategy in accordance with the direction;**]**

(b) it may give directions as to—

(i) the manner in which the scheme's technical provisions are to be calculated, including the methods and assumptions to be used in calculating the scheme's technical provisions, or

(ii) the period within which, and manner in which, any failure to meet the statutory funding objective is to be remedied;

(c) it may impose a schedule of contributions specifying—

(i) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme, and

(ii) the dates on or before which such contributions are to be paid.

(3) No modification may be made under subsection (2)(a) that on taking effect would or might adversely affect any subsisting right of—

(a) any member of the scheme, or

(b) any survivor of a member of the scheme.

For this purpose "subsisting right" and "survivor" have the meanings given by section 67A of the Pensions Act 1995.

(4) In exercising any of the powers conferred by this section the Regulator must comply with any prescribed requirements.

(5) The powers conferred by this section are in addition to any other powers exercisable by the Regulator under this Act or the Pensions Act 1995 (c. 26).

Textual Amendments

F9 S. 231(1)(zza) inserted (11.2.2021 for specified purposes, 6.4.2024 in so far as not already in force) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(b), **Sch. 10 para. 7(2)**; S.I. 2024/451, reg. 2(b)

F10 S. 231(1)(za) inserted (26.1.2009) by Pensions Act 2008 (c. 30), **ss. 132**, 149(1); S.I. 2009/82, art. 2(1)(c)

F11 S. 231(2)(aa) inserted (11.2.2021 for specified purposes, 6.4.2024 in so far as not already in force) by Pension Schemes Act 2021 (c. 1), s. 131(1)(3)(b), **Sch. 10 para. 7(3)**; S.I. 2024/451, reg. 2(b)

Modifications etc. (not altering text)

C13 Ss. 224-231 modified (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), reg. 1, **Sch. 4 para. 7**

Commencement Information

I21 S. 231 in force at 4.12.2005 for specified purposes by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

I22 S. 231 in force at 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

[[F12]**231A Requirements for winding up procedure** E+W+S

(1) Where an occupational pension scheme in respect of which a recovery plan has been prepared under section 226 begins to wind up during the recovery period, the trustees

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or managers of the scheme must as soon as reasonably practicable prepare a winding up procedure.

(2) A winding up procedure must—

(a) set out the action to be taken to establish the liabilities to or in respect of the members of the scheme, in respect of pensions or other benefits, and to recover any assets of the scheme;

(b) give an estimate of the amount of time it will take to establish those liabilities and to recover any such assets;

(c) give an indication of which of the accrued rights or benefits (if any), to which a person is entitled under the scheme, are likely to be affected by a reduction in actuarial value;

(d) specify which one or more of the ways mentioned in subsection (3)(a) to (e) of section 74 of the Pensions Act 1995 will be used to discharge the liabilities to or in respect of the members of the scheme in respect of pensions or other benefits;

(e) give an estimate of the amount of time it will take to discharge those liabilities.

(3) The requirement imposed by subsection (2)(c) applies only to the extent that the trustees or managers have sufficient information to give such an indication.

(4) A winding up procedure must be appropriate having regard to the nature and circumstances of the scheme.

(5) A winding up procedure may be reviewed, and if necessary revised, where the trustees or managers consider that there are reasons that may justify a variation to it.

(6) The trustees or managers must send a copy of any winding up procedure to the Regulator as soon as reasonably practicable after it has been prepared or, as the case may be, revised.

(7) Where any requirement of this section is not complied with, section 10 of the Pensions Act 1995 (civil penalties) applies to a trustee or manager who has failed to take all reasonable steps to secure compliance.

(8) In this section "recovery period", in relation to an occupational pension scheme, means the period specified in the scheme's recovery plan in accordance with section 226(2)(b).**]**

Textual Amendments

F12 S. 231A inserted (24.7.2006) by The Occupational Pension Schemes (Winding up Procedure Requirement) Regulations 2006 (S.I. 2006/1733), regs. 1, **2(1)**,

Supplementary provisions

232 Power to modify provisions of this Part E+W+S

Regulations may modify the provisions of this Part as they apply in prescribed circumstances.

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Commencement Information

I23 S. 232 in force at 4.12.2005 for specified purposes by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

I24 S. 232 in force at 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

233 Construction as one with the Pensions Act 1995 E+W+S

This Part shall be construed as one with Part 1 of the Pensions Act 1995 (c. 26).

Modifications etc. (not altering text)

C16 Pt. 3 extended by S.I. 1996/1172, reg. 49(4)(a)(i) (as substituted (30.12.2005) by The Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), reg. 1, **Sch. 3 para. 1(5)(a)**)

Commencement Information

I25 S. 233 in force at 4.12.2005 for specified purposes by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

I26 S. 233 in force at 30.12.2005 in so far as not already in force by S.I. 2005/3331, art. 2(1), **Sch. Pt. 1**

Changes to legislation:
Pensions Act 2004, Part 3 is up to date with all changes known to be in force on or before 24 June 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.
View outstanding changes

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))