



# Pension Schemes Act 1993

## 1993 CHAPTER 48

### PART IX

#### MODIFICATION AND WINDING UP OF SCHEMES

##### *Winding up*

#### **142 Powers of the Board to wind up schemes**

- (1) On an application made to them in respect of an occupational pension scheme or a personal pension scheme by persons competent to make such an application, the Board may make an order directing or authorising the scheme to be wound up on grounds specified in subsection (2).
- (2) Those grounds are that, having regard to any provision of this Act, or to any other Act (passed or to be passed) amending or replacing any such provision or making provision for similar purposes, the scheme—
  - (a) ought to be replaced (in whole or in part) by a different scheme, or
  - (b) is no longer required.
- (3) An order of the Board under subsection (1) authorising a scheme to be wound up shall include such directions with respect to the manner and timing of the winding up as the Board think appropriate having regard to the purposes of the order.
- (4) Sections 137 and 138 and subsections (5) and (6) of section 140 shall apply with the necessary modifications in relation to an application or an order under subsection (1) as they apply in relation to an application or, as the case may be, an order under section 136(1), taking references in those subsections to modification as references to winding up.
- (5) If in the case of a scheme to which section 53 applies the Board are satisfied that the guaranteed minimum pensions under the scheme are not, and cannot be, adequately secured to its beneficiaries, they may by order—

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- (a) require the scheme to be wound up in accordance with such directions in that behalf as may be contained in the order; or
  - (b) direct the trustees or managers to take such steps for the winding up of the scheme as the order may specify.
- (6) On a winding up in pursuance of an order under subsection (5) the same powers shall be exercisable by the Board in relation to the scheme's winding-up rules as are exercisable by them under section 53(4) and (5) in relation to other rules.

### **143 Winding up of public service schemes**

- (1) Nothing in section 142 applies to public service pension schemes but, subject to the provisions of this section, the appropriate authority shall, in relation to such a scheme, have power to make such provision for the winding up of the scheme as could be made by an order of the Board under subsection (1) of that section in the case of a scheme other than a public service pension scheme.
- (2) The powers of the appropriate authority under this section shall be exercisable by means of an order directing that the scheme be wound up and including directions with respect to the manner and timing of the winding up.
- (3) Subsections (2) and (4) of section 141 apply to an order under this section as they apply to an order under subsection (1) of that section.

### **144 Deficiencies in the assets of a scheme on winding up**

- (1) If, in the case of an occupational pension scheme which is not a money purchase scheme, the value at the applicable time of the scheme's liabilities exceeds the value of its assets, then an amount equal to the excess shall be treated as a debt due from the employer to the trustees of the scheme.
- (2) If—
  - (a) a relevant insolvency event occurs in relation to the employer; and
  - (b) the debt mentioned in subsection (1) has not been discharged at the time that event occurs,
 then, for the purposes of the law relating to winding up, bankruptcy or sequestration as it applies in relation to the employer, that debt shall be taken to arise immediately before that time.
- (3) In this section—
  - “the applicable time” means—
    - (a) if the scheme is being wound up before a relevant insolvency event occurs in relation to the employer, any time when it is being wound up before such an event occurs; and
    - (b) otherwise, immediately before the relevant insolvency event occurs; and
  - “the employer” means the employer of persons of the description or category of employment to which the scheme relates.
- (4) For the purposes of this section a relevant insolvency event occurs in relation to the employer—
  - (a) in England and Wales—
    - (i) where the employer is a company, when it goes into liquidation, within the meaning of section 247(2) of the Insolvency Act 1986; or

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- (ii) where the employer is an individual, at the commencement of his bankruptcy, within the meaning of section 278 of that Act; or
- (b) in Scotland—
  - (i) where the employer is a company, at the commencement of its winding up, within the meaning of section 129 of that Act; or
  - (ii) where the employer is a debtor within the meaning of the Bankruptcy (Scotland) Act 1985, on the date of sequestration as defined in section 12(4) of that Act.
- (5) The value of a scheme's assets and liabilities for the purposes of subsection (1) shall be determined in accordance with regulations and such regulations may provide that, in calculating the value of the scheme's liabilities, any provision of the scheme which limits the amount of its liabilities by reference to the amount of its assets is to be disregarded.
- (6) This section is without prejudice to any other right or remedy which the trustees may have in respect of the deficiency in the scheme's assets.
- (7) A debt due by virtue only of this section shall not be regarded—
  - (a) as a preferential debt for the purposes of the Insolvency Act 1986, nor
  - (b) as a preferred debt for the purposes of the Bankruptcy (Scotland) Act 1985.
- (8) The provisions of this section and of any regulations made under section 153(5) modifying this section override any provision of a scheme to the extent that it conflicts with this section or those regulations.