



# Pensions Act 1995

## 1995 CHAPTER 26

### PART I

#### OCCUPATIONAL PENSIONS

##### *Supervision by the Authority*

### **3 Prohibition orders**

- (1) The Authority may by order prohibit a person from being a trustee of a particular trust scheme in any of the following circumstances.
  - (2) The circumstances are—
    - (a) that the Authority are satisfied that while being a trustee of the scheme the person has been in serious or persistent breach of any of his duties under—
      - (i) this Part, other than the following provisions: sections 51 to 54, 62 to 65 and 110 to 112, or
      - (ii) the following provisions of the Pension Schemes Act 1993: section 6 (registration), Chapter IV of Part IV (transfer values), section 113 (information) and section 175 (levy),
    - (b) that the Authority are satisfied that, while being a trustee of the scheme, this section has applied to the person by virtue of any other provision of this Part,
    - (c) that the person is a company and any director of the company is prohibited under this section from being a trustee of the scheme,
    - (d) that the person is a Scottish partnership and any of the partners is prohibited under this section from being a trustee of the scheme, or
    - (e) that the person is a director of a company which, by reason of circumstances falling within paragraph (a) or (b), is prohibited under this section from being a trustee of the scheme and the Authority are satisfied that the acts or defaults giving rise to those circumstances were committed with the consent or connivance of, or attributable to any neglect on the part of, the director;
- or any other prescribed circumstances.

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- (3) The making of an order under subsection (1) against a person who is a trustee of the scheme in question has the effect of removing him.
- (4) The Authority may, on the application of any person against whom an order under subsection (1) is in force, by order revoke the order, but a revocation made at any time cannot affect anything done before that time.

#### **4 Suspension orders**

- (1) The Authority may by order suspend a trustee of a trust scheme—
  - (a) pending consideration being given to the making of an order against him under section 3(1),
  - (b) where proceedings have been instituted against him for an offence involving dishonesty or deception and have not been concluded,
  - (c) where a petition has been presented to the court for an order adjudging him bankrupt, or for the sequestration of his estate, and proceedings on the petition have not been concluded,
  - (d) where the trustee is a company, if a petition for the winding up of the company has been presented to the court and proceedings on the petition have not been concluded,
  - (e) where an application has been made to the court for a disqualification order against him under the Company Directors Disqualification Act 1986 and proceedings on the application have not been concluded, or
  - (f) where the trustee is a company or Scottish partnership and, if any director or, as the case may be, partner were a trustee, the Authority would have power to suspend him under paragraph (b), (c) or (e).
- (2) An order under subsection (1)—
  - (a) if made by virtue of paragraph (a), has effect for an initial period not exceeding twelve months, and
  - (b) in any other case, has effect until the proceedings in question are concluded; but the Authority may by order extend the initial period referred to in paragraph (a) for a further period of twelve months, and any order suspending a person under subsection (1) ceases to have effect if an order is made against that person under section 3(1).
- (3) An order under subsection (1) has the effect of prohibiting the person suspended, during the period of his suspension, from exercising any functions as trustee of any trust scheme to which the order applies; and the order may apply to a particular trust scheme, a particular class of trust schemes or trust schemes in general.
- (4) An order under subsection (1) may be made on one of the grounds in paragraphs (b) to (e) whether or not the proceedings were instituted, petition presented or application made (as the case may be) before or after the coming into force of that subsection.
- (5) The Authority may, on the application of any person suspended under subsection (1), by order revoke the order, either generally or in relation to a particular scheme or a particular class of schemes; but a revocation made at any time cannot affect anything done before that time.
- (6) An order under this section may make provision as respects the period of the trustee's suspension for matters arising out of it, and in particular for enabling any person to

execute any instrument in his name or otherwise act for him and for adjusting any rules governing the proceedings of the trustees to take account of the reduction in the number capable of acting.

## **5 Removal of trustees: notices**

- (1) Before the Authority make an order under section 3 against a person without his consent, the Authority must, unless he cannot be found or has no known address, give him not less than one month's notice of their proposal, inviting representations to be made to them within a time specified in the notice.
- (2) Where any such notice is given, the Authority must take into consideration any representations made to them about the proposals within the time specified in the notice.
- (3) Before making an order under section 3 against a person, the Authority must give notice of their intention to do so to each of the trustees of the scheme, except that person (if he is a trustee) and any trustee who cannot be found or has no known address.
- (4) Where the Authority make an order under section 4 against a person, they must—
  - (a) immediately give notice of that fact to that person, and
  - (b) as soon as reasonably practicable, give notice of that fact to the other trustees of any trust scheme to which the order applies, except any trustee who cannot be found or has no known address.
- (5) Any notice to be given to any person under this section may be given by delivering it to him or by leaving it at his proper address or by sending it to him by post; and, for the purposes of this subsection and section 7 of the Interpretation Act 1978 in its application to this subsection, the proper address of any person is his latest address known to the Authority.

## **6 Removal or suspension of trustees: consequences**

- (1) A person who purports to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under section 3 or suspended in relation to the scheme under section 4 is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine or imprisonment or both.
- (2) An offence under subsection (1) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence under that subsection by reference to any period of time following the preceding conviction of the offence.
- (3) Things done by a person purporting to act as trustee of a trust scheme while prohibited from being a trustee of the scheme under section 3 or suspended in relation to the scheme under section 4 are not invalid merely because of that prohibition or suspension.
- (4) Nothing in section 3 or 4 or this section affects the liability of any person for things done, or omitted to be done, by him while purporting to act as trustee of a trust scheme.

## **7 Appointment of trustees**

- (1) Where a trustee of a trust scheme is removed by an order under section 3, or a trustee of such a scheme ceases to be a trustee by reason of his disqualification, the Authority may by order appoint another trustee in his place.
- (2) Where a trustee appointed under subsection (1) is appointed to replace a trustee appointed under section 23(1)(b), sections 22 to 26 shall apply to the replacement trustee as they apply to a trustee appointed under section 23(1)(b).
- (3) The Authority may also by order appoint a trustee of a trust scheme where they are satisfied that it is necessary to do so in order—
  - (a) to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme,
  - (b) to secure that the number of trustees is sufficient for the proper administration of the scheme, or
  - (c) to secure the proper use or application of the assets of the scheme.
- (4) The Authority may also appoint a trustee of a trust scheme in prescribed circumstances.
- (5) The power to appoint a trustee by an order under this section includes power by such an order—
  - (a) to determine the appropriate number of trustees for the proper administration of the scheme,
  - (b) to require a trustee appointed by the order to be paid fees and expenses out of the scheme's resources,
  - (c) to provide for the removal or replacement of such a trustee.
- (6) Regulations may make provision about the descriptions of persons who may or may not be appointed trustees under this section.

## **8 Appointment of trustees: consequences**

- (1) An order under section 7 appointing a trustee may provide that an amount equal to the amount (if any) to which subsection (2) applies is to be treated for all purposes as a debt due from the employer to the trustees.
- (2) This subsection applies to any amount which has been paid to the trustee so appointed out of the resources of the scheme and has not been reimbursed by the employer.
- (3) Subject to subsection (4), a trustee appointed under that section shall, unless he is the independent trustee and section 22 applies in relation to the scheme, have the same powers and duties as the other trustees.
- (4) Such an order may make provision—
  - (a) for restricting the powers or duties of a trustee so appointed, or
  - (b) for powers or duties to be exercisable by a trustee so appointed to the exclusion of other trustees.

## **9 Removal and appointment of trustees: property**

Where the Authority have power under this Part to appoint or remove a trustee, they may exercise the same jurisdiction and powers as are exercisable by the High Court or, in relation to a trust scheme subject to the law of Scotland, the Court of Session

for vesting any property in, or transferring any property to, trustees in consequence of the appointment or of the removal.

## 10 Civil penalties

- (1) Where the Authority are satisfied that by reason of any act or omission this section applies to any person, they may by notice in writing require him to pay, within a prescribed period, a penalty in respect of that act or omission not exceeding the maximum amount.
- (2) In this section “the maximum amount” means—
  - (a) £5,000 in the case of an individual and £50,000 in any other case, or
  - (b) such lower amount as may be prescribed in the case of an individual or in any other case,and the Secretary of State may by order amend paragraph (a) by substituting higher amounts for the amounts for the time being specified in that paragraph.
- (3) Regulations made by virtue of this Part may provide for any person who has contravened any provision of such regulations to pay, within a prescribed period, a penalty under this section not exceeding an amount specified in the regulations; and the regulations must specify different amounts in the case of individuals from those specified in other cases and any amount so specified may not exceed the amount for the time being specified in the case of individuals or, as the case may be, others in subsection (2)(a).
- (4) An order made under subsection (2) or regulations made by virtue of subsection (3) do not affect the amount of any penalty recoverable under this section by reason of an act or omission occurring before the order or, as the case may be, regulations are made.
- (5) Where—
  - (a) apart from this subsection, a penalty under this section is recoverable from a body corporate or Scottish partnership by reason of any act or omission of the body or partnership as a trustee of a trust scheme, and
  - (b) the act or omission was done with the consent or connivance of, or is attributable to any neglect on the part of, any persons mentioned in subsection (6),this section applies to each of those persons who consented to or connived in the act or omission or to whose neglect the act or omission was attributable.
- (6) The persons referred to in subsection (5)(b)—
  - (a) in relation to a body corporate, are—
    - (i) any director, manager, secretary, or other similar officer of the body, or a person purporting to act in any such capacity, and
    - (ii) where the affairs of a body corporate are managed by its members, any member in connection with his functions of management, and
  - (b) in relation to a Scottish partnership, are the partners.
- (7) Where the Authority requires any person to pay a penalty by virtue of subsection (5), they may not also require the body corporate, or Scottish partnership, in question to pay a penalty in respect of the same act or omission.
- (8) A penalty under this section is recoverable by the Authority.

- (9) The Authority must pay to the Secretary of State any penalty recovered under this section.

## **11 Powers to wind up schemes**

- (1) Subject to the following provisions of this section, the Authority may by order direct or authorise an occupational pension scheme to be wound up if they are satisfied that—
- (a) the scheme, or any part of it, ought to be replaced by a different scheme,
  - (b) the scheme is no longer required, or
  - (c) it is necessary in order to protect the interests of the generality of the members of the scheme that it be wound up.
- (2) The Authority may not make an order under this section on either of the grounds referred to in subsection (1)(a) or (b) unless they are satisfied that the winding up of the scheme—
- (a) cannot be achieved otherwise than by means of such an order, or
  - (b) can only be achieved in accordance with a procedure which—
    - (i) is liable to be unduly complex or protracted, or
    - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,
- and that it is reasonable in all the circumstances to make the order.
- (3) An order made under this section on either of the grounds referred to in subsection (1) (a) or (b) may be made only on the application of—
- (a) the trustees or managers of the scheme,
  - (b) any person other than the trustees or managers who has power to alter any of the rules of the scheme, or
  - (c) the employer.
- (4) An order under this section authorising a scheme to be wound up must include such directions with respect to the manner and timing of the winding up as the Authority think appropriate having regard to the purposes of the order.
- (5) The winding up of a scheme in pursuance of an order of the Authority under this section is as effective in law as if it had been made under powers conferred by or under the scheme.
- (6) An order under this section may be made and complied with in relation to a scheme—
- (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up, or
  - (b) except for the purpose of the Authority determining whether or not they are satisfied as mentioned in subsection (2), without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the winding up.
- (7) In the case of a public service pension scheme—
- (a) an order under subsection (1) directing or authorising the scheme to be wound up may only be made on the grounds referred to in paragraph (c), and
  - (b) such an order may, as the Authority think appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

## **12 Powers to wind up public service schemes**

- (1) The appropriate authority may by order direct a public service pension scheme to be wound up if they are satisfied that—
  - (a) the scheme, or any part of it, ought to be replaced by a different scheme, or
  - (b) the scheme is no longer required.
- (2) Subsection (2) of section 11 applies for the purposes of this section as it applies for the purposes of that, but as if references to the Authority were to the appropriate authority.
- (3) In this section “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury as having responsibility for the particular scheme.
- (4) An order under this section must include such directions with respect to the manner and timing of the winding up as that authority think appropriate.
- (5) Such an order may, as that authority think appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

## **13 Injunctions and interdicts**

- (1) If, on the application of the Authority, the court is satisfied that—
  - (a) there is a reasonable likelihood that a particular person will do any act which constitutes a misuse or misappropriation of assets of an occupational pension scheme, or
  - (b) that a particular person has done any such act and that there is a reasonable likelihood that he will continue or repeat the act in question or do a similar act,the court may grant an injunction restraining him from doing so or, in Scotland, an interdict prohibiting him from doing so.
- (2) The jurisdiction conferred by this section is exercisable by the High Court or the Court of Session.

## **14 Restitution**

- (1) If, on the application of the Authority, the court is satisfied—
  - (a) that a power to make a payment, or distribute any assets, to the employer, has been exercised in contravention of section 37, 76 or 77, or
  - (b) that any act or omission of the trustees or managers of an occupational pension scheme was in contravention of section 40,the court may order the employer and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct for restoring the parties to the position in which they were before the payment or distribution was made, or the act or omission occurred.
- (2) The jurisdiction conferred by this section is exercisable by the High Court or the Court of Session.

## **15 Directions**

- (1) The Authority may, where in the case of any trust scheme the employer fails to comply with any requirement included in regulations by virtue of section 49(5), direct the

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trustees to make arrangements for the payment to the members of the benefit to which the requirement relates.

- (2) The Authority may—
  - (a) where in the case of any trust scheme an annual report is published, direct the trustees to include a statement prepared by the Authority in the report, and
  - (b) in the case of any trust scheme, direct the trustees to send to the members a copy of a statement prepared by the Authority.
- (3) A direction under this section must be given in writing.
- (4) Where a direction under this section is not complied with, sections 3 and 10 apply to any trustee who has failed to take all such steps as are reasonable to secure compliance.