



# Child Support, Pensions and Social Security Act 2000

## 2000 CHAPTER 19

### PART II

#### PENSIONS

### CHAPTER II

#### OCCUPATIONAL AND PERSONAL PENSION SCHEMES

##### *Winding-up of schemes*

#### **47 Information to be given to the Authority**

- (1) In section 22(1) and (3) of the Pensions Act 1995 (circumstances in which provisions apply to a trust scheme the employer in relation to which has been subjected to an insolvency procedure), for “26”, in each case, there shall be substituted “26A”.
- (2) After section 26 of that Act there shall be inserted—

##### **“26A Information to be given to the Authority in a s. 22 case**

- (1) If at any time while section 22 applies in relation to a scheme—
  - (a) the trustees of the scheme do not include at least one person who the practitioner or official receiver has informed them is a person about whose independent status he is satisfied, and
  - (b) the trustees have no other reasonable grounds for believing that their number includes at least one person about whose independent status the practitioner or official receiver is satisfied,

it shall be the duty of the trustees, as soon as reasonably practicable after it first appears to any one or more of them as mentioned in paragraphs (a) and

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- (b), to give notice to the Authority that the scheme appears not to have an independent trustee.
- (2) If a trust scheme is without trustees at any time while section 22 applies to it, it shall be the duty of every person involved in the administration of the scheme, as soon as reasonably practicable after it first appears to him that the scheme is without trustees, to give notice to the Authority that the scheme has no trustees.
- (3) No person shall be required to give a notice under subsection (1) or (2) at any time when it appears to him on reasonable grounds—
- (a) that it is the intention of the practitioner or official receiver, for the purpose of complying with his duty under section 23(1)(b), to make or secure the appointment of any person as a trustee of the scheme; and
  - (b) that the appointment will be made within the period specified by or under section 23(2) for the performance of that duty.
- (4) No person shall be required to give a notice under subsection (2) at any time when it appears to him, on reasonable grounds, that the Authority are already aware that the scheme has no trustees.
- (5) Where the practitioner or official receiver at any time informs the trustees of a trust scheme that he is not, or is no longer, satisfied about a person's independent status, no account shall be taken for the purposes of subsection (1)(a) of any information that he was so satisfied which was given by the practitioner or official receiver to the trustees before that time.
- (6) References in this section to the practitioner or official receiver being satisfied about a person's independent status are references to his being satisfied for the purposes of section 23 that that person is an independent person.
- (7) If subsection (1) is not complied with, section 10 applies to any trustee who has failed to take all such steps as are reasonable to secure compliance.
- (8) Section 10 applies to any person who fails to comply with a duty imposed on him by subsection (2).

### **26B Information to be given in cases where s. 22 disapplied**

- (1) Where, at any time—
- (a) section 22 would apply in relation to a trust scheme but for regulations under section 118,
  - (b) the employer in relation to the scheme is the sole trustee of the scheme,
  - (c) there are persons involved in the administration of the scheme, and
  - (d) none of those persons has received an employer's assurance relating to the scheme,

it shall be the duty of every person who is involved in the administration of the scheme, as soon as reasonably practicable after it first appears to him as mentioned in paragraphs (a) and (b), to give notice to the Authority that the case is one falling within paragraphs (a) to (d).

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- (2) For the purposes of this section a person has received an employer's assurance relating to a scheme if during the period while section 22 would have applied in relation to the scheme but for regulations under section 118—
- (a) he has been informed by the person who is the employer in relation to the scheme that there is no reason why the employer should not continue to act as a trustee of the scheme;
  - (b) he has not subsequently been informed by the person who is the employer in relation to the scheme that that has ceased to be the case; and
  - (c) the trustees of the scheme have not changed since he was informed as mentioned in paragraph (a).
- (3) No person shall be required to give a notice under subsection (1)—
- (a) at any time when it appears to him, on reasonable grounds, that the Authority are already aware that the case is one falling within paragraphs (a) to (d) of that subsection;
  - (b) if a period is prescribed for the purposes of this paragraph, at any time in the prescribed period after the event by virtue of which the scheme became a scheme in relation to which section 22 would apply but for regulations under section 118; or
  - (c) at any other time that is prescribed for the purposes of this subsection.
- (4) Section 10 applies to any person who fails to comply with any duty imposed on him by subsection (1).

### **26C Construction of ss. 26A and 26B**

- (1) In sections 26A and 26B references, in relation to a scheme, to a person involved in the administration of the scheme are (subject to subsection (2)) references to any person who is so involved otherwise than as—
- (a) the employer in relation to that scheme;
  - (b) a trustee of the scheme;
  - (c) the auditor of the scheme or its actuary;
  - (d) a legal adviser of the trustees of the scheme;
  - (e) a fund manager for the scheme;
  - (f) a person acting on behalf of a person who is involved in the administration of the scheme;
  - (g) a person providing services to a person so involved;
  - (h) a person acting in his capacity as an employee of a person so involved;
  - (i) a person who would fall within any of paragraphs (f) to (h) if persons acting in relation to the scheme in any capacity mentioned in the preceding paragraphs were treated as involved in the administration of a scheme.
- (2) In this section references, in relation to a scheme, to a person involved in the administration of the scheme do not include references to persons of a particular description if regulations provide for persons of that description to be excluded from those references.
- (3) If regulations so provide in relation to any provision of section 26A or 26B, so much of that provision as requires any notice to be given as soon as reasonably

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practicable after a particular time shall have effect as a requirement to give that notice within such period after that time as may be prescribed.”

- (3) In subsection (2) of section 118 of that Act (powers to provide for sections 22 to 26 not to apply in the case of certain schemes), for “sections 22 to 26” there shall be substituted “some or all of the provisions of sections 22 to 26C”.
- (4) After that subsection there shall be inserted—
- “(3) Regulations may modify sections 26A and 26B for the purpose of requiring prescribed persons, in addition to or instead of the persons who (apart from the regulations) would be required to provide information to the Authority under those sections, to be subject to the duties imposed by those sections.”
- (5) In section 178(b) of the Pension Schemes Act 1993 (regulations providing for who is to be treated as a trustee of a scheme), at the end there shall be inserted “or sections 22 to 26C of the Pensions Act 1995”.

#### **48 Modification of scheme to secure winding-up**

After section 71 of the Pensions Act 1995 (effect of modification orders under section 69) there shall be inserted—

##### **“71A Modification by Authority to secure winding-up**

- (1) The Authority may at any time while—
- (a) an occupational pension scheme is being wound up, and
  - (b) the employer in relation to the scheme is subject to an insolvency procedure,
- make an order modifying that scheme with a view to ensuring that it is properly wound up.
- (2) The Authority shall not make such an order except on an application made to them, at a time such as is mentioned in subsection (1), by the trustees or managers of the scheme.
- (3) Except in so far as regulations otherwise provide, an application for the purposes of this section must be made in writing.
- (4) Regulations may make provision—
- (a) for the form and manner in which an application for the purposes of this section is to be made to the Authority;
  - (b) for the matters which are to be contained in such an application;
  - (c) for the documents which must be attached to an application for the purposes of this section or which must otherwise be delivered to the Authority with or in connection with any such application;
  - (d) for persons to be required, before such time as may be prescribed, to give such notifications of the making of an application for the purposes of this section as may be prescribed;
  - (e) for the matters which are to be contained in a notification of such an application;

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- (f) for persons to have the opportunity, for a prescribed period, to make representations to the Authority about the matters to which such an application relates;
  - (g) for the manner in which the Authority are to deal with any such application.
- (5) The power of the Authority to make an order under this section—
- (a) shall be limited to what they consider to be the minimum modification necessary to enable the scheme to be properly wound up; and
  - (b) shall not include power to make any modification that would have a significant adverse effect on—
    - (i) the accrued rights of any member of the scheme; or
    - (ii) any person’s entitlement under the scheme to receive any benefit.
- (6) A modification of an occupational pension scheme by an order of the Authority under this section shall be as effective in law as if—
- (a) it had been made under powers conferred by or under the scheme;
  - (b) the modification made by the order were capable of being made in exercise of such powers notwithstanding any enactment, rule of law or rule of the scheme that would have prevented their exercise for the making of that modification; and
  - (c) the exercise of such powers for the making of that modification would not have been subject to any enactment, rule of law or rule of the scheme requiring the implementation of any procedure or the obtaining of any consent in connection with the making of a modification.
- (7) Regulations may provide that, in prescribed circumstances, this section—
- (a) does not apply in the case of occupational pension schemes of a prescribed class or description; or
  - (b) in the case of occupational pension schemes of a prescribed class or description applies with prescribed modifications.
- (8) The times when an employer in relation to an occupational pension scheme shall be taken for the purposes of this section to be subject to an insolvency procedure are—
- (a) in the case of a trust scheme, while section 22 applies in relation to the scheme; and
  - (b) in the case of a scheme that is not a trust scheme, while section 22 would apply in relation to the scheme if it were a trust scheme;
- and for the purposes of this subsection no account shall be taken of modifications or exclusions contained in any regulations under section 118.
- (9) The Authority shall not be entitled to make an order under this section in relation to a public service pension scheme.”

#### **49 Reports about winding-up**

- (1) After section 72 of the Pensions Act 1995 there shall be inserted—

*“Supervision of winding-up***72A Reports to Authority about winding-up**

- (1) Where—
- (a) an occupational pension scheme is being wound up, and
  - (b) the winding-up is one beginning at a time (whether before or after the passing of this Act) by reference to which regulations provide that it is to be a winding-up to which this section applies,
- it shall be the duty of the trustees or managers, in accordance with this section, to make periodic reports in writing to the Authority about the progress of the winding-up.
- (2) In the case of each winding-up, the first report to be made under this section shall be made—
- (a) except in a case to which paragraph (b) applies—
    - (i) after the end of the prescribed period beginning with the day on which the winding-up began; and
    - (ii) before the end of the prescribed period that begins with the end of the period that applies for the purposes of subparagraph (i);
  - and
  - (b) in a case where the winding-up began before the coming into force of the regulations which (for the purposes of subsection (1)(b)) prescribe the time by reference to which the winding-up is one to which this section applies, before such date as may be prescribed by those regulations.
- (3) Subject to subsection (4), each subsequent report made under this section in the case of a winding-up shall be made no more than twelve months after the date which (apart from any postponement under subsection (4)) was the latest date for the making of the previous report required to be made in the case of that winding-up.
- (4) If, in the case of any report required to be made under subsection (3), the Authority consider (whether on an application made for the purpose or otherwise) that it would be appropriate to do so, they may, at any time before the latest time for the making of that report, postpone that latest time by such period as they think fit.
- (5) The latest time for making a report shall not be postponed under subsection (4) by more than twelve months.
- (6) Subject to the application of the limit specified in subsection (5) to the cumulative period of the postponements, more than one postponement may be made under subsection (4) in the case of the same report.
- (7) A report under this section—
- (a) must contain such information and statements as may be prescribed; and
  - (b) must be made in accordance with the prescribed requirements.

- (8) Regulations may—
- (a) provide that, in prescribed circumstances, there shall be no obligation to make a report that would otherwise fall to be made under this section;
  - (b) make provision for the period within which, and the manner in which, applications may be made for a postponement under subsection (4); and
  - (c) modify subsections (3) and (5) by substituting periods of different lengths for the periods for the time being specified in those subsections.
- (9) If there is any failure by the trustees or managers of any scheme to comply with their duty to make a report in accordance with the requirements imposed by or under this section—
- (a) section 3 applies, if the scheme is a trust scheme, to any trustee who has failed to take all such steps as are reasonable to secure compliance; and
  - (b) section 10 applies (irrespective of the description of scheme involved) to any trustee or manager who has failed to take all such steps.”
- (2) In section 124 of that Act (interpretation of Part I), after subsection (3) there shall be inserted—
- “(3A) In a case of the winding-up of an occupational pension scheme in pursuance of an order of the Authority under section 11 or of an order of a court, the winding-up shall (subject to subsection (3E)) be taken for the purposes of this Part to begin—
- (a) if the order provides for a time to be the time when the winding-up begins, at that time; and
  - (b) in any other case, at the time when the order comes into force.
- (3B) In a case of the winding-up of an occupational pension scheme in accordance with a requirement or power contained in the rules of the scheme, the winding-up shall (subject to subsections (3C) to (3E)) be taken for the purposes of this Part to begin—
- (a) at the time (if any) which under those rules is the time when the winding-up begins; and
  - (b) if paragraph (a) does not apply, at the earliest time which is a time fixed by the trustees or managers as the time from which steps for the purposes of the winding-up are to be taken.
- (3C) Subsection (3B) shall not require a winding-up of a scheme to be treated as having begun at any time before the end of any period during which effect is being given—
- (a) to a determination under section 38 that the scheme is not for the time being to be wound up; or
  - (b) to a determination in accordance with the rules of the scheme to postpone the commencement of a winding-up.
- (3D) In subsection (3B)(b) the reference to the trustees or managers of the scheme shall have effect in relation to any scheme the rules of which provide for a

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determination that the scheme is to be wound up to be made by persons other than the trustees or managers as including a reference to those other persons.

(3E) Subsections (3A) to (3D) above do not apply for such purposes as may be prescribed.”

(3) After section 49 of that Act (other responsibilities of trustees employers etc.) there shall be inserted—

**“49A Record of winding-up decisions**

(1) Except so far as regulations otherwise provide, the trustees or managers of an occupational pension scheme shall keep written records of—

- (a) any determination for the winding-up of the scheme in accordance with its rules;
- (b) decisions as to the time from which steps for the purposes of the winding-up of the scheme are to be taken;
- (c) determinations under section 38;
- (d) determinations in accordance with the rules of the scheme to postpone the commencement of a winding-up of the scheme.

(2) For the purpose of this section—

- (a) the determinations and decisions of which written records must be kept under this section include determinations and decisions by persons who—
  - (i) are not trustees or managers of a scheme, but
  - (ii) are entitled, in accordance with the rules of a scheme, to make a determination for its winding-up;

and

- (b) regulations may, in relation to such determinations or decisions as are mentioned in paragraph (a), impose obligations to keep written records on the persons making the determinations or decisions (as well as, or instead of, on the trustees or managers).

(3) Regulations may provide for the form and content of any records that are required to be kept under this section.

(4) Section 3 applies to any trustee of a scheme who fails to take all such steps as are reasonable to secure compliance by the trustees of that scheme with the obligations imposed on them by this section.

(5) Section 10 applies to any trustee or manager of a scheme who fails to take all such steps as are reasonable to secure compliance by the trustees or managers of that scheme with those obligations.”

**50 Directions for facilitating winding-up**

After the section 72A inserted in the Pensions Act 1995 by section 49 there shall be inserted—



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### **“72B Directions by Authority for facilitating winding-up**

- (1) Subject to the following provisions of this section, the Authority shall have power, at any time after the winding-up of an occupational pension scheme has begun, to give directions under this section if they consider that the giving of the direction is appropriate on any of the grounds set out in subsection (2).
- (2) Those grounds are—
  - (a) that the trustees or managers of the scheme are not taking all the steps in connection with the winding-up that the Authority consider would be being taken if the trustees or managers were acting reasonably;
  - (b) that steps being taken by the trustees or managers for the purposes of the winding-up involve things being done with what the Authority consider to be unreasonable delay;
  - (c) that the winding-up is being obstructed or unreasonably delayed by the failure of any person—
    - (i) to provide information to the trustees or managers;
    - (ii) to provide information to a person involved in the administration of the scheme;
    - (iii) to provide information to a person of a prescribed description;or
    - (iv) to take any step (other than the provision of information) that he has been asked to take by the trustees or managers;
  - (d) that the winding-up would be likely to be facilitated or accelerated by the taking by any person other than the trustees or managers of any other steps;
  - (e) that in any prescribed circumstances not falling within paragraphs (a) to (d)—
    - (i) the provision by any person of any information to the trustees or managers or to any other person, or
    - (ii) the taking of any other step by any person,would be likely to facilitate or accelerate the progress of the winding-up.
- (3) Except in prescribed circumstances, the power of the Authority to give a direction under this section in the case of a winding-up shall be exercisable only where—
  - (a) periodic reports about the progress of the winding-up are required to be made under section 72A; and
  - (b) the first report that has to be made for the purposes of that section in the case of that winding-up either has been made or should have been made.
- (4) Regulations may provide that, in prescribed circumstances, the Authority shall not give a direction on the ground set out in subsection (2)(e) except in response to an application made by the trustees or managers of the scheme for the giving of a direction on that ground.
- (5) A direction under this section is a direction in writing given to and imposing requirements on—

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- (a) any or all of the trustees or managers of the scheme;
  - (b) a person who is involved in its administration; or
  - (c) a person of a prescribed description.
- (6) The requirements that may be imposed by a direction under this section are any requirement for the person to whom it is given, within such period specified in the direction as the Authority may consider reasonable—
- (a) to provide the trustees or managers with all such information as may be specified or described in the direction;
  - (b) to provide a person involved in the administration of the scheme with all such information as may be so specified or described;
  - (c) to provide a person who is of a prescribed description with all such information as may be so specified or described;
  - (d) to take such steps (other than the provision of information) as may be so specified or described.
- (7) If, at any time before the end of a period within which any step is required by a direction under this section to be taken by any person, the Authority consider (whether on an application made for the purpose or otherwise) that it would be appropriate to do so, they may extend (or further extend) that period until such time as they think fit.
- (8) Regulations may—
- (a) impose limitations on the steps that a person may be required to take by a direction under this section;
  - (b) make provision for the period within which, and the manner in which, applications may be made for a period to be extended (or further extended) under subsection (7).
- (9) In this section references, in relation to a scheme, to a person involved in the administration of the scheme are (subject to subsection (10)) references to any person who is so involved otherwise than as—
- (a) the employer in relation to that scheme;
  - (b) a trustee or manager of the scheme;
  - (c) the auditor of the scheme or its actuary;
  - (d) a legal adviser of the trustees or managers of the scheme;
  - (e) a fund manager for the scheme;
  - (f) a person acting on behalf of a person who is involved in the administration of the scheme;
  - (g) a person providing services to a person so involved;
  - (h) a person acting in his capacity as an employee of a person so involved;
  - (i) a person who would fall within any of paragraphs (f) to (h) if persons acting in relation to the scheme in any capacity mentioned in the preceding paragraphs were treated as involved in the administration of a scheme.
- (10) In this section references, in relation to a scheme, to a person involved in the administration of the scheme do not include references to persons of a particular description if regulations provide for persons of that description to be excluded from those references.

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### **72C Duty to comply with directions under s. 72B**

- (1) It shall be the duty of any person to whom a direction is given under section 72B to comply with it.
- (2) Where a direction is given under section 72B to the trustees of a trust scheme, section 3 applies to any trustee who fails, without reasonable excuse, to take all such steps as are reasonable to secure compliance with it.
- (3) Section 10 applies to any trustee or manager of a scheme who fails, without reasonable excuse, to take all such steps as are reasonable to secure compliance by the trustees or managers of that scheme with any direction given to them under section 72B.
- (4) Section 10 applies to any person who—
  - (a) is a person to whom a direction under section 72B is given otherwise than in the capacity of a trustee or manager; and
  - (b) without reasonable excuse, fails to comply with that direction.
- (5) For the purposes of this section it shall not be a reasonable excuse in relation to any failure to provide information in pursuance of a direction under section 72B that the provision of that information would (but for the duty imposed by subsection (1) of this section) involve a breach by any person of a duty owed to another not to disclose that information.”