
STATUTORY INSTRUMENTS

2014 No. 1711

The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014

PART 11

Payment of surplus funds to employer

Interpretation

36.—(1) In this Part—

“employer” has the meaning given by section 124(1) of the 1995 Act; and

“the Payments to Employer Regulations” means the Occupational Pension Schemes (Payments to Employer) Regulations 2006(1).

(2) Where—

(a) a trust scheme in relation to which there is more than one employer is divided into two or more sections; and

(b) the provisions of the scheme meet the conditions specified in regulation 18(1)(b) of the Payments to Employer Regulations (schemes with more than one employer),

this Part applies as if each section of the scheme were a separate scheme.

Commencement Information

II Reg. 36 comes into force in accordance with reg. 1(1)

Failure to comply with the requirements of section 37 or 76 of the 1995 Act: periods before the appointed day

37.—(1) Where the conditions specified in paragraph (2) are met neither—

(a) section 37 of the 1995 Act (payment of surplus to employer)(2); nor

(b) section 76 of that Act (excess assets on winding up)(3),

(as the case may be) apply in respect of a payment from scheme funds made to the employer in relation to the scheme.

(2) The conditions specified in this paragraph are that—

(a) the trustees of a trust scheme have exercised a power under the scheme rules to make a payment to the employer out of funds held for the purposes of the scheme and that payment was made to the employer before the appointed day;

(1) [S.I. 2006/802](#).

(2) Section 37 was substituted by section 250 of the 2004 Act and was amended by section 130 of the 2008 Act.

(3) Section 76 was amended by sections 319(1) and Schedule 12 to the 2004 Act and by [S.I. 2006/745](#).

- (b) at the time that the payment was made to the employer the scheme included—
 - (i) cash balance benefits; or
 - (ii) pensions derived from money purchase or cash balance benefits;
- (c) no benefits other than those specified in sub-paragraph (b), money purchase benefits and death benefits secured by insurance policies or annuity contracts; and
- (d) the trustees of the scheme treated the scheme as if it were a money purchase scheme and for that reason did not comply with the requirements—
 - (i) for schemes not in winding up, of section 37 of the 1995 Act; or
 - (ii) for schemes in winding up, of section 76 of that Act,
 before exercising the power to make a payment to the employer.

Commencement Information

I2 Reg. 37 comes into force in accordance with reg. 1(1)

Non money-purchase schemes providing cash balance benefits etc

- 38.**—(1) Where the circumstances specified in paragraph (2) apply—
- (a) the trustees of a trust scheme may not use an actuarial valuation made on the basis specified in paragraph (2)(c) for the purposes of fulfilling the conditions specified in section 37(3)(a) of the 1995 Act or regulation 4(1) or (2) of the Payments to Employer Regulations (schemes that are subject to Part 3 of the 2004 Act – determination of assets and liabilities); and
 - (b) a valuation certificate prepared in relation to an actuarial valuation made on the basis specified in paragraph (2)(c) is not valid in relation to any period after the appointed day.
- (2) The circumstances specified in this paragraph are that—
- (a) the scheme is subject to Part 3 of the 2004 Act (scheme funding);
 - (b) the scheme provides any of the benefits specified in paragraph (3); and
 - (c) the trustees of the scheme propose to use an actuarial valuation made on the basis that benefits specified in paragraph (3) were money purchase benefits for the purpose of meeting the condition specified in section 37(3)(a) of the 1995 Act.
- (3) The benefits specified in this paragraph are—
- (a) cash balance benefits;
 - (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
 - (c) top-up benefits;
 - (d) pensions derived from money purchase benefits; and
 - (e) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c).

Commencement Information

I3 Reg. 38 comes into force in accordance with reg. 1(1)

Amendment of the Payments to Employer Regulations

39. For the definition of “money purchase benefits” in regulation 2 of the Payments to Employer Regulations (interpretation) substitute—

““money purchase benefits” has the meaning given by section 181(1) of the Pension Schemes Act 1993 (general interpretation)(**4**)”.

Commencement Information

I4 Reg. 39 comes into force in accordance with reg. 1(1)

(4) Relevant amendments were made to section 181(1) by section 29 of the Pensions Act 2011 (c. 19) (“the Act”).

Changes to legislation:

There are currently no known outstanding effects for the The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014, PART 11.