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STATUTORY INSTRUMENTS

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**2005 No. 255**

**The Pensions (Northern Ireland) Order 2005**

**PART III**

**THE BOARD OF THE PENSION PROTECTION FUND**

**CHAPTER 3**

**PENSION PROTECTION**

*Reconsideration*

**Application for reconsideration**

**135.**—(1 <sup>F1</sup> Where paragraph (2) or (3) applies in relation to an eligible scheme, the trustees or managers of the scheme may make an application to the Board under this Article for it to assume responsibility for the scheme in accordance with this Chapter.

(2) This paragraph applies where—

(a) a scheme failure notice has been issued under Article 106(2)(a) in relation to the scheme, that notice has become binding and the trustees or managers have received a copy of the binding notice under Article 109(3),

<sup>F1</sup>(b) [<sup>F2</sup>the determination made by the Board or valuation obtained by the Board in respect of the scheme under Article 127(2)] has become binding, and

(c <sup>F1</sup> the Board would have been required to assume responsibility for the scheme under Article 111 but for the fact that the condition in paragraph (2)(a) of that Article was not satisfied.

(3) This paragraph applies where—

(a) the Board has issued a scheme failure notice under paragraph (2) of Article 114 in relation to the scheme, that notice has become binding and the trustees or managers have received a copy of the binding notice under paragraph (7) of that Article,

<sup>F1</sup>(b) [<sup>F3</sup>the determination made by the Board or valuation obtained by the Board in respect of the scheme under Article 127(2)] has become binding, and

(c <sup>F1</sup> the Board would have been required to assume responsibility for the scheme under Article 112 but for the fact that the condition in paragraph (2)(a) of that Article was not satisfied.

(4) An application under this Article must be in the prescribed form, contain the prescribed information and be accompanied by—

(a) a protected benefits quotation in the prescribed form, [<sup>F4</sup>or evidence in the prescribed form which shows that the trustees or managers of the scheme have taken all reasonable steps to obtain a protected benefits quotation but were unable to do so,] and

(b) audited scheme accounts for a period which—

(i) begins with such date as may be determined in accordance with regulations, and

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- (ii) ends with a date which falls within the prescribed period ending with the day on which the application is made.
- (5) An application under this Article must be made within the authorised period.
- (6) In this Article “the authorised period” means the prescribed period which begins—
- (a) where paragraph (2) applies, with the later of—
- (i) the day on which the trustees or managers received the copy of the binding notice mentioned in sub-paragraph (a) of that paragraph, and
- (ii) the day on which they received a copy of the binding [<sup>F5</sup>determination or] valuation mentioned in sub-paragraph (b) of that paragraph, and
- (b) where paragraph (3) applies, with the later of—
- (i) the day on which the trustees or managers received the copy of the binding notice mentioned in sub-paragraph (a) of that paragraph, and
- (ii) the day on which they received a copy of the binding [<sup>F6</sup>determination or] valuation mentioned in sub-paragraph (b) of that paragraph.
- (7) Where the Board receives an application under paragraph (1), it must give a copy of the application to the Regulator.
- (8) <sup>F1</sup> <sup>F7</sup>For the purposes of this Article—
- “audited scheme accounts”, in relation to a scheme, means—
- (a) accounts obtained by the trustees or managers of the scheme ( “the scheme accounts”) which are prepared in accordance with paragraphs (9) to (11) and audited by the auditor in relation to the scheme, and
- (b) a report by the auditor, in the prescribed form, as to whether or not such requirements as may be prescribed are satisfied in relation to the scheme accounts;
- “auditor”, in relation to a scheme, has the meaning given by Article 47 of the 1995 Order;
- “protected benefits quotation”, in relation to a scheme, means a quotation for one or more annuities from one or more insurers, being companies willing to accept payment in respect of the members from the trustees or managers of the scheme, which would provide in respect of each member of the scheme from the reconsideration time—
- (a) benefits for or in respect of the member corresponding to the compensation which would be payable to or in respect of the member in accordance with the pension compensation provisions if the Board assumed responsibility for the scheme by virtue of this Article, or
- (b) benefits in accordance with the member's entitlement or accrued rights (including pension credit rights within the meaning of Article 121(1) of the 1995 Order) under the scheme rules (other than his entitlement or rights in respect of money purchase benefits), whichever benefits can, in the case of that member, be secured at the lower cost;
- “the reconsideration time”, in relation to an application under this Article, means the time immediately before the end of the period to which the audited scheme accounts mentioned in paragraph (4)(b) relate.
- (9) The scheme accounts are prepared in accordance with this paragraph if, subject to paragraphs (10) and (11), they—
- (a) <sup>F1</sup> include a statement of the assets of the scheme (excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules) as at the reconsideration time, and
- (b) are prepared in accordance with such other requirements as may be prescribed.

(10) Subject to paragraph (11), regulations under paragraph (4) of Article 127 (other than regulations made by virtue of paragraph (5) of that Article), and guidance under paragraph (6) of that Article, apply to the scheme accounts as they apply for the purposes of a valuation [<sup>F8</sup>under Article 127(2)(b)].

(11) Regulations may provide that, where an asset of a prescribed description has been acquired during the assessment period, the value assigned to the asset as at the reconsideration time is to be determined, for the purposes of the scheme accounts, in the prescribed manner.

(12) For the purposes of this Article—

- (a) regulations may prescribe how the cost of securing the benefits mentioned in paragraph (a) of the definition of “protected benefits quotation” in paragraph (8) is to be determined, calculated and verified, and
- (b) subject to any provision made under sub-paragraph (a), that cost is to be determined, calculated and verified in accordance with guidance issued by the Board.

(13) Where the scheme is being wound up, for the purposes of determining the benefits which fall within paragraph (b) of the definition of “protected benefits quotation” in paragraph (8) no account is to be taken of the winding up of the scheme.

- F1** mod. by SR 2005/55
- F2** Words in art. 135(2)(b) substituted (2.7.2012 for specified purposes, 23.7.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), s. 34\(3\), Sch. 4 para. 9\(2\)](#); S.R. 2012/265, art. 2(3)(a)(ii)
- F3** Words in art. 135(3)(b) substituted (2.7.2012 for specified purposes, 23.7.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), s. 34\(3\), Sch. 4 para. 9\(2\)](#); S.R. 2012/265, art. 2(3)(a)(ii)
- F4** Words in art. 135(4)(a) inserted (2.7.2012 for specified purposes, 23.7.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), s. 34\(3\), Sch. 4 para. 14](#); S.R. 2012/265, art. 2(3)(a)(iii)
- F5** Words in art. 135(6)(a)(ii) inserted (2.7.2012 for specified purposes, 23.7.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), s. 34\(3\), Sch. 4 para. 9\(3\)](#); S.R. 2012/265, art. 2(3)(a)(ii)
- F6** Words in art. 135(6)(b)(ii) inserted (2.7.2012 for specified purposes, 23.7.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), s. 34\(3\), Sch. 4 para. 9\(3\)](#); S.R. 2012/265, art. 2(3)(a)(ii)
- F7** mod. by SR 2005/91
- F8** Words in art. 135(10) substituted (2.7.2012 for specified purposes, 23.7.2012 in so far as not already in operation) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\), s. 34\(3\), Sch. 4 para. 9\(4\)](#); S.R. 2012/265, art. 2(3)(a)(ii)

#### **Modifications etc. (not altering text)**

- C1** Pt. III amendment to earlier affecting provision S.R. 2005/91 (23.7.2012) by [The Pension Protection Fund \(Miscellaneous Amendments\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/270\), regs. 1, 2](#)

#### **Commencement Information**

- II** Art. 135 partly in operation; art. 135 not in operation at date of making see art. 1(2); art. 135(4)(6)(9) (b) in operation for certain purposes at 25.2.2005 and wholly in operation at 6.4.2005 by [S.R. 2005/48, art. 2\(4\), Sch. Pt. 4](#); art. 135(8) partly in operation at 25.2.2005 and 6.4.2005 by [S.R. 2005/48, art. 2\(4\), Sch. Pt. 4](#); art. 135 partly in operation at 6.4.2005 by [S.R. 2005/48, art. 2\(7\), Sch. Pt. 7](#); art. 135(8) in operation at 1.4.2006 in so far as not already in operation by [S.R. 2006/95, art. 2\(b\), Sch. Pt. 2](#)

**Changes to legislation:**

The Pensions (Northern Ireland) Order 2005, Section 135 is up to date with all changes known to be in force on or before 10 April 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.

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 6 para. 21(2)(c)-(cc) substituted for (b)(c) by [2008 c. 13 \(N.I.\) Sch. 6 para. 11](#)
- art. 2(4)(b)(viii)-(x) inserted by [2016 c. 1 \(N.I.\) Sch. 2 para. 21\(3\)\(b\)](#)
- art. 19(1A) inserted by [2016 c. 1 \(N.I.\) Sch. 2 para. 24\(3\)](#)
- art. 19(10A) inserted by [2016 c. 1 \(N.I.\) Sch. 2 para. 24\(5\)](#)
- art. 34(1)-(1B) substituted for art. 34(1) by [2016 c. 1 \(N.I.\) Sch. 2 para. 25](#)
- art. 34(7)(da) inserted by [2021 c. 1 Sch. 8 para. 3\(2\)](#)
- art. 39(1)-(1B) substituted for art. 39(1) by [2016 c. 1 \(N.I.\) Sch. 2 para. 26\(2\)](#)
- art. 48(1)-(1B) substituted for art. 48(1) by [2016 c. 1 \(N.I.\) Sch. 2 para. 27](#)
- art. 75(1)(a)(iib) inserted by [2021 c. 1 Sch. 8 para. 8\(2\)](#)
- art. 110(1)-(1B) substituted for art. 110(1) by [2016 c. 1 \(N.I.\) Sch. 2 para. 29](#)
- art. 191(5) added by [2008 c. 13 \(N.I.\) Sch. 9 para. 6](#)
- art. 267(4)(f) and word inserted by [2021 c. 1 Sch. 6 para. 20\(b\)](#)