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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) 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),
- (b) the valuation obtained by the Board under Article 127 in respect of the scheme has become binding, and
- (c) 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,
- (b) the valuation obtained by the Board under Article 127 in respect of the scheme has become binding, and
- (c) 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, and
- (b) audited scheme accounts for a period which—
  - (i) begins with such date as may be determined in accordance with regulations, and
  - (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 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 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) 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) 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 under that Article.

(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.

### **Duty to assume responsibility following reconsideration**

**136.**—(1) This Article applies where an application is made in respect of a scheme in accordance with Article 135.

(2) The Board must assume responsibility for the scheme in accordance with this Chapter if it is satisfied that the value of the assets of the scheme at the reconsideration time is less than the aggregate of—

- (a) the amount quoted in the protected benefits quotation accompanying the application,
- (b) the amount at that time of the liabilities of the scheme which are not liabilities to, or in respect of, members of the scheme, and
- (c) the estimated costs of winding up the scheme at that time.

(3) Where the Board makes a determination for the purposes of paragraph (2), it must issue a determination notice and give a copy of that notice to—

- (a) the trustees or managers of the scheme, and
- (b) the Regulator.

(4) In paragraph (3) “determination notice” means a notice which is in the prescribed form and contains such information about the determination as may be prescribed.

(5) But where the Board is satisfied of the matters mentioned in paragraph (2), it is not required to assume responsibility for the scheme under paragraph (2) until the determination notice issued under paragraph (3) becomes binding.

(6) For the purposes of paragraph (5) a determination notice is not binding until—

- (a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
- (b) if the issue of the notice is so reviewed—
  - (i) the review and any reconsideration,
  - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
  - (iii) any appeal against his determination or directions,

has been finally disposed of and the notice has not been revoked, varied or substituted.

(7) Where a determination notice issued under paragraph (3) becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—

- (a) the trustees or managers of the scheme, and

(b) the Regulator.

(8) A notice under paragraph (7) must be in the prescribed form and contain such information as may be prescribed.

(9) The Board may—

(a) for the purposes of paragraph (2), obtain its own valuation of the assets of the scheme as at the reconsideration time (within the meaning of Article 135), and

(b) for the purposes of paragraph (2)(b), obtain its own valuation of the liabilities of the scheme as at that time;

and where it does so, paragraphs (9)(b), (10) and (11) of Article 135 apply in relation to the valuation as they apply in relation to the scheme accounts (within the meaning of that Article).

(10) Regulations under paragraph (4) of Article 127, and guidance under paragraph (6) of that Article, apply for the purposes of this Article in relation to the estimated costs within paragraph (2) (c) as they apply for the purposes of Article 127 in relation to protected liabilities within Article 115(1)(c).

(11) In this Article references to the assets of the scheme do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

(12) This Article is subject to Articles 130 and 131 (refusal to assume responsibility for a scheme).