
STATUTORY INSTRUMENTS

2005 No. 255

The Pensions (Northern Ireland) Order 2005

PART III

THE BOARD OF THE PENSION PROTECTION FUND

CHAPTER 3

PENSION PROTECTION

Valuation of assets and liabilities

Board's obligation to obtain valuation of assets and protected liabilities

127.—(1 ^{F1} This Article applies in a case within paragraph (1) of Article 111 or 112.

^{F2F1}[^{F3}(2) The Board must, as soon as reasonably practicable—

- (a) determine whether the condition in paragraph (2)(a) of the Article in question is satisfied, or
- (b) for the purposes of determining whether that condition is satisfied, obtain an actuarial valuation of the scheme as at the relevant time.

(2A) Before doing so, it must give a notice stating whether it will make a determination under paragraph (2)(a) or obtain an actuarial valuation under paragraph (2)(b) to—

- (a) the trustees or managers of the scheme, and
- (b) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.]

(3) For [^{F4}the purposes of this Article], regulations may provide that any of the following are to be regarded as assets or protected liabilities of the scheme at the relevant time if prescribed requirements are met—

- (a) a debt due to the trustees or managers of the scheme by virtue of a contribution notice issued under Article 34, 43 or 51 during the pre-approval period;
- (b) an obligation arising under financial support for the scheme (within the meaning of Article 41) put in place during the pre-approval period in accordance with a financial support direction issued under Article 39;
- (c) an obligation imposed by a restoration order under Article 48 during the pre-approval period in respect of a transaction involving assets of the scheme.

(4) For the purposes of [^{F5}a determination made under paragraph (2)(a) or an actuarial valuation obtained under paragraph (2)(b)], regulations may prescribe how—

- (a) the assets and the protected liabilities of eligible schemes, and
- (b) their amount or value,

are to be determined, calculated and verified.

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(5) Regulations under paragraph (4) may provide, in particular, that when calculating the amount or value of assets or protected liabilities of an eligible scheme at the relevant time which consist of any of the following—

- (a) a debt (including any contingent debt) due to the trustees or managers of the scheme from the employer under Article 75 of the 1995 Order (deficiencies in the scheme assets),
- (b) a debt due to the trustees or managers of the scheme by virtue of a contribution notice issued under Article 34, 43 or 51,
- (c) an obligation arising under financial support for the scheme (within the meaning of Article 41) put in place in accordance with a financial support direction issued under Article 39, or
- (d) an obligation imposed by a restoration order made under Article 48 in respect of a transaction involving assets of the scheme,

account must be taken in the prescribed manner of prescribed events which occur during the pre-approval period.

[^{F6}(5A) Paragraph (5B) applies if—

- (a) during the pre#approval period any liability to provide pensions or other benefits to or in respect of any member or members under the scheme is discharged by virtue of regulations under Article 119(4) or the Board validating any action mentioned in Article 119(9), and
- (b) at the relevant time the protected liabilities of the scheme include any cost within Article 115(1)(a) relating to compensation in respect of those pensions or other benefits.

(5B) If this paragraph applies, for the purposes [^{F7}of this Article]—

- (a) in determining that cost the effect of the discharge on the compensation payable in respect of those pensions or other benefits under paragraph 23A of Schedule 6 must be taken into account,
- (b) in a case where assets of the scheme at the relevant time were transferred from the scheme during the pre#approval period in consideration for the discharge, those assets are not to be regarded as assets of the scheme at the relevant time, and
- (c) in a case where assets that were not assets of the scheme at that time (“later#acquired assets”) were so transferred, the value of the assets of the scheme at that time is to be reduced by the value of the later#acquired assets at the time of the discharge.]

[^{F8}(5C) The Board must issue a statement setting out how (subject to any provision made under paragraph (4)) it will make determinations under paragraph (2)(a).]

(6) Subject to any provision made under paragraph (4), [^{F9}for the purposes of an actuarial valuation obtained under paragraph (2)(b)] the matters mentioned in [^{F10}paragraph (4)(a) and (b)] are to be determined, calculated and verified in accordance with guidance issued by the Board.

(7 ^{F1} In calculating the amount of any liabilities for the purposes of this Article, a provision of the scheme rules which limits the amount of the scheme's liabilities by reference to the value of its assets is to be disregarded.

(8) The duty imposed by paragraph (2) ceases to apply if and when the Board ceases to be involved with the scheme.

(9) Nothing in paragraph (2) [^{F11}requires a determination to be made, or an] actuarial valuation to be obtained during any period when the Board considers that an event may occur which, by virtue of regulations under paragraph (3) or (4)[^{F6} or by virtue of paragraph (5B)], may affect the value of the assets or the amount of the protected liabilities of the scheme for the purposes of [^{F12}the determination or] the valuation.

(10) In a case where there are one or more reviewable ill health pensions (within the meaning of Article 124), nothing in paragraph (2) [^{F13}requires a determination to be made, or an] actuarial valuation to be obtained during the period mentioned in Article 125(5)(b) (period during which Board may exercise its power to make a decision following a review) relating to any such pension.

(11) For the purposes of this Article—

(a) ^{F2} ^{F1c} “actuarial valuation”, in relation to the scheme, means a written valuation of the assets and protected liabilities of the scheme which—

(i) is in the prescribed form and contains the prescribed information, and

(ii) is prepared and signed by—

(a) a person with prescribed qualifications or experience, or

(b) a person approved by the Department,

^{F2}(b) “the pre-approval period”, in relation to the scheme, means the period which—

(i) begins immediately after the relevant time, and

(ii) ends immediately before the time the Board first [^{F14}makes a determination under paragraph (2)(a) or] approves a valuation of the scheme under Article 128 after the relevant time,

(c) ^{F1} “the relevant time”

(i) in a case within paragraph (1) of Article 111, has the meaning given in paragraph (4) (b) of that Article, and

(ii) ^{F1} in a case within paragraph (1) of Article 112, has the meaning given in paragraph (3) (b) of that Article, and

(d) references to “assets” do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules.^{F1}

F1 mod. by SR 2005/91

F2 mod. by SR 2005/55

F3 [Art. 127\(2\)\(2A\)](#) substituted for [art. 127\(2\)](#) (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. 5\(2\)](#); S.R. 2012/265, [art. 2\(3\)\(a\)\(ii\)](#)

F4 Words in [art. 127\(3\)](#) 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. 5\(3\)](#); S.R. 2012/265, [art. 2\(3\)\(a\)\(ii\)](#)

F5 Words in [art. 127\(4\)](#) 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. 5\(4\)](#); S.R. 2012/265, [art. 2\(3\)\(a\)\(ii\)](#)

F6 SR 2005/137

F7 Words in [art. 127\(5B\)](#) 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. 5\(5\)](#); S.R. 2012/265, [art. 2\(3\)\(a\)\(ii\)](#)

F8 [Art. 127\(5C\)](#) 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. 5\(6\)](#); S.R. 2012/265, [art. 2\(3\)\(a\)\(ii\)](#)

F9 Words in [art. 127\(6\)](#) 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. 5\(7\)\(a\)](#); S.R. 2012/265, [art. 2\(3\)\(a\)\(ii\)](#)

F10 Words in [art. 127\(6\)](#) 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. 5\(7\)\(b\)](#); S.R. 2012/265, [art. 2\(3\)\(a\)\(ii\)](#)

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- F11** Words in art. 127(9) 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. 5(8)(a)**; S.R. 2012/265, art. 2(3)(a)(ii)
- F12** Words in art. 127(9) 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. 5(8)(b)**; S.R. 2012/265, art. 2(3)(a)(ii)
- F13** Words in art. 127(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. 5(9)**; S.R. 2012/265, art. 2(3)(a)(ii)
- F14** Words in art. 127(11)(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. 5(10)**; 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

Determinations under Article 127

[^{F15}**127A.**—(1) Where the Board makes a determination under Article 127(2)(a) it must give a copy of the determination to—

- (a) the Regulator,
 - (b) the trustees or managers of the scheme, and
 - (c) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (2) For the purposes of this Chapter a determination under Article 127(2)(a) is not binding until—
- (a) the period within which the determination may be reviewed by virtue of Chapter 6 has expired, and
 - (b) if the determination is so reviewed—
 - (i) the review and any reconsideration,
 - (ii) any reference to the PPF Ombudsman in respect of the determination, and
 - (iii) any appeal against the PPF Ombudsman's determination or directions,
 has been finally disposed of.

(3) For the purposes of determining whether or not the condition in Article 111(2)(a) or, as the case may be, Article 112(2)(a) (condition that scheme assets are less than protected liabilities) is satisfied in relation to a scheme, a binding determination under Article 127(2)(a) is conclusive.

This paragraph is subject to Article 156(3) and (4) (treatment of fraud compensation payments).

(4) Where a determination under Article 127(2)(a) becomes binding under this Article the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding determination to—

- (a) the Regulator,
- (b) the trustees or managers of the scheme, and
- (c) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

(5) A notice under paragraph (4) must be in the prescribed form and contain the prescribed information.]

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F15 Art. 127A 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. 6**; S.R. 2012/265, art. 2(3)(a)(ii)

Approval of valuation

128.—(1 ^{F16} ^{F17}This Article applies where the Board obtains a valuation in respect of a scheme under Article [^{F18}127(2)(b)].

(2) Where the Board is satisfied that the valuation has been prepared in accordance with [^{F19}Article 127], it must—

- (a) approve the valuation, and
- (b) give a copy of the valuation to—
 - (i) the Regulator,
 - (ii) the trustees or managers of the scheme, and
 - (iii) ^{F17} any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

^{F17}(3) Where the Board is not so satisfied, it must obtain another valuation under that Article.

F16 mod. by SR 2005/55

F17 mod. by SR 2005/91

F18 Word in art. 128(1) substituted (23.7.2012) by Pensions Act (Northern Ireland) 2012 (c. 3), s. 34(3), **Sch. 4 para. 7(2)**; S.R. 2012/265, art. 2(4)(a)(ii)

F19 Words in art. 128(2) substituted (23.7.2012) by Pensions Act (Northern Ireland) 2012 (c. 3), s. 34(3), **Sch. 4 para. 7(3)**; S.R. 2012/265, art. 2(4)(a)(ii)

Binding valuations

129.—(1 ^{F20} For the purposes of this Chapter a valuation obtained under Article [^{F21}127(2)(b)] is not binding until—

- (a) it is approved under Article 128,
- (b) the period within which the approval may be reviewed by virtue of Chapter 6 has expired, and
- (c) if the approval is so reviewed—
 - (i) the review and any reconsideration,
 - (ii) any reference to the PPF Ombudsman in respect of the approval, and
 - (iii) any appeal against his determination or directions,has been finally disposed of.

(2 ^{F22} ^{F20}Subject to Article 156(3) and (4) (treatment of fraud compensation payments), for the purposes of determining whether or not the condition in Article 111(2)(a) or, as the case may be, 112(2)(a) (condition that scheme assets are less than protected liabilities) is satisfied in relation to a scheme, a binding valuation is conclusive.

(3) Where a valuation becomes binding under this Article the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding valuation to—

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

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(c) ^{F20} any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

^{F20}(4) A notice under paragraph (3) must be in the prescribed form and contain the prescribed information.

F20 mod. by SR 2005/91

F21 Word in [art. 129\(1\)](#) substituted (23.7.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), s. 34(3), [Sch. 4 para. 8](#); S.R. 2012/265, art. 2(4)(a)(ii)

F22 mod. by SR 2005/55

Changes to legislation:

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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\(b\)](#)