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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**

*Winding up*

**Requirement to wind up schemes with sufficient assets to meet protected liabilities**

**138.**—(1) Where, in relation to an eligible scheme, an assessment period within Article 116(2) or (4) comes to an end because the conditions in paragraph (2) are satisfied, the trustees or managers of the scheme must—

- (a) wind up the scheme, or
- (b) where the winding up of the scheme began before the assessment period (whether by virtue of Article 198 or otherwise), continue the winding up of the scheme.

(2) <sup>F1</sup> The conditions are—

- (a) <sup>F1</sup> that paragraph (2) or (3) of Article 135 (scheme rescue not possible but scheme has sufficient assets to meet the protected liabilities) applies in relation to the scheme,
- (b) that—

- (i) the trustees or managers did not make an application under that Article or Article 137(2) within the authorised period (within the meaning of Article 135(6)) (or any such application has been withdrawn), or
- (ii) if such an application was made, it has been finally determined, and

(c) <sup>F2</sup> that, if an application was made under Article 135, the Board is not required to assume responsibility for the scheme by virtue of Article 136(2) [<sup>F3</sup>or (2B)].

(3) For the purposes of paragraph (2)(b)(ii) an application is not finally determined until—

- (a) the Board has issued a determination notice in respect of the application under Article 136 or, as the case may be, 137,
- (b) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
- (c) 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,

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has been finally disposed of.

(4) Where, in relation to an eligible scheme, an assessment period within Article 143(3) comes to an end because the conditions in paragraph (5) are satisfied, the trustees or managers of the scheme must continue the winding up of the scheme begun (whether in accordance with this Article or otherwise) before that assessment period.

(5) The conditions are—

- (a) that an application is made by, or notice is given to, the trustees or managers of the scheme under Article 141 (applications and notifications where closed schemes have insufficient assets),
- (b) <sup>F2</sup> that the [<sup>F4</sup>determination made by the Board or] valuation obtained by the Board in respect of the scheme under Article 142(3) has become binding, and
- (c) <sup>F2</sup> that the Board is not required to assume responsibility for the scheme by virtue of Article 142(1) (duty to assume responsibility for closed scheme).

(6) <sup>F1</sup> Where a scheme is wound up in accordance with paragraph (1)(a), the winding up is to be taken as beginning immediately before the assessment period.

(7) Without prejudice to the power to give directions under Article 118, but subject to any order made under paragraph (8), the Board may give the trustees or managers of the scheme directions relating to the manner of the winding up of the scheme under this Article (and may vary or revoke any such direction given by it).

(8) The Regulator may by order direct any person specified in the order—

- (a) to take such steps as are so specified as it considers are necessary as a result of—
  - (i) the winding up of the scheme beginning, by virtue of paragraph (6), immediately before the assessment period, or
  - (ii) the winding up of the scheme being continued under paragraph (1)(b), and
- (b) to take those steps within a period specified in the order.

(9) If the trustees or managers of a scheme fail to comply with a direction to them under paragraph (7), or contained in an order under paragraph (8), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(10) That Article also applies to any other person who, without reasonable excuse, fails to comply with a direction to him contained in an order under paragraph (8).

(11) <sup>F1</sup> The winding up of a scheme under this Article is as effective in law as if it had been made under powers conferred by or under the scheme.

(12) <sup>F1</sup> This Article must be complied with in relation to a scheme—

- (a) in spite of any statutory provision or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up, and
- (b) without regard to any such statutory provision, rule of law or rule of the scheme as would otherwise require or might otherwise be taken to require the implementation of any procedure or the obtaining of any consent with a view to the winding up.

(13) Where an assessment period in relation to an eligible scheme comes to an end by virtue of the conditions in paragraph (2) or (5) being satisfied, paragraphs (1) to (4) of Article 134 apply as they apply where an assessment period comes to an end by virtue of the Board ceasing to be involved with the scheme, except that in paragraph (2) of that Article the reference to Article 198 is to be read as a reference to paragraph (6) of this Article.

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(14) Where a public service pension scheme [<sup>F5</sup>(within the meaning of the Pension Schemes Act)] is required to be wound up under this Article, the appropriate authority may by order make provision modifying any statutory provision in which the scheme is contained or under which it is made.

(15) In paragraph (14), “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury or the Department of Finance and Personnel as having responsibility for the particular scheme.

- F1** mod. by SR 2005/91
- F2** mod. by SR 2005/55
- F3** Words in art. 138(2)(c) inserted (23.7.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), s. 34(3), [Sch. 4 para. 16](#); S.R. 2012/265, art. 2(4)(a)(iii)
- F4** Words in art. 138(5)(b) inserted (23.7.2012) by [Pensions Act \(Northern Ireland\) 2012 \(c. 3\)](#), s. 34(3), [Sch. 4 para. 10](#); S.R. 2012/265, art. 2(4)(a)(ii)
- F5** Words in art. 138(14) inserted (28.4.2014) by [Public Service Pensions Act \(Northern Ireland\) 2014 \(c. 2\)](#), s. 37(2), [Sch. 4 para. 18](#); S.R. 2014/123, art. 4(e)

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#### **Commencement Information**

- II** Art. 138 wholly in operation at 6.4.2007; art. 138 not in operation at date of making see art. 1(2); art. 138(1)(2)(a)(c)(6)-(15) in operation at 6.4.2005 by [S.R. 2005/48](#), art. 2(7), [Sch. Pt. 7](#); art. 138 in operation at 6.4.2007 in so far as it is not already in operation by [S.R. 2006/352](#), [art. 2\(5\)](#), [Sch. Pt. 2](#)

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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\(b\)](#)