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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**

*Eligible schemes*

**Eligible schemes**

**110.**—(1) Subject to the following provisions of this Article, in this Part references to an “eligible scheme” are to an occupational pension scheme which—

- (a) is not a money purchase scheme, and
- (b) is not a prescribed scheme or a scheme of a prescribed description.

(2) A scheme is not an eligible scheme if it is being wound up immediately before the day appointed by the Department by order for the purposes of this paragraph.

(3) Regulations may provide that where—

- (a) an assessment period begins in relation to an eligible scheme (see Article 116), and
- (b) after the beginning of that period, the scheme ceases to be an eligible scheme,

the scheme is, in such circumstances as may be prescribed, to be treated as remaining an eligible scheme for the purposes of such of the provisions mentioned in paragraph (4) as may be prescribed.

(4) Those provisions are—

- (a) any provision of this Part, and
- (b) any other provision of this Order in which “eligible scheme” has the meaning given by this Article.

(5) Regulations may also provide that a scheme which would be an eligible scheme in the absence of this paragraph is not an eligible scheme in such circumstances as may be prescribed.

*Circumstances in which Board assumes responsibility for eligible schemes*

**Duty to assume responsibility for schemes following insolvency event**

**111.**—(1) This Article applies where a qualifying insolvency event has occurred in relation to the employer in relation to an eligible scheme.

(2) The Board must assume responsibility for the scheme in accordance with this Chapter if—

- (a) the value of the assets of the scheme at the relevant time was less than the amount of the protected liabilities at that time (see Articles 115 and 127),
- (b) after the relevant time a scheme failure notice is issued under Article 106(2)(a) in relation to the scheme and that notice becomes binding, and
- (c) a withdrawal event has not occurred in relation to the scheme in respect of a withdrawal notice which has been issued during the period—
  - (i) beginning with the occurrence of the qualifying insolvency event, and
  - (ii) ending immediately before the issuing of the scheme failure notice under Article 106(2)(a),
 and the occurrence of such a withdrawal event in respect of a withdrawal notice issued during that period is not a possibility (see Article 133).
- (3) For the purposes of this Article, in relation to an eligible scheme an insolvency event (“the current event”) in relation to the employer is a qualifying insolvency event if—
  - (a) it occurs on or after the day appointed under Article 110(2), and
  - (b) it—
    - (i) is the first insolvency event to occur in relation to the employer on or after that day, or
    - (ii) does not occur within an assessment period (see Article 116) in relation to the scheme which began before the occurrence of the current event.
- (4) For the purposes of this Article—
  - (a) the reference in paragraph (2)(a) to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules, and
  - (b) “the relevant time” means the time immediately before the qualifying insolvency event occurs.
- (5) This Article is subject to Articles 130 and 131 (cases where Board must refuse to assume responsibility for a scheme).

### **Duty to assume responsibility for schemes following application or notification**

**112.—**(1) This Article applies where, in relation to an eligible scheme, the trustees or managers of the scheme—

- (a) make an application under paragraph (1) of Article 113 (an “Article 113 application”), or
  - (b) receive a notice from the Board under paragraph (5)(a) of that Article (an “Article 113 notification”).
- (2) The Board must assume responsibility for the scheme in accordance with this Chapter if—
- (a) the value of the assets of the scheme at the relevant time was less than the amount of the protected liabilities at that time (see Articles 115 and 127),
  - (b) after the relevant time the Board issues a scheme failure notice under Article 114(2) in relation to the scheme and that notice becomes binding, and
  - (c) a withdrawal event has not occurred in relation to the scheme in respect of a withdrawal notice which has been issued during the period—
    - (i) beginning with the making of the Article 113 application or, as the case may be, the receipt of the Article 113 notification, and
    - (ii) ending immediately before the issuing of the scheme failure notice under Article 114(2),

and the occurrence of such a withdrawal event in respect of a withdrawal notice issued during that period is not a possibility (see Article 133).

(3) In paragraph (2)—

(a) the reference in sub-paragraph (a) to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules, and

(b) “the relevant time” means the time immediately before the Article 113 application was made or, as the case may be, the Article 113 notification was received.

(4) An application under Article 113(1) or notification under Article 113(5)(a) is to be disregarded for the purposes of paragraph (1) if it is made or given during an assessment period (see Article 116) in relation to the scheme which began before the application was made or notification was given.

(5) This Article is subject to Articles 130 and 131 (cases where Board must refuse to assume responsibility for a scheme).

### **Applications and notifications for the purposes of Article 112**

**113.**—(1) Where the trustees or managers of an eligible scheme become aware that—

(a) the employer in relation to the scheme is unlikely to continue as a going concern, and

(b) the prescribed requirements are met in relation to the employer,

they must make an application to the Board for it to assume responsibility for the scheme under Article 112.

(2) Where the Board receives an application under paragraph (1), it must give a copy of the application to—

(a) the Regulator, and

(b) the employer.

(3) An application under paragraph (1) must—

(a) be in the prescribed form and contain the prescribed information, and

(b) be made within the prescribed period.

(4) Where the Regulator becomes aware that—

(a) the employer in relation to an eligible scheme is unlikely to continue as a going concern, and

(b) the requirements mentioned in paragraph (1)(b) are met in relation to the employer,

it must give the Board a notice to that effect.

(5) Where the Board receives a notice under paragraph (4), it must—

(a) give the trustees or managers of the scheme a notice to that effect, and

(b) give the employer a copy of that notice.

(6) The duty imposed by paragraph (1) does not apply where the trustees or managers of an eligible scheme become aware as mentioned in that paragraph by reason of a notice given to them under paragraph (5).

(7) The duty imposed by paragraph (4) does not apply where the Regulator becomes aware as mentioned in that paragraph by reason of a copy of an application made by the trustees or managers of the eligible scheme in question given to the Regulator under paragraph (2).

(8) Regulations may require notices under this Article to be in the prescribed form and to contain the prescribed information.

**Board's duty where application or notification received under Article 113**

**114.**—(1) This Article applies where the Board—

- (a) receives an application under paragraph (1) of Article 113 and is satisfied that sub-paragraphs (a) and (b) of that paragraph are satisfied in relation to the application, or
- (b) is notified by the Regulator under Article 113(4).

(2) If the Board is able to confirm that a scheme rescue is not possible, it must as soon as reasonably practicable issue a notice to that effect (a “scheme failure notice”).

(3) If the Board is able to confirm that a scheme rescue has occurred, it must as soon as reasonably practicable issue a notice to that effect (a “withdrawal notice”).

(4) The Board must, as soon as reasonably practicable, give a copy of any notice issued under paragraph (2) or (3) to—

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

(5) For the purposes of this Article—

- (a) the Board is able to confirm that a scheme rescue has occurred in relation to an occupational pension scheme if, and only if, it is able to confirm such matters as are prescribed for the purposes of this sub-paragraph, and
- (b) the Board is able to confirm that a scheme rescue is not possible in relation to such a scheme if, and only if, it is able to confirm such matters as are prescribed for the purposes of this sub-paragraph.

(6) For the purposes of this Part a notice issued under paragraph (2) or (3) 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 notice issued under paragraph (2) or (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 Regulator,
- (b) the trustees or managers of the scheme, and
- (c) the employer.

(8) Notices under this Article must be in the prescribed form and contain such information as may be prescribed.

(9) A notice given under paragraph (7) in relation to a withdrawal notice under paragraph (3) which has become binding must state the time from which the Board ceases to be involved with the scheme (see Article 133).

**Protected liabilities**

**115.**—(1) For the purposes of this Chapter the protected liabilities, in relation to an eligible scheme, at a particular time (“the relevant time”) are—

- (a) the cost of securing benefits for and in respect of members of the scheme which correspond to the compensation which would be payable, in relation to the scheme, in accordance with the pension compensation provisions (see Article 146) if the Board assumed responsibility for the scheme in accordance with this Chapter,
- (b) liabilities of the scheme which are not liabilities to, or in respect of, its members, and
- (c) the estimated cost of winding up the scheme.

(2) For the purposes of determining the cost of securing benefits within paragraph (1)(a), references in Articles 124 to 126 and Schedule 6 (pension compensation provisions) to the assessment date are to be read as references to the date on which the time immediately after the relevant time falls.

#### *Restrictions on schemes during the assessment period*

#### **Assessment periods**

**116.**—(1) In this Part references to an assessment period are to be construed in accordance with this Article.

(2) Where, in relation to an eligible scheme, a qualifying insolvency event occurs in relation to the employer, an assessment period—

- (a) begins with the occurrence of that event, and
- (b) ends when—
  - (i) the Board ceases to be involved with the scheme (see Article 133),
  - (ii) the trustees or managers of the scheme receive a transfer notice under Article 144, or
  - (iii) the conditions in Article 138(2) (no scheme rescue but sufficient assets to meet protected liabilities etc.) are satisfied in relation to the scheme,whichever first occurs.

(3) In paragraph (2) “qualifying insolvency event” has the meaning given by Article 111(3).

(4) Where, in relation to an eligible scheme, an application is made under Article 113(1) or a notification is received under Article 113(5)(a), an assessment period—

- (a) begins when the application is made or the notification is received, and
- (b) ends when—
  - (i) the Board ceases to be involved with the scheme (see Article 133),
  - (ii) the trustees or managers of the scheme receive a transfer notice under Article 144, or
  - (iii) the conditions in Article 138(2) (no scheme rescue but sufficient assets to meet protected liabilities etc.) are satisfied in relation to the scheme,whichever first occurs.

(5) For the purposes of paragraph (4) an application under Article 113(1) or notification under Article 113(5)(a) is to be disregarded if it is made or given during an assessment period in relation to the scheme which began before the application was made or notification was given.

(6) This Article is subject to Article 143 (which provides for further assessment periods to begin in certain circumstances where schemes are required to wind up or continue winding up under Article 138).

**Admission of new members, payment of contributions etc.**

**117.—**(1) This Article applies where there is an assessment period in relation to an eligible scheme.

(2) No new members of any class may be admitted to the scheme during the assessment period.

(3) Except in prescribed circumstances and subject to prescribed conditions, no further contributions (other than those due to be paid before the beginning of the assessment period) may be paid towards the scheme during the assessment period.

(4) Any obligation to pay contributions towards the scheme during the assessment period (including any obligation under Article 49(8) of the 1995 Order to pay amounts deducted corresponding to such contributions) is to be read subject to paragraph (3) and Article 134 (obligation to pay contributions when assessment period ends).

(5) No benefits may accrue under the scheme rules to, or in respect of, members of the scheme during the assessment period.

(6) Paragraph (5) does not prevent any increase, in a benefit, which would otherwise accrue in accordance with the scheme or any statutory provision.

This paragraph is subject to Article 122 (which limits the scheme benefits payable during an assessment period).

(7) Paragraph (5) does not prevent the accrual of money purchase benefits to the extent that they are derived from income or capital gains arising from the investment of payments which are made by, or in respect of, a member of the scheme.

(8) Where a person is entitled to a pension credit derived from another person's shareable rights under the scheme, nothing in this Article prevents the trustees or managers of the scheme discharging their liability in respect of the credit under Chapter 1 of Part V of the 1999 Order (sharing of rights under pension arrangements) by conferring appropriate rights under the scheme on that person.

(9) In paragraph (8)—

“appropriate rights” has the same meaning as in paragraph 5 of Schedule 5 to that Order (pension credits: mode of discharge);

“shareable rights” has the same meaning as in Chapter 1 of Part V of that Order (sharing of rights under pension arrangements).

(10) Any action taken in contravention of this Article is void.

(11) Disregarding paragraph (10), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with this Article.

**Directions**

**118.—**(1) This Article applies where there is an assessment period in relation to an eligible scheme.

(2) With a view to ensuring that the scheme's protected liabilities do not exceed its assets or, if they do exceed its assets, that the excess is kept to a minimum, the Board may give a relevant person in relation to the scheme directions regarding the exercise during that period of his powers in respect of—

- (a) the investment of the scheme's assets,
- (b) the incurring of expenditure,
- (c) the instigation or conduct of legal proceedings, and
- (d) such other matters as may be prescribed.

(3) In paragraph (2)—

(a) “relevant person” in relation to a scheme means—

- (i) the trustees or managers of the scheme,
- (ii) the employer in relation to the scheme, or
- (iii) such other persons as may be prescribed, and

(b) the reference to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

(4) The Board may revoke or vary any direction under this Article.

(5) Where a direction under this Article given to the trustees or managers of a scheme is not complied with, Article 10 of the 1995 Order (civil penalties) applies to any such trustee or manager who has failed to take all reasonable steps to secure compliance with the direction.

(6) That Article also applies to any other person who, without reasonable excuse, fails to comply with a direction given to him under this Article.

### **Restrictions on winding up, discharge of liabilities etc.**

**119.**—(1) This Article applies where there is an assessment period in relation to an eligible scheme.

(2) Subject to paragraph (3), the winding up of the scheme must not begin during the assessment period.

(3) Paragraph (2) does not apply to the winding up of the scheme in pursuance of an order by the Regulator under Article 11(3A) of the 1995 Order (Regulator’s powers to wind up occupational pension schemes to protect Pension Protection Fund) directing the scheme to be wound up (and Article 198 makes provision for the backdating of the winding up).

(4) During the assessment period, except in prescribed circumstances and subject to prescribed conditions—

- (a) no transfers of, or transfer payments in respect of, any member’s rights under the scheme rules are to be made from the scheme, and
- (b) no other steps may be taken to discharge any liability of the scheme to or in respect of a member of the scheme in respect of—
  - (i) pensions or other benefits, or
  - (ii) such other liabilities as may be prescribed.

(5) Paragraph (4)—

- (a) is subject to Article 122, and
- (b) applies whether or not the scheme was being wound up immediately before the assessment period or began winding up by virtue of paragraph (3).

(6) Paragraph (7) applies where, on the commencement of the assessment period—

- (a) a member’s pensionable service terminates, and
- (b) he becomes a person to whom Chapter 5 of Part IV of the Pension Schemes Act (early leavers: cash transfer sums and contribution refunds) applies.

Article 134(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within sub-paragraph (a) or (b).

(7) Where this paragraph applies, during the assessment period—

- (a) no right or power conferred by that Chapter may be exercised, and

(b) no duty imposed by that Chapter may be discharged.

(8) Where a person is entitled to a pension credit derived from another person's shareable rights (within the meaning of Chapter 1 of Part V of the 1999 Order (sharing of rights under pension arrangements)) under the scheme, nothing in paragraph (4) prevents the trustees or managers of the scheme discharging their liability in respect of the credit in accordance with that Chapter.

(9) Any action taken in contravention of this Article is void, except to the extent that the Board validates the action (see Article 120).

(10) Disregarding paragraph (9), where there is a contravention of this Article, 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 with this Article.

(11) The Regulator may not make a freezing order (see Article 19) in relation to the scheme during the assessment period.

### **Power to validate contraventions of Article 119**

**120.**—(1) The Board may validate an action for the purposes of Article 119(9) only if it is satisfied that to do so is consistent with the objective of ensuring that the scheme's protected liabilities do not exceed its assets or, if they do exceed its assets, that the excess is kept to a minimum.

(2) Where the Board determines to validate, or not to validate, any action of the trustees or managers for those purposes, it must issue a notice to that effect and give a copy of that notice to—

- (a) the Regulator,
- (b) the trustees or managers of the scheme,
- (c) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer, and
- (d) any other person who appears to the Board to be directly affected by the determination.

(3) A notice under paragraph (2) must contain a statement of the Board's reasons for the determination.

(4) The validation of an action does not take effect—

- (a) until—
  - (i) the Board has issued a notice under paragraph (2) relating to the determination, and
  - (ii) the period within which the issue of that notice may be reviewed by virtue of Chapter 6 has expired, and
- (b) if the issue of the notice is so reviewed, until—
  - (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.

(5) In paragraph (1) the reference to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

### **Board to act as creditor of the employer**

**121.**—(1) Paragraph (2) applies where there is an assessment period in relation to an eligible scheme.



(2) During the assessment period, the rights and powers of the trustees or managers of the scheme in relation to any debt (including any contingent debt) due to them by the employer, whether by virtue of Article 75 of the 1995 Order (deficiencies in the scheme assets) or otherwise, are exercisable by the Board to the exclusion of the trustees or managers.

(3) Where, by virtue of paragraph (2), any amount is paid to the Board in respect of such a debt, the Board must pay that amount to the trustees or managers of the scheme.

### **Payment of scheme benefits**

**122.**—(1) Paragraphs (2) and (3) apply where there is an assessment period in relation to an eligible scheme.

(2) The benefits payable to or in respect of any member under the scheme rules during the assessment period must be reduced to the extent necessary to ensure that they do not exceed the compensation which would be payable to or in respect of the member in accordance with this Chapter if—

- (a) the Board assumed responsibility for the scheme in accordance with this Chapter, and
- (b) the assessment date referred to in Schedule 6 were the date on which the assessment period began.

(3) But where, on the commencement of the assessment period—

- (a) a member's pensionable service terminates, and
- (b) he becomes a person to whom Chapter 5 of Part IV of the Pension Schemes Act (early leavers: cash transfer sums and contribution refunds) applies,

no benefits are payable to or in respect of him under the scheme during the assessment period.

(4) Article 134(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within sub-paragraph (a) or (b) of paragraph (3).

(5) Nothing in paragraph (3) prevents the payment of benefits attributable (directly or indirectly) to a pension credit during the assessment period in accordance with paragraph (2).

(6) Where at any time during the assessment period the scheme is being wound up, subject to any reduction required under paragraph (2) and to paragraph (3), the benefits payable to or in respect of any member under the scheme rules during that period are the benefits that would have been so payable in the absence of the winding up of the scheme.

(7) Paragraphs (2), (3) and (6) are subject to Articles 134(1) to (3) and 138(13) (which provide for the adjustment of amounts paid during an assessment period when that period ends other than as a result of the Board assuming responsibility for the scheme).

(8) For the purposes of paragraphs (2) and (3) the trustees or managers of the scheme may take such steps as they consider appropriate (including steps adjusting future payments under the scheme rules) to recover any overpayment or pay any shortfall.

(9) Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with paragraphs (2) and (3).

(10) Regulations may provide that, where there is an assessment period in relation to an eligible scheme—

- (a) in such circumstances as may be prescribed paragraph (2) does not operate to require the reduction of benefits payable to or in respect of any member;
- (b) the commencement of a member's pension or payment of a member's lump sum or other benefits is, in such circumstances and on such terms and conditions as may be prescribed,

to be postponed for the whole or any part of the assessment period for which he continues in employment after attaining normal pension age.

(11) For the purposes of paragraph (10)—

- (a) “normal pension age”, in relation to an eligible scheme and any pension or other benefit under it, means the age specified in the scheme rules as the earliest age at which the pension or other benefit becomes payable without actuarial adjustment (disregarding any scheme rule making special provision as to early payment on the grounds of ill health), and
- (b) where different ages are so specified in relation to different parts of a pension or other benefit—
  - (i) paragraph (10) has effect as if those parts were separate pensions or, as the case may be, benefits, and
  - (ii) in relation to a part of a pension or other benefit, the reference in that paragraph to normal pension age is to be read as a reference to the age specified in the scheme rules as the earliest age at which that part becomes so payable.

(12) Regulations may provide that, in prescribed circumstances, where—

- (a) a member of the scheme died before the commencement of the assessment period, and
- (b) during the assessment period, a person becomes entitled under the scheme rules to a benefit of a prescribed description in respect of the member,

the benefit, or any part of it, is, for the purposes of paragraph (2), to be treated as having become payable before the commencement of the assessment period.

(13) Nothing in paragraph (2) or (3) applies to money purchase benefits.

### **Loans to pay scheme benefits**

**123.**—(1) Paragraph (2) applies where Article 122(2) applies in relation to an eligible scheme.

(2) Where the Board is satisfied that the trustees or managers of the scheme are not able to pay benefits under the scheme rules (reduced in accordance with Article 122(2)) as they fall due, it may, on an application by the trustees or managers, lend to them such amounts as the Board considers appropriate for the purpose of enabling them to pay those benefits.

(3) Where an amount lent to the trustees or managers of a scheme under paragraph (2) is outstanding at—

- (a) the time the Board ceases to be involved with the scheme, or
- (b) if earlier—
  - (i) the time during the assessment period when an order is made under Article 11(3A) of the 1995 Order directing the winding up of the scheme, or
  - (ii) where no such order is made during that period, the time when the assessment period ends because the conditions in Article 138(2) or (5) are satisfied,

that amount, together with the appropriate interest on it, falls to be repaid by the trustees or managers of the scheme to the Board at that time.

(4) No loan may be made under paragraph (2) after the time mentioned in paragraph (3)(b)(i).

(5) In paragraph (2) the reference to “benefits” does not include money purchase benefits.

(6) In paragraph (3) “the appropriate interest” on an amount lent under paragraph (2) means interest at the prescribed rate from the time the amount was so lent until repayment.

(7) Subject to this Article, the Board may make a loan under paragraph (2) on such terms as it thinks fit.

### *Ill health pensions*

#### **Reviewable ill health pensions**

**124.**—(1) This Article applies where there is an assessment period in relation to an eligible scheme.

(2) The Board may review a reviewable ill health pension in respect of a member if—

- (a) disregarding Article 125, the member would be entitled to compensation under paragraph 3 of Schedule 6 in respect of the pension if the Board assumed responsibility for the scheme,
- (b) the member did not attain normal pension age in respect of the pension before the assessment date, and
- (c) the pension is attributable to the member's pensionable service.

(3) An ill health pension in respect of a member is reviewable for the purposes of paragraph (2) if the member is entitled to the pension by reason of an award under the scheme rules ("the award") which was made—

- (a) in the period of three years ending immediately before the assessment date, or
- (b) before the end of the prescribed period beginning with the assessment date, in response to an application made before that date.

(4) Where—

- (a) before the assessment date, an application was made under the scheme for the award of a pension before normal pension age by virtue of any provision of the scheme rules making special provision as to early payment of pension on grounds of ill health, and
- (b) the trustees or managers of the scheme failed to decide the application before the end of the period mentioned in paragraph (3)(b),

Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure that the application was decided before the end of that period.

(5) Where—

- (a) the award was made in response to an application which—
  - (i) was made on or after the assessment date, or
  - (ii) was made before that date but not decided by the trustees or managers of the scheme before the end of the period mentioned in paragraph (3)(b), and

(b) in the absence of this paragraph, the award would take effect before the assessment date, the award is, for the purposes of determining the compensation payable under this Chapter in a case where the Board assumes responsibility for the scheme, to be treated as taking effect after the date on which the decision to make the award was made.

(6) Regulations must prescribe the procedure to be followed in relation to the review of a pension under this Article and any subsequent decision under Article 125.

#### **Effect of a review**

**125.**—(1) This Article applies where, during an assessment period in relation to an eligible scheme, the Board reviews an ill health pension by virtue of Article 124.

(2) Where the conditions of paragraph (3) are satisfied, the Board may determine that the compensation payable in respect of the pension, in a case where the Board assumes responsibility for the scheme, is to be determined in the prescribed manner on and after the relevant date.

- (3) The conditions are—
- (a) that the annual rate of compensation which would be payable under this Part in respect of the pension at the assessment date, if the Board assumed responsibility for the scheme, exceeds the notional reviewed rate of compensation in respect of the pension,
  - (b) that the Board is satisfied—
    - (i) that the decision to make the award was made in ignorance of, or was based upon a mistake as to, a material fact relevant to the decision,
    - (ii) that, at the time that decision was made, the member knew or could reasonably have been expected to know of that fact and that it was relevant to the decision, and
    - (iii) that, had the trustees or managers known about, or not been mistaken as to, that fact, they could not reasonably have decided to make the award, and
  - (c) that the Board is not satisfied that the criteria in the admissible rules governing entitlement to early payment of pension on grounds of ill health were satisfied in respect of the member at any time after that decision but before the assessment date.
- (4) For the purposes of paragraph (2) “the relevant date” means the date during the assessment period on which a scheme valuation in relation to the scheme becomes binding.
- (5) The power to make a decision in respect of the pension under paragraph (2) may only be exercised at a time which falls—
- (a) during the assessment period but before the time the Board first approves a scheme valuation under Article 128 in relation to the scheme, and
  - (b) within a reasonable period beginning with the assessment date or, where the decision to make the award was made at a later date, that date.
- (6) Regulations made for the purposes of paragraph (2) may, in particular, include provision applying any provision of Schedule 6 with such modifications as may be prescribed.

#### **Articles 124 and 125: interpretation**

**126.—**(1) For the purposes of Articles 124 and 125—

“admissible rules” is to be construed in accordance with Schedule 6;

“assessment date” means the date on which the assessment period begins;

“ill health pension”, in relation to a scheme, means a pension which, immediately before the assessment date, is a pension to which a person is entitled under the admissible rules in circumstances where that entitlement arose before normal pension age by virtue of any provision of the admissible rules making special provision as to early payment of pension on grounds of ill health;

“normal pension age”, in relation to a scheme and any pension under it, means the age specified in the admissible rules as the earliest age at which the pension becomes payable without actuarial adjustment (disregarding any admissible rule making special provision as to early payment on the grounds of ill health) and sub-paragraphs (2) and (3) of paragraph 34 of Schedule 6 apply in relation to this Article as they apply in relation to that Schedule;

“notional reviewed rate of compensation”, in respect of an ill health pension, means—

- (a) the annual rate of compensation which would be payable in respect of the pension at the assessment date, if the Board assumed responsibility for the scheme and the compensation so payable at that date was determined in accordance with regulations under Article 125(2), or
  - (b) if no such compensation would have been so payable at that date, nil;
- “pensionable service” is to be construed in accordance with Schedule 6;

“scheme valuation”, in relation to a scheme, means a valuation under Article 127 of the assets and protected liabilities of the scheme as at the time immediately before the assessment period begins.

(2) For the purposes of Article 124(4)—

- (a) the definition of “normal pension age” in paragraph (1), and
- (b) sub-paragraphs (2) and (3) of paragraph 34 of Schedule 6 as they apply by virtue of that definition,

have effect as if the references in those provisions to the admissible rules were references to the scheme rules.

(3) Paragraph 37(4) of Schedule 6 (references to “ill health” to be construed in accordance with regulations) applies in relation to Articles 124 and 125 and this Article as if, in that provision, the reference to that Schedule included a reference to those Articles and this Article.

(4) In those Articles references to the Board assuming responsibility for the scheme are to the Board assuming responsibility for the scheme in accordance with this Chapter at the time the assessment period in question comes to an end.

#### *Valuation of assets and liabilities*

#### **Board’s obligation to obtain valuation of assets and protected liabilities**

**127.**—(1) This Article applies in a case within paragraph (1) of Article 111 or 112.

(2) For the purposes of determining whether the condition in paragraph (2)(a) of the Article in question is satisfied, the Board must, as soon as reasonably practicable, obtain an actuarial valuation of the scheme as at the relevant time.

(3) For those purposes, 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 this Article, 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.

(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.

(6) Subject to any provision made under paragraph (4), the matters mentioned in sub-paragraphs (a) and (b) of that paragraph are to be determined, calculated and verified in accordance with guidance issued by the Board.

(7) 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) requires the 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), may affect the value of the assets or the amount of the protected liabilities of the scheme for the purposes of 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) requires the 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) “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,

(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 approves a valuation of the scheme under Article 128 after the relevant time,

(c) “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) 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.

### **Approval of valuation**

**128.—**(1) This Article applies where the Board obtains a valuation in respect of a scheme under Article 127.

(2) Where the Board is satisfied that the valuation has been prepared in accordance with that Article, 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) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (3) Where the Board is not so satisfied, it must obtain another valuation under that Article.

### **Binding valuations**

**129.**—(1) For the purposes of this Chapter a valuation obtained under Article 127 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) 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
- (c) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

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

### *Refusal to assume responsibility*

### **Schemes which become eligible schemes**

**130.**—(1) Regulations may provide that where the Board is satisfied that an eligible scheme was not such a scheme throughout such period as may be prescribed, the Board must refuse to assume responsibility for the scheme under this Chapter.

(2) Where, by virtue of paragraph (1), the Board is required to refuse to assume responsibility for a scheme, it—

- (a) must issue a notice to that effect (a “withdrawal notice”), and
- (b) give a copy of that notice to—
  - (i) the Regulator,
  - (ii) the trustees or managers of the scheme, and

(iii) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

(3) For the purposes of this Part a withdrawal notice issued by virtue of this Article 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.

(4) Where a withdrawal notice issued by virtue of this Article 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 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) Notices under this Article must be in the prescribed form and contain such information as may be prescribed.

(6) A notice given under paragraph (4) must state the time from which the Board ceases to be involved with the scheme (see Article 133).

### **New schemes created to replace existing schemes**

**131.**—(1) The Board must refuse to assume responsibility for a scheme (“the new scheme”) under this Chapter where it is satisfied that—

- (a) the new scheme was established during such period as may be prescribed,
- (b) the employer in relation to the new scheme was, at the date of establishment of that scheme, also the employer in relation to a scheme established before the new scheme (“the old scheme”),
- (c) a transfer or transfers of, or a transfer payment or transfer payments in respect of, any rights of members under the old scheme has or have been made to the new scheme, and
- (d) the main purpose or one of the main purposes of establishing the new scheme and making the transfer or transfers, or transfer payment or transfer payments, was to enable those members to receive compensation under the pension compensation provisions in respect of their rights under the new scheme in circumstances where, in the absence of the transfer or transfers, regulations under Article 130 would have operated to prevent such payments in respect of their rights under the old scheme.

(2) Where, under paragraph (1), the Board is required to refuse to assume responsibility for a scheme, it—

- (a) must issue a notice to that effect (a “withdrawal notice”), and
- (b) give a copy of that notice to—
  - (i) the Regulator,
  - (ii) the trustees or managers of the scheme, and



- (iii) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (3) For the purposes of this Part a withdrawal notice issued under this Article 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.
- (4) Where a withdrawal notice issued under this Article 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 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) Notices under this Article must be in the prescribed form and contain such information as may be prescribed.
- (6) A notice given under paragraph (4) must state the time from which the Board ceases to be involved with the scheme (see Article 133).

#### **Withdrawal following issue of Article 106(4) notice**

- 132.**—(1) This Article applies where—
- (a) a notice under Article 106(4) (inability to confirm status of scheme) is issued in relation to an eligible scheme and becomes binding, and
  - (b) a withdrawal event has not occurred in relation to the scheme in respect of a withdrawal notice which has been issued during the period—
    - (i) beginning with the occurrence of the last insolvency event in relation to the employer, and
    - (ii) ending immediately before the notice under Article 106(4) becomes binding,and the occurrence of such a withdrawal event in respect of a withdrawal notice issued during that period is not a possibility (see Article 133).
- (2) The Board must determine whether any insolvency event—
- (a) has occurred in relation to the employer since the issue of the notice under Article 106(4), or
  - (b) is likely to so occur before the end of the period of six months beginning with the date on which this Article applies.
- (3) If the Board determines under paragraph (2) that no insolvency event has occurred or is likely to occur as mentioned in that paragraph, it must issue a notice to that effect (a “withdrawal notice”).
- (4) Where—
- (a) no withdrawal notice is issued under paragraph (3) before the end of the period mentioned in paragraph (2)(b), and

(b) no further insolvency event occurs in relation to the employer during that period, the Board must issue a notice to that effect (a “withdrawal notice”).

(5) Where the Board is required to issue a withdrawal notice under this Article, it must give a copy of the notice to—

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

(6) For the purposes of this Part, a withdrawal notice issued under this Article 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 withdrawal notice issued under this Article 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 Regulator,
- (b) the trustees or managers of the scheme, and
- (c) the employer.

(8) Notices under this Article must be in the prescribed form and contain such information as may be prescribed.

(9) A notice given under paragraph (7) must state the time from which the Board ceases to be involved with the scheme (see Article 133).

### *Cessation of involvement with a scheme*

#### **Circumstances in which Board ceases to be involved with an eligible scheme**

**133.**—(1) Where an assessment period begins in relation to an eligible scheme, the Board ceases to be involved with the scheme, for the purposes of this Part, on the occurrence of the first withdrawal event after the beginning of that period.

(2) For this purpose the following are withdrawal events in relation to a scheme—

- (a) a withdrawal notice issued under Article 106(2)(b) (scheme rescue has occurred) becoming binding;
- (b) a withdrawal notice issued under Article 114(3) (scheme rescue has occurred) becoming binding;
- (c) a withdrawal notice issued under or by virtue of Article 130 or 131 (refusal to assume responsibility) becoming binding;
- (d) a withdrawal notice issued under Article 132 (no insolvency event has occurred or is likely to occur) becoming binding,

and references in this Chapter to a “withdrawal event” are to be construed accordingly.

(3) Paragraph (4) applies where a withdrawal notice mentioned in paragraph (2) is issued in relation to a scheme and becomes binding and—

- (a) an insolvency event in relation to the employer occurs during the interim period and, if paragraph (4) did not apply, the event would not be a qualifying insolvency event within the meaning given by paragraph (3) of Article 111 solely because the condition in head (ii) of sub-paragraph (b) of that paragraph would not be satisfied, or
- (b) an application under Article 113(1) is made, or a notification under Article 113(5)(a) is given, in relation to the scheme during the interim period and, if paragraph (4) did not apply, the application or notification would be disregarded for the purposes of—
  - (i) paragraph (1) of Article 112 by virtue of paragraph (4) of that Article, and
  - (ii) paragraph (4) of Article 116 by virtue of paragraph (5) of that Article.

(4) In such a case, the withdrawal notice is to be treated for the purposes of paragraphs (1) and (2), as if the time when it became binding was the time immediately before—

- (a) in a case falling within paragraph (3)(a), the occurrence of the insolvency event, and
- (b) in a case falling within paragraph (3)(b), the making of the application under Article 113(1) or, as the case may be, the giving of the notification under Article 113(5)(a).

(5) For the purposes of paragraph (3), the “interim period” in relation to a scheme means the period beginning with the issuing of the withdrawal notice in relation to the scheme and ending with that notice becoming binding.

(6) For the purposes of this Chapter—

- (a) the occurrence of a withdrawal event in relation to a scheme in respect of a withdrawal notice issued during a particular period (“the specified period”) is a possibility until each of the following is no longer reviewable—
  - (i) any withdrawal notice which has been issued in relation to the scheme during the specified period;
  - (ii) any failure to issue such a withdrawal notice during the specified period;
  - (iii) any notice which has been issued by the Board under Chapter 2 or this Chapter which is relevant to the issue of a withdrawal notice in relation to the scheme during the specified period or to such a withdrawal notice which has been issued during that period becoming binding;
  - (iv) any failure to issue such a notice as is mentioned in head (iii), and
- (b) the issue of, or failure to issue, a notice is to be regarded as reviewable—
  - (i) during the period within which it may be reviewed by virtue of Chapter 6, and
  - (ii) if the matter is so reviewed, until—
    - (a) the review and any reconsideration,
    - (b) any reference to the PPF Ombudsman in respect of the matter, and
    - (c) any appeal against his determination or directions,has been finally disposed of.

### **Consequences of the Board ceasing to be involved with a scheme**

**134.**—(1) Where—

- (a) an assessment period comes to an end by virtue of the Board ceasing to be involved with an eligible scheme, and

(b) during the assessment period any amount of any benefit payable to a member, or to a person in respect of a member, under the scheme rules was not paid by reason of Article 122 (requirement to pay benefits in accordance with the pension compensation provisions), that amount falls due to the member, or as the case may be, person at the end of that period.

(2) Where the winding up of the scheme began before the end of the assessment period (whether by virtue of Article 198 (backdating the winding up of eligible schemes) or otherwise), the reference in paragraph (1)(b) to the amount of any benefit payable to a member, or to a person in respect of a member, under the scheme rules is a reference to the amount so payable taking account of any reduction required by virtue of Articles 73 to 73B of the 1995 Order (provisions relating to the winding up of certain schemes).

(3) Where—

- (a) an assessment period comes to an end by virtue of the Board ceasing to be involved with an eligible scheme, and
- (b) during the assessment period the amount of benefit paid to a member, or to a person in respect of a member, under the scheme rules exceeded the amount that would have been payable in the absence of Article 122(6) (requirement to disregard winding up when paying benefits during assessment period),

the trustees or managers of the scheme must, at the end of that period, take such steps as they consider appropriate (including steps to adjust future payments under the scheme rules) to recover an amount equal to the excess from the person to whom it was paid.

(4) Paragraphs (1) to (3) are without prejudice to Article 73A(2)(b) of the 1995 Order (requirement to adjust benefits paid to reflect liabilities which can be met on winding up).

(5) Regulations may provide that, in cases within sub-paragraph (a) of paragraph (1), benefits are to accrue under the scheme rules, in such circumstances as may be prescribed, to or in respect of members of the scheme in respect of any specified period of service being service in employment which, but for Article 117(5), would have qualified the member in question for those benefits under the scheme rules.

(6) Regulations under paragraph (5) may in particular make provision—

- (a) for benefits not to accrue to, or in respect of, a member unless contributions are paid by or on behalf of the member towards the scheme within a prescribed period;
- (b) for contributions towards the scheme which, but for Article 117, would have been payable by or on behalf of the employer (otherwise than on behalf of an employee) during the assessment period, to fall due;
- (c) requiring that such contributions as are mentioned in sub-paragraph (a) or (b) are accepted for the assessment period or any part of that period;
- (d) modifying Article 28 of the 1999 Order (reduction of benefit where a person's shareable rights are subject to a pension debit), in its application in relation to cases where benefits accrue under the scheme by virtue of regulations under paragraph (5).

(7) In this Article “contributions” means, in relation to an eligible scheme, contributions payable towards the scheme by or on behalf of the employer or the active members of the scheme in accordance with the schedule of contributions maintained under Article 206 in respect of the scheme.

## *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).

### *Closed schemes*

#### **Closed schemes**

**137.**—(1) This Article applies where Article 135(2) or (3) (scheme rescue not possible but scheme has sufficient assets to meet the protected liabilities) applies in relation to an eligible scheme.

(2) If the trustees or managers of the scheme are unable to obtain a full buy-out quotation, they must, within the authorised period, apply to the Board for authority to continue as a closed scheme.

(3) For the purposes of determining whether they must make an application under paragraph (2), the trustees or managers of the scheme must take all reasonable steps to obtain a full buy-out quotation in respect of the scheme.

(4) An application under paragraph (2) must—

- (a) be in the prescribed form and contain the prescribed information, and
- (b) be accompanied by evidence in the prescribed form which shows that the trustees or managers of the scheme have complied with the obligation under paragraph (3) but were unable to obtain a full buy-out quotation.

(5) Where the Board receives an application under paragraph (2), if it is satisfied that the trustees or managers have complied with the obligation under paragraph (3) but were unable to obtain a full buy-out quotation, it must authorise the scheme to continue as a closed scheme.

(6) Where the Board determines an application in respect of a scheme under this Article, 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.

(7) In this Article—

“authorised period” has the same meaning as in Article 135;

“determination notice” means a notice which is in the prescribed form and contains such information about the determination as may be prescribed;

“full buy-out 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 a relevant date, benefits in accordance with the member’s entitlement or accrued rights, including pension credit rights, under the scheme rules (other than his entitlement or rights in respect of money purchase benefits);

“pension credit rights” has the meaning given by Article 121(1) of the 1995 Order;

“relevant date” means a date within the authorised period.

(8) If the trustees or managers of the scheme fail to comply with paragraph (2) or (3), 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.



### *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) The conditions are—
- (a) 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) 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).
- (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,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) that the valuation obtained by the Board in respect of the scheme under Article 142(3) has become binding, and
  - (c) 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) 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) 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) 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.

(14) Where a public service pension scheme 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.

### *Provisions applying to closed schemes*

#### **Treatment of closed schemes**

**139.**—(1) In this Article “closed scheme” means an eligible scheme which is authorised under Article 137 to continue as a closed scheme.

(2) The provisions mentioned in paragraph (3) apply in relation to a closed scheme at any time when the trustees or managers of the scheme are required to wind up or continue winding up the scheme under Article 138 as if that time fell within an assessment period in relation to the scheme.

(3) The provisions are—

- (a) Article 36(5) and (6) (Board to act as creditor for debt due by virtue of a contribution notice under Article 34);
- (b) Article 45(5) and (6) (Board to act as creditor for debt due by virtue of a contribution notice under Article 43);
- (c) Article 50(5) and (6) (Board to act as creditor for debt due by virtue of a restoration order under Article 48);
- (d) Article 52(5) and (6) (Board to act as creditor for debt due by virtue of a contribution notice under Article 51);
- (e) Article 117 (admission of new members, payment of contributions etc.);
- (f) Article 118 (directions);
- (g) Article 121 (Board to act as creditor of the employer).

(4) Regulations may require the trustees or managers of a closed scheme in relation to which the provisions mentioned in paragraph (3) apply to comply with such requirements as may be prescribed when providing for the discharge of any liability to, or in respect of, a member of the scheme for pensions or other benefits.

#### **Valuations of closed schemes**

**140.**—(1) Regulations may make provision requiring the trustees or managers of closed schemes to obtain actuarial valuations of the scheme at such intervals as may be prescribed for the purposes of enabling them to determine—

- (a) the benefits payable under the scheme rules;
- (b) whether to make an application under Article 141.

(2) Regulations under this Article may prescribe how—

- (a) the assets, the full scheme liabilities and the protected liabilities in relation to closed schemes, and
- (b) their amount or value,

are to be determined, calculated and verified.

(3) Subject to any provision made under paragraph (2), those matters are to be determined, calculated and verified in accordance with guidance issued by the Board.

(4) In calculating the amount of any liabilities for the purposes of a valuation required by virtue 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.

(5) Nothing in regulations under this Article may require the trustees or managers of a closed scheme to obtain an actuarial valuation of the scheme until—

- (a) the period within which the issue of the determination notice, under Article 137(6), in respect of the Board's determination to authorise the scheme to continue as a closed scheme, 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.

(6) In this Article, in relation to a scheme—

“actuarial valuation” means a written valuation of—

- (a) the scheme's assets,
  - (b) the full scheme liabilities, and
  - (c) the protected liabilities in relation to the scheme,
- prepared and signed by the actuary;

"the actuary" means—

- (a) the actuary appointed under Article 47(1)(b) of the 1995 Order (professional advisers) in relation to the scheme, or
- (b) if no such actuary has been appointed—
  - (i) a person with prescribed qualifications or experience, or
  - (ii) a person approved by the Department;

"assets" do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules;

"closed scheme" has the same meaning as in Article 139;

"full scheme liabilities" means—

- (a) the liabilities under the scheme rules to or in respect of members of the scheme,
- (b) other liabilities of the scheme, and
- (c) the estimated cost of winding up the scheme;

"liabilities" do not include liabilities in respect of money purchase benefits under the scheme rules.

### *Reconsideration of closed schemes*

#### **Applications and notifications where closed schemes have insufficient assets**

**141.**—(1) If at any time the trustees or managers of a closed scheme become aware that the value of the assets of the scheme is less than the amount of the protected liabilities in relation to the scheme, they must, before the end of the prescribed period beginning with that time, make an application to the Board for it to assume responsibility for the scheme.

(2) Where the Board receives an application under paragraph (1), it must give a copy of the application to the Regulator.

(3) If at any time the Regulator becomes aware that the value of the assets of the scheme is less than the amount of the protected liabilities in relation to the scheme, it must give the Board a notice to that effect.

(4) Where the Board receives a notice under paragraph (3), it must give the trustees or managers of the scheme a notice to that effect.

(5) The duty imposed by paragraph (1) does not apply where the trustees or managers of a closed scheme become aware as mentioned in that paragraph by reason of a notice given to them under paragraph (4).

(6) The duty imposed by paragraph (3) does not apply where the Regulator becomes aware as mentioned in that paragraph by reason of a copy of an application made by the trustees or managers of the closed scheme being given to it under paragraph (2).

(7) Regulations may require notices and applications under this Article to be in the prescribed form and to contain the prescribed information.

(8) If the trustees or managers of a closed scheme fail to comply with paragraph (1), 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.

(9) In this Article—

“assets”, in relation to a scheme, do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules;

“closed scheme” has the same meaning as in Article 139.

### **Duty to assume responsibility for closed schemes**

**142.**—(1) Where the trustees or managers of a closed scheme—

(a) make an application under paragraph (1) of Article 141, or

(b) receive a notice from the Board under paragraph (4) of that Article,

the Board must assume responsibility for the scheme in accordance with this Chapter if the value of the assets of the scheme at the relevant time was less than the amount of the protected liabilities at that time.

(2) In paragraph (1) the reference to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

(3) For the purposes of determining whether the condition in paragraph (1) is satisfied, the Board must, as soon as reasonably practicable, obtain an actuarial valuation (within the meaning of Article 127) of the scheme as at the relevant time.

(4) Subject to paragraph (6), paragraph (3) of Article 127 applies for those purposes as it applies for the purposes mentioned in paragraph (2) of that Article (and the definitions contained in paragraphs (b) and (d) of paragraph (11) of that Article apply accordingly).

(5) Subject to paragraph (6), the following provisions apply in relation to a valuation obtained under paragraph (3) as they apply in relation to a valuation obtained under Article 127—

(a) paragraphs (4) to (7) and (11)(b) and (d) of that Article;

(b) Article 128 (approval of valuation), other than paragraph (2)(b)(iii) (duty to give copy of approved valuation to employer’s insolvency practitioner);

(c) Article 129 (binding valuations), other than paragraph (3)(c) (duty to give copy of binding valuation to employer’s insolvency practitioner).

(6) In the application of Articles 127 and 129 by virtue of paragraph (4) or (5)—

(a) paragraphs (3), (5) and (11)(b) and (c) of Article 127 apply as if the references to “the relevant time” were references to that term as defined in paragraph (8), and

(b) paragraph (2) of Article 129 applies as if the reference to Article 112(2)(a) included a reference to paragraph (1) of this Article.

(7) An application under paragraph (1) of Article 141, or notification under paragraph (4) of that Article, is to be disregarded for the purposes of paragraph (1) if it is made or given during an assessment period (see Articles 116 and 143) in relation to the scheme which began before the application was made or notification was given.

(8) In this Article—

“closed scheme” has the same meaning as in Article 139;

“the relevant time” means the time immediately before the application mentioned in paragraph (1)(a) was made, or (as the case may be) the notice mentioned in paragraph (1)(b) was received, by the trustees or managers of the scheme.

**Closed schemes: further assessment periods**

**143.**—(1) Paragraph (3) applies where—

- (a) an application is made under paragraph (1) of Article 141 in relation to a closed scheme, or
- (b) the trustees or managers of the scheme receive a notice under paragraph (4) of that Article.

(2) For the purposes of paragraph (1) an application under paragraph (1) of Article 141, or notification under paragraph (4) of that Article, is to be disregarded if it is made or given during an assessment period (see Article 116 and this Article) in relation to the scheme which began before the application was made or notification was given.

(3) An assessment period—

- (a) begins when the application is made or the notice is received by the trustees or managers of the scheme, and
- (b) ends when—
  - (i) the trustees or managers receive a transfer notice under Article 144, or
  - (ii) the conditions in Article 138(5) (closed scheme with sufficient assets to meet protected liabilities etc.) are satisfied in relation to the scheme,

whichever first occurs.

(4) In this Article “closed scheme” has the same meaning as in Article 139.

*Assumption of responsibility for a scheme***Transfer notice**

**144.**—(1) This Article applies where the Board is required to assume responsibility for a scheme under Article 111, 112, 136 or 142.

(2) The Board must give the trustees or managers a notice (a “transfer notice”).

(3) In a case to which Article 111 or 112 applies, a transfer notice may not be given until the valuation obtained under Article 127 is binding.

(4) In a case to which Article 142 applies, a transfer notice may not be given until the valuation obtained under paragraph (3) of that Article is binding.

(5) A transfer notice may not be given in relation to a scheme during any period when the issue of, or failure to issue, a withdrawal notice under or by virtue of Article 130 or 131 (refusal to assume responsibility) is reviewable (see Article 133(6)(b)).

(6) The Board must give a copy of any notice given under paragraph (2) to—

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

(7) This Article is subject to Article 156(1) and (2) (no transfer notice within first 12 months of assessment period or when fraud compensation application is pending).

**Effect of Board assuming responsibility for a scheme**

**145.**—(1) Where a transfer notice is given to the trustees or managers of an eligible scheme, the Board assumes responsibility for the scheme in accordance with this Chapter.

(2) The effect of the Board assuming responsibility for a scheme is that—

- (a) the property, rights and liabilities of the scheme are transferred to the Board, without further assurance, with effect from the time the trustees or managers receive the transfer notice,
  - (b) the trustees or managers of the scheme are discharged from their pension obligations from that time, and
  - (c) from that time the Board is responsible for securing that compensation is (and has been) paid in accordance with the pension compensation provisions,
- and, accordingly, the scheme is to be treated as having been wound up immediately after that time.
- (3) In paragraph (2)(a) the reference to liabilities of the scheme does not include any liability to, or in respect of, any member of the scheme, other than—
- (a) liabilities in respect of money purchase benefits, and
  - (b) such other liabilities as may be prescribed.
- (4) In paragraph (2)(b) “pension obligations” in relation to the trustees or managers of the scheme means—
- (a) their obligations to provide pensions or other benefits to or in respect of persons (including any obligation to provide guaranteed minimum pensions within the meaning of the Pension Schemes Act), and
  - (b) their obligations to administer the scheme in accordance with the scheme rules and this or any other statutory provision.
- (5) Schedule 5 makes provision in respect of the transfer of the property, rights and liabilities of a scheme under paragraph (2)(a).
- (6) Regulations may make further provision regarding such transfers.
- (7) Without prejudice to the generality of paragraph (6), regulations may authorise the Board to modify a term of a relevant contract of insurance if—
- (a) any rights or liabilities under the contract are transferred to the Board by virtue of paragraph (2)(a), and
  - (b) as a result of the transfer, the Board is required, by reason of that term, to pay a specified amount or specified amounts to a specified person who, immediately before the time mentioned in paragraph (2)(a), was a member of the scheme or a person entitled to benefits in respect of such a member.
- (8) In paragraph (7)—
- “relevant contract of insurance” means a contract of insurance which—
- (a) is entered into with a view to securing the whole or part of the scheme’s liability for—
    - (i) any pension or other benefit payable to or in respect of one particular person whose entitlement to payment of a pension or other benefit has arisen, and
    - (ii) any benefit which will be payable in respect of that person on his death, and
  - (b) is a contract—
    - (i) which may not be surrendered, or
    - (ii) in respect of which the amount payable on surrender does not exceed the liability secured;
- “specified” means specified in, or determined in accordance with, the contract of insurance.

**The pension compensation provisions**

**146.**—(1) Schedule 6 makes provision for compensation to be paid in relation to a scheme for which the Board assumes responsibility in accordance with this Chapter, including provision for—

- (a) periodic compensation to be paid to or in respect of members,
- (b) lump sum compensation to be paid to members,
- (c) a cap to be imposed on the periodic compensation and lump sum compensation payable, and
- (d) annual increases to be made to periodic compensation.

(2) In this Part references to the pension compensation provisions are to the provisions of, and the provisions made by virtue of, this Article, Articles 124 to 126, 145(2)(c), 148 and 152 and Schedule 6.

(Those references do not include any provision of, or made by virtue of, Article 154 (discharge of liabilities in respect of money purchase benefits)).

**Adjustments to be made where the Board assumes responsibility for a scheme**

**147.**—(1) This Article applies where the Board assumes responsibility for an eligible scheme in accordance with this Chapter.

(2) Any benefits (other than money purchase benefits) which—

- (a) were payable under the scheme rules to any member, or to any person in respect of any member, during the period beginning with the assessment date and ending with the receipt by the trustees or managers of the transfer notice, and
- (b) have been paid before the trustees or managers receive the transfer notice,

are to be regarded as going towards discharging any liability of the Board to pay compensation to the member or, as the case may be, person in accordance with the pension compensation provisions.

(3) Regulations may provide that, in prescribed circumstances, where—

- (a) a member of the scheme died before the commencement of the assessment period, and
- (b) during the period mentioned in paragraph (2)(a), a person became entitled under the scheme rules to a benefit of a prescribed description in respect of the member,

the benefit, or any part of it, is for the purposes of paragraph (2), to be treated as having become payable before the assessment date.

(4) The Board must—

- (a) if any amount paid, during the period mentioned in paragraph (2)(a), by the trustees or managers of the scheme to a member, or to a person in respect of a member, exceeded the entitlement of that member or person under the pension compensation provisions, take such steps as it considers appropriate (including adjusting future compensation payments made in accordance with those provisions) to recover an amount equal to the aggregate of—
  - (i) the amount of the excess, and
  - (ii) interest on that amount, at the prescribed rate, for the period which begins when the excess was paid by the trustees or managers and ends with the recovery of the excess, and
- (b) if any amount so paid was less than that entitlement (or no amount was paid in respect of that entitlement), pay an amount to the member or person concerned equal to the aggregate of—
  - (i) the amount of the shortfall, and



- (ii) interest on that amount, at the prescribed rate, for the period which begins when the shortfall ought to have been paid by the trustees or managers and ends with the payment of the shortfall by the Board.
- (5) In paragraph (4) references to an amount paid do not include—
  - (a) an amount paid in respect of any money purchase benefit, or
  - (b) any other amount of a prescribed description.
- (6) Nothing in paragraph (4) requires the Board—
  - (a) to recover any amount from a person in such circumstances as may be prescribed, or
  - (b) to recover from any person any amount which it considers to be trivial.
- (7) In this Article “assessment date” is to be construed in accordance with Schedule 6.

### **Postponement of compensation entitlement for the assessment period**

**148.**—(1) Regulations may provide that, where the Board assumes responsibility for an eligible scheme, the entitlement of any member of the scheme to compensation under this Chapter is, in such circumstances as may be prescribed, postponed for the whole or any part of the assessment period for which he continued in employment after attaining normal pension age.

(2) Regulations under paragraph (1) may provide that the postponement is on such terms and conditions (including those relating to increments) as may be prescribed.

(3) In paragraph (1) the reference to “normal pension age” is to normal pension age, within the meaning of paragraph 34 of Schedule 6, in relation to the pension or lump sum in respect of which the entitlement to compensation arises.

### **Guaranteed minimum pensions**

**149.**—(1) The Board must notify the Commissioners of Inland Revenue where, by reason of it assuming responsibility for an eligible scheme in accordance with this Chapter, the trustees or managers of the scheme are discharged from their liability to provide a guaranteed minimum pension (within the meaning of the Pension Schemes Act) to or in respect of a member of the scheme.

(2) Notification under paragraph (1) must be given as soon as reasonably practicable.

(3) In section 43 of the Pension Schemes Act (further provision concerning entitlement to a guaranteed minimum pension for the purposes of section 42), after subsection (7) add—

“(8) For the purposes of section 42, a person shall be treated as entitled to a guaranteed minimum pension to which he would have been entitled but for the fact that the trustees or managers were discharged from their liability to provide that pension on the Board of the Pension Protection Fund assuming responsibility for the scheme.”.

### **Duty to pay scheme benefits unpaid at assessment date etc.**

**150.**—(1) This Article applies where the Board assumes responsibility for a scheme in accordance with this Chapter.

(2) Subject to paragraph (4), the Board must pay any amount by way of pensions or other benefits which a person had become entitled to payment of under the scheme rules before the assessment date but which remained unpaid at the time the transfer notice was received by the trustees or managers of the scheme.

(3) If, immediately before the assessment date, the person is entitled to the amount but has postponed payment of it, paragraph (2) does not apply.

(4) Paragraph (2) does not apply in relation to the amount of—

- (a) any transfer payment, or
  - (b) any payment in respect of a refund of contributions.
- (5) Regulations may provide that, in prescribed circumstances, where—
- (a) a member of the scheme died before the commencement of the assessment period, and
  - (b) during the period beginning with the assessment date and ending with the receipt by the trustees or managers of the transfer notice, a person became entitled under the scheme rules to a benefit of a prescribed description in respect of the member,
- that person's entitlement to the benefit, or to any part of it, is, for the purposes of paragraph (2), to be treated as having arisen before the assessment date.
- (6) Regulations may make provision requiring the Board, in such circumstances as may be prescribed, to take such steps (including making payments) as may be prescribed in respect of rights of prescribed descriptions to which members of the scheme were entitled immediately before the commencement of the assessment period.
- (7) For the purposes of regulations made under paragraph (6)—
- (a) this Chapter (other than this paragraph), and
  - (b) the scheme rules (including any relevant legislative provision within the meaning of Article 2(4)),
- are to have effect subject to such modifications as may be prescribed.
- (8) In this Article "assessment date" is to be construed in accordance with Schedule 6.

#### **Modification of Chapter where liabilities discharged during assessment period**

- 151.**—(1) Regulations may modify any of the provisions of this Chapter as it applies to cases—
- (a) where any liability to provide pensions or other benefits to or in respect of any member or members under a scheme is discharged during an assessment period in relation to the scheme by virtue of—
    - (i) regulations under Article 119(4), or
    - (ii) the Board validating any action mentioned in Article 119(9), or
  - (b) where, in prescribed circumstances, any such liability of a prescribed description is discharged on the assessment date but before the commencement of the assessment period.
- (2) In this Article "assessment date" is to be construed in accordance with Schedule 6.

#### **Administration of compensation**

- 152.**—(1) Regulations may make further provision regarding the operation and administration of this Chapter.
- (2) Regulations under paragraph (1) may, in particular, make provision—
- (a) prescribing the manner in which and time when compensation is to be paid (including provision requiring periodic compensation to be paid by instalments);
  - (b) for calculating the amounts of compensation according to a prescribed scale or otherwise adjusting them to avoid fractional amounts or facilitate computation;
  - (c) prescribing the circumstances and manner in which compensation to which a person ("the beneficiary") is entitled may be made to another person on behalf of the beneficiary for any purpose (including the discharge in whole or in part of an obligation of the beneficiary or any other person);

- (d) for the payment or distribution of compensation to or among persons claiming to be entitled on the death of any person and for dispensing with strict proof of their title;
  - (e) for the recovery of amounts of compensation paid by the Board in excess of entitlement (together with interest on such amounts for the period from payment until recovery);
  - (f) specifying the circumstances in which payment of compensation can be suspended.
- (3) In this Article “compensation” means compensation payable under Schedule 6 or under Article 125(2).

### *Discharge of Board's liabilities*

#### **Discharge of liabilities in respect of compensation**

**153.**—(1) This Article applies where the Board assumes responsibility for an eligible scheme in accordance with this Chapter.

(2) The Board may provide for the discharge of any liability imposed by this Chapter to provide compensation—

- (a) by the taking out of a policy of insurance or a number of such policies;
- (b) by the entry into an annuity contract or a number of such contracts;
- (c) by the transfer of the benefit of such a policy or policies or such a contract or contracts;
- (d) in prescribed circumstances, by the payment of a cash sum calculated in the prescribed manner.

#### **Discharge of liabilities in respect of money purchase benefits**

**154.**—(1) This paragraph applies where—

- (a) the Board assumes responsibility for an eligible scheme in accordance with this Chapter, and
- (b) one or more members are entitled, or have accrued rights, under the scheme rules to money purchase benefits.

(2) Regulations must make provision in respect of cases to which paragraph (1) applies requiring the Board to secure that liabilities in respect of such benefits transferred to the Board under Article 145 are discharged by it in the prescribed manner.

(3) The provision made under paragraph (2) must include provision prescribing the manner in which protected rights are to be given effect to.

(4) In this Article—

“accrued rights”, under the scheme rules, include pension credit rights within the meaning of Article 121(1) of the 1995 Order;

“protected rights” has the meaning given by section 6 of the Pension Schemes Act (protected rights and money purchase benefits).

### *Equal treatment*

#### **Equal treatment**

**155.**—(1) This Article applies where—

- (a) a woman has been employed on like work with a man in the same employment,

- (b) a woman has been employed on work rated as equivalent with that of a man in the same employment, or
- (c) a woman has been employed on work which, not being work in relation to which sub-paragraph (a) or (b) applies, was, in terms of the demands made on her (for instance under such headings as effort, skill and decision), of equal value to that of a man in the same employment,

and service in that employment was pensionable service under an occupational pension scheme.

(2) If, apart from this paragraph, any of the payment functions so far as it relates (directly or indirectly) to that pensionable service —

- (a) is or becomes less favourable to the woman than it is to the man, or
- (b) is or becomes less favourable to the man than it is to the woman,

that function has effect with such modifications as are necessary to ensure that the provision is not less favourable.

(3) Paragraph (2) does not operate in relation to any difference as between a woman and a man in the operation of any of the payment functions if the Board proves that the difference is genuinely due to a material factor which—

- (a) is not the difference of sex, but
- (b) is a material difference between the woman's case and the man's case.

(4) Paragraph (2) does not apply in such circumstances as may be prescribed.

(5) This Article has effect in relation to the exercise of any payment function in so far as it relates (directly or indirectly) to any pensionable service on or after 17th May 1990.

(6) In this Article—

“payment function” means any function conferred on the Board by or by virtue of this Chapter which relates to a person's entitlement to or the payment of any amount under or by virtue of—

- (a) the pension compensation provisions,
- (b) Article 150 (duty to pay scheme benefits unpaid at assessment date etc.),
- (c) Article 153 (discharge of liabilities in respect of compensation), or
- (d) Article 154 (discharge of liabilities in respect of money purchase benefits);

“pensionable service” has the meaning given by Article 121(1) of the 1995 Order.

### *Relationship with fraud compensation regime*

#### **Relationship with fraud compensation regime**

**156.**—(1) No transfer notice may be given in respect of a scheme within the first 12 months of an assessment period in relation to the scheme.

(2) Where an application has been made under Article 165 (application for fraud compensation payment), no transfer notice may be given until—

- (a) the Board has determined the application,
- (b) the period within which the Board's determination may be reviewed by virtue of Chapter 6 has expired, and
- (c) 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 his determination or directions,  
has been finally disposed of.

(3) Paragraph (4) applies where during an assessment period in relation to a scheme the Board determines to make one or more fraud compensation payments (“the fraud compensation”) to the trustees or managers of the scheme under Chapter 4.

(4) For the purposes of determining whether the condition in Article 111(2)(a), 112(2)(a), 136(2) or 142(1) is satisfied, any fraud compensation payment which becomes payable after the relevant time is, to the extent that it relates to a loss incurred by the scheme before that time, to be regarded as an asset of the scheme at that time.

(5) For the purposes of paragraph (4) “the relevant time”—

- (a) in the case of Article 111(2)(a), has the same meaning as in that provision,
- (b) in the case of Article 112(2)(a), has the same meaning as in that provision,
- (c) in the case of Article 136(2), means the reconsideration time (within the meaning of Article 135), and
- (d) in the case of Article 142(1), has the same meaning as in that provision.

(6) Paragraph (4) does not apply to the extent that the fraud compensation is payable in respect of a reduction in the value of money purchase assets of the scheme.

For this purpose “money purchase assets” means assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

### *The levies*

#### **Initial levy**

**157.**—(1) Regulations must make provision for imposing a levy (“the initial levy”) in respect of eligible schemes for the period (“the initial period”) which—

- (a) begins with the day appointed for this purpose by the regulations, and
- (b) ends on the following 31st March or, if the regulations so provide, 12 months after the day referred to in sub-paragraph (a).

(2) The regulations must prescribe—

- (a) the factors by reference to which the initial levy is to be assessed,
- (b) the rate of the levy, and
- (c) the time or times during the initial period when the levy, or any instalment of the levy, becomes payable.

(3) Regulations under this Article may only be made with the approval of the Department of Finance and Personnel.

#### **Pension protection levies**

**158.**—(1) For each financial year falling after the initial period, the Board must impose both of the following—

- (a) a risk-based pension protection levy in respect of all eligible schemes;
- (b) a scheme-based pension protection levy in respect of eligible schemes.

In this Chapter “pension protection levy” means a levy imposed in accordance with this Article.

(2) For the purposes of this Article—

- (a) a risk-based pension protection levy is a levy assessed by reference to—
  - (i) the difference between the value of a scheme's assets (disregarding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules) and the amount of its protected liabilities,
  - (ii) except in relation to any prescribed scheme or scheme of a prescribed description, the likelihood of an insolvency event occurring in relation to the employer in relation to a scheme, and
  - (iii) if the Board considers it appropriate, one or more other risk factors mentioned in paragraph (3), and
- (b) a scheme-based pension protection levy is a levy assessed by reference to—
  - (i) the amount of a scheme's liabilities to or in respect of members (other than liabilities in respect of money purchase benefits), and
  - (ii) if the Board considers it appropriate, one or more other scheme factors mentioned in paragraph (4).
- (3) The other risk factors referred to in paragraph (2)(a)(iii) are factors which the Board considers indicate one or more of the following—
  - (a) the risks associated with the nature of a scheme's investments when compared with the nature of its liabilities;
  - (b) such other matters as may be prescribed.
- (4) The other scheme factors referred to in paragraph (2)(b)(ii) are—
  - (a) the number of persons who are members, or fall within any description of member, of a scheme;
  - (b) the total annual amount of pensionable earnings of active members of a scheme;
  - (c) such other factors as may be prescribed.
- (5) The Board must, before the beginning of each financial year, determine in respect of that year—
  - (a) the factors by reference to which the pension protection levies are to be assessed,
  - (b) the time or times by reference to which those factors are to be assessed,
  - (c) the rate of the levies, and
  - (d) the time or times during the year when the levies, or any instalment of levy, becomes payable.
- (6) Different risk factors, scheme factors or rates may be determined in respect of different descriptions of scheme.
- (7) The rate determined in respect of a description of scheme may be nil.
- (8) In this Article—
  - “initial period” is to be construed in accordance with Article 157;
  - “pensionable earnings”, in relation to an active member under a scheme, means the earnings by reference to which a member's entitlement to benefits would be calculated under the scheme rules if he ceased to be an active member at the time by reference to which the factor within paragraph (4)(b) is to be assessed.
- (9) The Board's duty to impose pension protection levies in respect of any financial year is subject to—
  - (a) Article 160 (amounts to be raised by the pension protection levies), and
  - (b) Article 163 (transitional provision).

### **Supplementary provisions about pension protection levies**

**159.**—(1) The Board must consult such persons as it considers appropriate in the prescribed manner before making a determination under Article 158(5) in respect of a financial year if—

- (a) that year is the first financial year for which the Board is required to impose levies under Article 158,
- (b) any of the proposed levy factors or levy rates is different, or applies to a different description of scheme, from the levy factors and levy rates in respect of the pension protection levies imposed in the previous financial year, or
- (c) no consultation has been required under this paragraph in relation to the pension protection levies imposed for either of the previous two financial years.

(2) The Board must publish details of any determination under Article 158(5) in the prescribed manner.

### **Amounts to be raised by the pension protection levies**

**160.**—(1) Before determining the pension protection levies to be imposed for a financial year, the Board must estimate the amount which will be raised by the levies it proposes to impose.

(2) The Board must impose levies for a financial year in a form which it estimates will raise an amount not exceeding the levy ceiling for the financial year.

(3) The pension protection levies imposed for a financial year must be in a form which the Board estimates will result in at least 80% of the amount raised by the levies for that year being raised by the risk-based pension protection levy.

(4) For the first financial year after the transitional period, regulations may modify paragraph (2) so as to provide that the reference to the levy ceiling for the financial year is to be read as a reference to such lower amount as is prescribed.

(5) For the second financial year after the transitional period and for any subsequent financial year, the Board must impose pension protection levies in a form which it estimates will raise an amount which does not exceed by more than 25% the amount estimated under paragraph (1) in respect of the pension protection levies imposed for the previous financial year.

(6) Whenever the Secretary of State makes an order under section 177(6) of the Pensions Act 2004 (c. 35), the Department may make a corresponding order for Northern Ireland.

(7) Regulations under paragraph (4) may be made only with the approval of the Department of Finance and Personnel.

(8) In this Article—

- (a) “risk-based pension protection levy” and “scheme-based pension protection levy” are to be construed in accordance with Article 158, and
- (b) “transitional period” has the meaning given by Article 163(3).

### **The levy ceiling**

**161.** Whenever the Secretary of State makes an order under section 178 of the Pensions Act 2004 (c. 35), the Department may make a corresponding order for Northern Ireland.

### **Valuations to determine scheme underfunding**

**162.**—(1) For the purposes of enabling risk-based pension protection levies (within the meaning of Article 158) to be calculated in respect of eligible schemes, regulations may make provision

requiring the trustees or managers of each such scheme to provide the Board or the Regulator on the Board's behalf—

- (a) with an actuarial valuation of the scheme at such intervals as may be prescribed, and
  - (b) with such other information as the Board may require in respect of the assets and protected liabilities of the scheme at such times as may be prescribed.
- (2) For the purposes of this Article, in relation to a scheme—
- “an actuarial valuation” means a written valuation of the scheme's assets and protected liabilities prepared and signed by the actuary;
- “the actuary” means—
- (a) the actuary appointed under Article 47(1)(b) of the 1995 Order (professional advisers) in relation to the scheme, or
  - (b) if no such actuary has been appointed—
    - (i) a person with prescribed qualifications or experience, or
    - (ii) a person approved by the Department.
- (3) Regulations under this Article may prescribe how—
- (a) the assets and the protected liabilities of schemes, and
  - (b) their amount or value,

are to be determined, calculated and verified.

(4) Subject to any provision made under paragraph (3), those matters are to be determined, calculated and verified in accordance with guidance issued by the Board.

(5) In calculating the amount of any liabilities for the purposes of a valuation required by virtue 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.

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

### **Pension protection levies during the transitional period**

**163.**—(1) Regulations may provide that in respect of any financial year during the transitional period—

- (a) Articles 158 and 160(3) are to apply with such modifications as may be prescribed;
- (b) Article 160(2) is to apply as if the reference to the levy ceiling for the financial year were a reference to such lower amount as is specified in the regulations.

(2) Regulations which contain provision made by virtue of paragraph (1)(b) may only be made with the approval of the Department of Finance and Personnel.

(3) For the purposes of this Article “the transitional period” means the prescribed period beginning immediately after the initial period (within the meaning of Article 157).

(4) If the transitional period begins with a date other than 1st April, regulations may provide that any provision of this Article or of Articles 158 to 162 applies, with such modifications as may be prescribed, in relation to—

- (a) the period beginning at the same time as the transitional period and ending with the following 31st March, and
- (b) the financial year which begins immediately after that period.



### **Calculation, collection and recovery of levies**

**164.**—(1) This Article applies in relation to—

- (a) the initial levy imposed under Article 157 in respect of a scheme, and
- (b) any pension protection levy imposed under Article 158 in respect of a scheme.

(2) The levy is payable to the Board by or on behalf of—

- (a) the trustees or managers of the scheme, or
- (b) any other prescribed person.

(3) The Board must in respect of the levy—

- (a) determine the schemes in respect of which it is imposed,
- (b) calculate the amount of the levy in respect of each of those schemes, and
- (c) notify any person liable to pay the levy in respect of the scheme of the amount of the levy in respect of the scheme and the date or dates on which it becomes payable.

(4) The Board may require the Regulator to discharge, on the Board's behalf, its functions under paragraph (3) in respect of the levy.

(5) Where a scheme is an eligible scheme for only part of the period for which the levy is imposed, except in prescribed circumstances, the amount of the levy payable in respect of the scheme for that period is such proportion of the full amount as that part bears to that period.

(6) An amount payable by a person on account of the levy is a debt due from him to the Board.

(7) An amount so payable may be recovered—

- (a) by the Board, or
- (b) if the Board so determines, by the Regulator on its behalf.

(8) Regulations may make provision relating to—

- (a) the collection and recovery of amounts payable by way of any levy in relation to which this Article applies;
- (b) the circumstances in which any such amount may be waived.