



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 2

#### THE BOARD OF THE PENSION PROTECTION FUND

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

- C1** Pt. 2 modified (8.3.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [The Pension Protection Fund \(Partially Guaranteed Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/277\)](#), regs. 1(1), **2-11**
- C2** Pt. 2 modified in part (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 in so far as not already in force (except ch. 4)) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, **2-60**, 71, 72

#### CHAPTER 1

##### THE BOARD

##### *Establishment*

#### **107 The Board of the Pension Protection Fund**

There shall be a body corporate called the Board of the Pension Protection Fund (in this Act referred to as “the Board”).

##### Commencement Information

- II** S. 107 in force at 17.12.2004 by [S.I. 2004/3350](#), art. 2, [Sch.](#)

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## 108 Membership of the Board

- (1) The Board is to consist of the following members—
  - (a) a chairman,
  - (b) the Chief Executive of the Board, and
  - (c) at least five other persons (“ordinary members”).
- (2) The chairman must not be appointed from the staff of the Board or be the chairman of the Regulator.
- (3) The number of ordinary members must not exceed any maximum number which may be prescribed.
- (4) At least two ordinary members must be appointed from the staff of the Board.
- (5) No member of the Determinations Panel established by the Regulator under section 9, or member of the staff of the Regulator, is eligible for appointment as a member of the Board.
- (6) Any power to appoint ordinary members must be exercised so as to secure that a majority of the members of the Board are non-executive members.
- (7) In this Part—
  - (a) references to executive members of the Board are to—
    - (i) the Chief Executive, and
    - (ii) the ordinary members appointed from the staff of the Board, and
  - (b) references to non-executive members of the Board are to members who are not executive members.

### Commencement Information

- I2** S. 108(1)(2)(5)-(7) in force at 17.12.2004 by [S.I. 2004/3350](#), art. 2, [Sch.](#)
- I3** S. 108(4) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

## 109 Further provision about the Board

Schedule 5 makes further provision about the Board, including provision as to—

- the appointment of members,
- the terms of appointment, tenure and remuneration of members,
- the appointment of the Chief Executive and other staff,
- the proceedings of the Board,
- its accounts, and
- the status and liability of the Board, its members and staff.

### Commencement Information

- I4** S. 109 in force at 17.12.2004 for specified purposes by [S.I. 2004/3350](#), art. 2, [Sch.](#)
- I5** S. 109 in force at 6.4.2005 for specified purposes by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

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### *General provision about functions*

#### **110 Board’s functions**

- (1) The Board must hold, manage and apply, in accordance with this Part and any provision in force in Northern Ireland corresponding to it—
  - (a) a fund to be known as the Pension Protection Fund, and
  - (b) a fund to be known as the Fraud Compensation Fund.
- (2) Sections 175 and 189 make provision for contributions to those funds to be levied by the Board.
- (3) The Board also has such other functions as are conferred on it by, or by virtue of, this or any other enactment.

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#### **Commencement Information**

- I6** S. 110(1)(a) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)  
**I7** S. 110(3) in force at 17.12.2004 by [S.I. 2004/3350](#), art. 2, [Sch.](#)

#### **111 Supplementary powers**

- The Board may do anything which—
- (a) is calculated to facilitate the exercise of its functions, or
  - (b) is incidental or conducive to their exercise.

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#### **Commencement Information**

- I8** S. 111 in force at 17.12.2004 by [S.I. 2004/3350](#), art. 2, [Sch.](#)

### *Non-executive functions*

#### **112 Non-executive functions**

- (1) The functions listed in subsection (4) (in this Part referred to as “the non-executive functions”) are functions of the Board.
- (2) The Board must establish a committee to discharge the non-executive functions on its behalf.
- (3) Only non-executive members of the Board may be members of that committee.
- (4) The non-executive functions are—
  - (a) the duty to keep under review the question whether the Board’s internal financial controls secure the proper conduct of its financial affairs;
  - (b) the duty to determine under sub-paragraph (5)(a) of paragraph 12 of Schedule 5, subject to the approval of the Secretary of State, the terms and conditions as to remuneration of any Chief Executive appointed under sub-paragraph (4) of that paragraph;

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- (c) the duty to determine under paragraph 13(3)(a) of that Schedule, subject to the approval of the Secretary of State, the terms and conditions as to remuneration of any member of the staff who is also to be an executive member of the Board;
  - (d) the duty to determine under paragraph 13(3)(b) of that Schedule, the terms and conditions as to remuneration of any member of the staff of a description prescribed for the purposes of that provision.
- (5) The committee established under this section must prepare a report on the discharge of the non-executive functions for inclusion in the Board's annual report to the Secretary of State under section 119.
- (6) The committee's report must relate to the same period as that covered by the Board's report.
- (7) The members of any sub-committee of the committee (established by virtue of paragraph 15(2) of Schedule 5)—
- (a) may include persons who are not members of the committee, but
  - (b) must not include persons who are executive members or other staff of the Board.
- (8) The committee may authorise any of its sub-committees to discharge on its behalf—
- (a) any of the non-executive functions;
  - (b) the duty to prepare a report under subsection (5).

#### **Commencement Information**

- I9** S. 112(1)-(3)(4)(b)(c)(d) in force at 17.12.2004 by [S.I. 2004/3350](#), [art. 2](#), [Sch.](#)
- I10** S. 112(4)(a)(7)(8) in force at 10.2.2005 by [S.I. 2005/275](#), [art. 2\(4\)](#), [Sch. Pt. 4](#)
- I11** S. 112(5)(6) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

### *Financial matters*

#### **113 Investment of funds**

- (1) The Board may invest for the purposes of the prudent management of its financial affairs.
- (2) When exercising the power conferred by subsection (1) in relation to the Pension Protection Fund, the Board must have regard to—
- (a) the interests of persons who are or may become entitled to compensation under the pension compensation provisions (see section 162) or any corresponding provisions in force in Northern Ireland, and
  - (b) the effect of the exercise of the power on the rate of any levy which may be imposed under section 174 or 175 or any corresponding provision in force in Northern Ireland and the interests which persons have in the rate of any such levy.
- (3) When exercising the power conferred by subsection (1) in relation to the Fraud Compensation Fund, the Board must have regard to—
- (a) the interests of members of occupational pension schemes in relation to which section 189(1), or any corresponding provision in force in Northern Ireland, applies, and

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- (b) the effect of the exercise of the power on the level of any levy which may be imposed under section 189 or any corresponding provision in force in Northern Ireland and the interests which persons have in the rate of any such levy.
- (4) For the purposes of subsection (1) there must be at least two fund managers.
- (5) For this purpose “fund manager” means an individual who or firm which is appointed by the Board to manage the fund maintained under section 173 (the Pension Protection Fund).
- (6) The Board must not appoint an individual or firm as a fund manager unless it is satisfied—
- (a) in the case of an individual, that the individual has the appropriate knowledge and experience for managing the investments of the Pension Protection Fund, or
  - (b) in the case of a firm, that arrangements are in place to secure that any individual who will exercise functions which the firm has as fund manager will, at the time he exercises those functions, have the appropriate knowledge and experience for managing the investments of that Fund.

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**Commencement Information**

**I12** S. 113 in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)

## 114 Investment principles

- (1) The Board must secure—
- (a) that a statement of investment principles is prepared and maintained, and
  - (b) that the statement is reviewed at such intervals, and on such occasions, as may be prescribed and, if necessary, revised.
- (2) In this section “statement of investment principles” means a written statement of the investment principles governing determinations about investments made by or on behalf of the Board.
- (3) Before preparing or revising a statement of investment principles, the Board must comply with any prescribed requirements.
- (4) A statement of investment principles must be in the prescribed form and cover, amongst other things, the prescribed matters.

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**Commencement Information**

**I13** S. 114(1)(a)(2) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)

**I14** S. 114(1)(b)(3)(4) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)

## 115 Borrowing

- (1) The Board may—

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- (a) borrow from a deposit-taker such sums as it may from time to time require for exercising any of its functions;
  - (b) give security for any money borrowed by it.
- (2) The Board may not borrow if the effect would be—
- (a) to take the aggregate amount outstanding in respect of the principal of sums borrowed by it over its borrowing limit, or
  - (b) to increase the amount by which the aggregate amount so outstanding exceeds that limit.
- (3) In this section—
- “borrowing limit” means such limit as the Secretary of State may specify by order;
- “deposit-taker” means—
- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 (c. 8) to accept deposits, or
  - (b) an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to that Act which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to accept deposits.
- (4) The definition of “deposit-taker” in subsection (3) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000,
  - (b) any relevant order under that section, and
  - (c) Schedule 2 to that Act.

#### Commencement Information

- I15** S. 115(1)(2)(4) in force at 8.3.2005 by [S.I. 2005/275](#), art. 2(5), **Sch. Pt. 5**
- I16** S. 115(3) in force at 10.2.2005 for specified purposes by [S.I. 2005/275](#), art. 2(1), **Sch. Pt. 1**
- I17** S. 115(3) in force at 8.3.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(5), **Sch. Pt. 5**

## 116 Grants

The Secretary of State may pay the Board out of money provided by Parliament such sums as he may determine towards any of its expenses, other than expenditure which by virtue of section 173(3) or 188(3) is payable out of—

- (a) the Pension Protection Fund, or
- (b) the Fraud Compensation Fund.

#### Commencement Information

- I18** S. 116 in force at 17.12.2004 by [S.I. 2004/3350](#), art. 2, **Sch.**

## 117 Administration levy

- (1) Regulations may provide for the imposition of a levy (“administration levy”) in respect of eligible schemes (see section 126) for the purpose of meeting—

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- (a) expenditure of the Secretary of State relating to the establishment of the Board;
  - (b) any expenditure of the Secretary of State under section 116.
- (2) An administration levy is payable to the Secretary of State by or on behalf of—
  - (a) the trustees or managers of an eligible scheme, or
  - (b) any other prescribed person.
- (3) An administration levy is payable at the prescribed rate and at prescribed times.
- (4) Before prescribing a rate under subsection (3), the Secretary of State must consult the Board.
- (5) An amount payable by a person on account of an administration levy is a debt due from him to the Secretary of State.
- (6) An amount so payable is recoverable by the Secretary of State or, if he so determines, by the Regulator on his behalf.
- (7) Without prejudice to the generality of subsections (1), (5) and (6), regulations under this section may include provision relating to—
  - (a) the collection and recovery of amounts payable by way of levy under this section;
  - (b) the circumstances in which any such amount may be waived.

#### Commencement Information

- 119** S. 117(1)(3)(7)(a) in force at 10.2.2005 for specified purposes and at 1.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(2\)](#), [Sch. Pt. 2](#)
- 120** S. 117(2)(a)(5)(6) in force at 1.4.2005 by [S.I. 2005/275, art. 2\(6\)](#), [Sch. Pt. 6](#)
- 121** S. 117(4) in force at 10.2.2005 by [S.I. 2005/275, art. 2\(4\)](#), [Sch. Pt. 4](#)

PROSPECTIVE

#### 118 Fees

- (1) Regulations may authorise the Board—
  - (a) to charge prescribed fees;
  - (b) to charge fees sufficient to meet prescribed costs.
- (2) Regulations under subsection (1) may prescribe, or authorise the Board to determine, the time at which any fee is due.
- (3) Any fee which is owed to the Board by virtue of regulations under this section may be recovered as a debt due to the Board.

*Annual reports*

#### 119 Annual reports to Secretary of State

- (1) The Board must prepare a report for each financial year.

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- (2) Each report—
- (a) must deal with the activities of the Board in the financial year for which it is prepared, including the matters mentioned in subsection (3), and
  - (b) must include the report prepared under subsection (5) of section 112 by the committee established under that section.
- (3) The matters referred to in subsection (2)(a) are—
- (a) the strategic direction of the Board and the manner in which it has been kept under review;
  - (b) the steps taken to scrutinise the performance of the Chief Executive in securing that the Board’s functions are exercised efficiently and effectively;
  - (c) the Board’s objectives and targets and the steps taken to monitor the extent to which they are being met.
- (4) The Board must send each report to the Secretary of State as soon as practicable after the end of the financial year for which it is prepared.
- (5) The Secretary of State must lay before each House of Parliament a copy of every report received by him under this section.
- (6) In this section “financial year” means—
- (a) the period beginning with the date on which the Board is established and ending with the next following 31st March, and
  - (b) each successive period of 12 months.

**Commencement Information**

**I22** S. 119 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

## CHAPTER 2

### INFORMATION RELATING TO EMPLOYER’S INSOLVENCY ETC

#### *Insolvency events*

#### **120 Duty to notify insolvency events in respect of employers**

- (1) This section applies where, in the case of an occupational pension scheme, an insolvency event occurs in relation to the employer.
- (2) The insolvency practitioner in relation to the employer must give a notice to that effect within the notification period to—
  - (a) the Board,
  - (b) the Regulator, and
  - (c) the trustees or managers of the scheme.
- (3) For the purposes of subsection (2) the “notification period” is the prescribed period beginning with the later of—
  - (a) the insolvency date, and



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- (b) the date the insolvency practitioner becomes aware of the existence of the scheme.
- (4) A notice under this section must be in such form and contain such information as may be prescribed.

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

- C3** S. 120 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 62(1)

**Commencement Information**

- I23** S. 120(1)(2) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**
- I24** S. 120(3)(4) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

## 121 Insolvency event, insolvency date and insolvency practitioner

- (1) In this Part each of the following expressions has the meaning given to it by this section—
- “insolvency event”
  - “insolvency date”
  - “insolvency practitioner”.
- (2) An insolvency event occurs in relation to an individual where—
- (a) he is adjudged bankrupt or sequestration of his estate has been awarded;
  - (b) the nominee in relation to a proposal for a voluntary arrangement under Part 8 of the Insolvency Act 1986 (c. 45) submits a report to the court under section 256(1) or 256A(3) of that Act which states that in his opinion a meeting of the individual’s creditors should be summoned to consider the debtor’s proposal;
  - (c) a deed of arrangement made by or in respect of the affairs of the individual is registered in accordance with the Deeds of Arrangement Act 1914 (c. 47);
  - (d) he executes a trust deed for his creditors or enters into a composition contract;
  - (e) he has died and—
    - (i) an insolvency administration order is made in respect of his estate in accordance with an order under section 421 of the Insolvency Act 1986, or
    - (ii) a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889 (c. 39) is required by that section to divide the individual’s estate among his creditors.
- (3) An insolvency event occurs in relation to a company where—
- (a) the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986 submits a report to the court under section 2 of that Act (procedure where nominee is not the liquidator or administrator) which states that in his opinion meetings of the company and its creditors should be summoned to consider the proposal;

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- (b) the directors of the company file (or in Scotland lodge) with the court documents and statements in accordance with paragraph 7(1) of Schedule A1 to that Act (moratorium where directors propose voluntary arrangement);
  - (c) an administrative receiver within the meaning of section 251 of that Act is appointed in relation to the company;
  - (d) the company enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act;
  - (e) a resolution is passed for a voluntary winding up of the company without a declaration of solvency under section 89 of that Act;
  - (f) a meeting of creditors is held in relation to the company under section 95 of that Act (creditors' meeting which has the effect of converting a members' voluntary winding up into a creditors' voluntary winding up);
  - (g) an order for the winding up of the company is made by the court under Part 4 or 5 of that Act.
- (4) An insolvency event occurs in relation to a partnership where—
- (a) an order for the winding up of the partnership is made by the court under any provision of the Insolvency Act 1986 (c. 45) (as applied by an order under section 420 of that Act (insolvent partnerships));
  - (b) sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 (c. 66) or the partnership grants a trust deed for its creditors;
  - (c) the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986 (as applied by an order under section 420 of that Act) submits a report to the court under section 2 of that Act (procedure where nominee is not the liquidator or administrator) which states that in his opinion meetings of the members of the partnership and the partnership’s creditors should be summoned to consider the proposal;
  - (d) the members of the partnership file with the court documents and statements in accordance with paragraph 7(1) of Schedule A1 to that Act (moratorium where directors propose voluntary arrangement) (as applied by an order under section 420 of that Act);
  - (e) an administration order under Part 2 of that Act (as applied by section 420 of that Act) is made in relation to the partnership.
- (5) An insolvency event also occurs in relation to a person where an event occurs which is a prescribed event in relation to such a person.
- (6) Except as provided by subsections (2) to (5), for the purposes of this Part an event is not to be regarded as an insolvency event in relation to a person.
- (7) The Secretary of State may by order amend subsection (4)(e) to make provision consequential upon any order under section 420 of the Insolvency Act 1986 (insolvent partnerships) applying the provisions of Part 2 of that Act (administration) as amended by the Enterprise Act 2002 (c. 40).
- (8) “Insolvency date”, in relation to an insolvency event, means the date on which the event occurs.
- (9) “Insolvency practitioner”, in relation to a person, means—
- (a) a person acting as an insolvency practitioner, in relation to that person, in accordance with section 388 of the Insolvency Act 1986;

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- (b) in such circumstances as may be prescribed, a person of a prescribed description.
- (10) In this section—
- “company” means a company within the meaning given by section 735(1) of the Companies Act 1985 (c. 6) or a company which may be wound up under Part 5 of the Insolvency Act 1986 (c. 45) (unregistered companies);
  - “person acting as an insolvency practitioner”, in relation to a person, includes the official receiver acting as receiver or manager of any property of that person.
- (11) In applying section 388 of the Insolvency Act 1986 under subsection (9) above—
- (a) the reference in section 388(2)(a) to a permanent or interim trustee in sequestration must be taken to include a reference to a trustee in sequestration, and
  - (b) section 388(5) (which includes provision that nothing in the section applies to anything done by the official receiver or the Accountant in Bankruptcy) must be ignored.

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

- C4** S. 121 applied (1.4.2005) by [The Occupational and Personal Pension Schemes \(General Levy\) Regulations 2005 \(S.I. 2005/626\)](#), regs. 1(2), **8(3)**

**Commencement Information**

- I25** S. 121(1)-(4)(6)(8)(9)(a)(10)(11) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**
- I26** S. 121(5) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

*Status of scheme*

**122 Insolvency practitioner’s duty to issue notices confirming status of scheme**

- (1) This section applies where an insolvency event has occurred in relation to the employer in relation to an occupational pension scheme.
- (2) An insolvency practitioner in relation to the employer must—
  - (a) if he is able to confirm that a scheme rescue is not possible, issue a notice to that effect (a “scheme failure notice”), or
  - (b) if he is able to confirm that a scheme rescue has occurred, issue a notice to that effect (a “withdrawal notice”).
- (3) Subsection (4) applies where—
  - (a) in prescribed circumstances, insolvency proceedings in relation to the employer are stayed or come to an end, or
  - (b) a prescribed event occurs.
- (4) If a person who was acting as an insolvency practitioner in relation to the employer immediately before this subsection applies has not been able to confirm in relation to the scheme—
  - (a) that a scheme rescue is not possible, or

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- (b) that a scheme rescue has occurred,  
he must issue a notice to that effect.
- (5) For the purposes of this section—
  - (a) a person is able to confirm that a scheme rescue has occurred in relation to an occupational pension scheme if, and only if, he is able to confirm such matters as are prescribed for the purposes of this paragraph, and
  - (b) a person is able to confirm that a scheme rescue is not possible, in relation to such a scheme if, and only if, he is able to confirm such matters as are prescribed for the purposes of this paragraph.
- (6) Where an insolvency practitioner or former insolvency practitioner in relation to the employer issues a notice under this section, he must give a copy of that notice to—
  - (a) the Board,
  - (b) the Regulator, and
  - (c) the trustees or managers of the scheme.
- (7) A person must comply with an obligation imposed on him by subsection (2), (4) or (6) as soon as reasonably practicable.
- (8) Regulations may require notices issued under this section—
  - (a) to be in a prescribed form;
  - (b) to contain prescribed information.

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

- C5** S. 122 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 62(2)

**Commencement Information**

- I27** S. 122 in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**
- I28** S. 122 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**
- I29** S. 122(1)(2)(4)(6)(7) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**
- I30** S. 122(3)(5)(8) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

**123 Approval of notices issued under section 122**

- (1) This section applies where the Board receives a notice under section 122(6) (“the section 122 notice”).
- (2) The Board must determine whether to approve the section 122 notice.
- (3) The Board must approve the section 122 notice if, and only if, it is satisfied—
  - (a) that the insolvency practitioner or former insolvency practitioner who issued the notice was required to issue it under that section, and
  - (b) that the notice complies with any requirements imposed by virtue of subsection (8) of that section.

**Status:** Point in time view as at 06/04/2005. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Pensions Act 2004, Part 2 is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (4) Where the Board makes a determination for the purposes of subsection (2), it must issue a determination notice and give a copy of that notice to—
- (a) the Regulator,
  - (b) the trustees or managers of the scheme,
  - (c) the insolvency practitioner or the former insolvency practitioner who issued the section 122 notice,
  - (d) any insolvency practitioner in relation to the employer (who does not fall within paragraph (c)), and
  - (e) if there is no insolvency practitioner in relation to the employer, the employer.
- (5) In subsection (4) “determination notice” means a notice which is in the prescribed form and contains such information about the determination as may be prescribed.

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

- C6** S. 123 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 62(3)

**Commencement Information**

- I31** S. 123(1)-(4) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**
- I32** S. 123(5) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

*Board’s duties*

**124 Board’s duty where there is a failure to comply with section 122**

- (1) This section applies where in relation to an occupational pension scheme—
- (a) the Board determines under section 123 not to approve a notice issued under section 122 by an insolvency practitioner or former insolvency practitioner in relation to the employer, or
  - (b) an insolvency practitioner or former insolvency practitioner in relation to the employer fails to issue a notice under section 122 and the Board is satisfied that such a notice ought to have been issued under that section.
- (2) The obligations on the insolvency practitioner or former insolvency practitioner imposed by subsections (2) and (4) of section 122 are to be treated as obligations imposed on the Board and the Board must accordingly issue a notice as required under that section.
- (3) Subject to subsections (4) and (5), where a notice is issued under section 122 by the Board by virtue of this section, it has effect as if it were a notice issued under section 122 by an insolvency practitioner or, as the case may be, former insolvency practitioner in relation to the employer.
- (4) Where a notice is issued under section 122 by virtue of this section, section 122(6) does not apply and the Board must, as soon as reasonably practicable, give a copy of the notice to—
- (a) the Regulator,

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- (b) the trustees or managers of the scheme,
  - (c) the insolvency practitioner or former insolvency practitioner mentioned in subsection (1),
  - (d) any insolvency practitioner in relation to the employer (who does not fall within paragraph (c)), and
  - (e) if there is no insolvency practitioner in relation to the employer, the employer.
- (5) Where the Board—
- (a) is required to issue a notice under section 122 by virtue of this section, and
  - (b) is satisfied that the notice ought to have been issued at an earlier time,
- it must specify that time in the notice and the notice is to have effect as if it had been issued at that time.

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

**C7** S. 124 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 62(4)

**Commencement Information**

**I33** S. 124 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**125 Binding notices confirming status of scheme**

- (1) Subject to subsection (2), for the purposes of this Part, a notice issued under section 122 is not binding until—
- (a) the Board issues a determination notice under section 123 approving the notice,
  - (b) the period within which the issue of the determination notice under that section may be reviewed by virtue of Chapter 6 has expired, and
  - (c) if the issue of the determination 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 determination notice has not been revoked, varied or substituted.
- (2) Where a notice is issued under section 122 by the Board by virtue of section 124, the 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.

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**Status:** Point in time view as at 06/04/2005. This version of this part contains provisions that are not valid for this point in time.  
**Changes to legislation:** Pensions Act 2004, Part 2 is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

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- (3) Where a notice issued under section 122 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,
  - (c) the insolvency practitioner or former insolvency practitioner who issued the notice under section 122 or, where that notice was issued by the Board by virtue of section 124, the insolvency practitioner or former insolvency practitioner mentioned in subsection (1) of that section,
  - (d) any insolvency practitioner in relation to the employer (who does not fall within paragraph (c)), and
  - (e) if there is no insolvency practitioner in relation to the employer, the employer.
- (4) A notice under subsection (3)—
- (a) must be in the prescribed form and contain such information as may be prescribed, and
  - (b) where it is given in relation to a withdrawal notice issued under section 122(2) (b) which has become binding, must state the time from which the Board ceases to be involved with the scheme (see section 149).

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

- C8** S. 125 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), [61](#), [62\(5\)](#)

**Commencement Information**

- I34** S. 125(1)-(3)(4)(b) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)
- I35** S. 125(4)(a) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#)

## CHAPTER 3

### PENSION PROTECTION

#### *Eligible schemes*

#### **126 Eligible schemes**

- (1) Subject to the following provisions of this section, 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 Secretary of State by order for the purposes of this subsection.
- (3) Regulations may provide that where—

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- (a) an assessment period begins in relation to an eligible scheme (see section 132), 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 subsection (4) as may be prescribed.
- (4) Those provisions are—
- (a) any provision of this Part, and
  - (b) any other provision of this Act in which “eligible scheme” has the meaning given by this section.
- (5) Regulations may also provide that a scheme which would be an eligible scheme in the absence of this subsection is not an eligible scheme in such circumstances as may be prescribed.

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

- C9** S. 126 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, **61**, **63**
- C10** S. 126(2) power exercised: 6.4.2005 appointed by [S.I. 2005/599](#), art. 2

**Commencement Information**

- I36** S. 126(1)(a) in force at 1.4.2005 by [S.I. 2005/275](#), art. 2(6), **Sch. Pt. 6**
- I37** S. 126(1)(b)(5) in force at 10.2.2005 for specified purposes and at 1.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(2), **Sch. Pt. 2**
- I38** S. 126(2) in force at 10.2.2005 for specified purposes and 8.3.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(1), **Sch. Pt. 1**
- I39** S. 126(3) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**
- I40** S. 126(4) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

*Circumstances in which Board assumes responsibility for eligible schemes*

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

- (1) This section 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 sections 131 and 143),
  - (b) after the relevant time a scheme failure notice is issued under section 122(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



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- (ii) ending immediately before the issuing of the scheme failure notice under section 122(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 section 149).
- (3) For the purposes of this section, 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 section 126(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 section 132) in relation to the scheme which began before the occurrence of the current event.
- (4) For the purposes of this section—
  - (a) the reference in subsection (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 section is subject to sections 146 and 147 (cases where Board must refuse to assume responsibility for a scheme).

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

**C11** S. 127 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 64(1)

**Commencement Information**

**I41** S. 127 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

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

- (1) This section applies where, in relation to an eligible scheme, the trustees or managers of the scheme—
  - (a) make an application under subsection (1) of section 129 (a “section 129 application”), or
  - (b) receive a notice from the Board under subsection (5)(a) of that section (a “section 129 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 sections 131 and 143),
  - (b) after the relevant time the Board issues a scheme failure notice under section 130(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—

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- (i) beginning with the making of the section 129 application or, as the case may be, the receipt of the section 129 notification, and
  - (ii) ending immediately before the issuing of the scheme failure notice under section 130(2),
- and the occurrence of such a withdrawal event in respect of a withdrawal notice issued during that period is not a possibility (see section 149).
- (3) In subsection (2)—
- (a) the reference in 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 section 129 application was made or, as the case may be, the section 129 notification was received.
- (4) An application under section 129(1) or notification under section 129(5)(a) is to be disregarded for the purposes of subsection (1) if it is made or given during an assessment period (see section 132) in relation to the scheme which began before the application was made or notification was given.
- (5) This section is subject to sections 146 and 147 (cases where Board must refuse to assume responsibility for a scheme).

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

**C12** S. 128 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 64(2)

**Commencement Information**

**I42** S. 128 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**129 Applications and notifications for the purposes of section 128**

- (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 section 128.
- (2) Where the Board receives an application under subsection (1), it must give a copy of the application to—
- (a) the Regulator, and
  - (b) the employer.
- (3) An application under subsection (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—

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- (a) the employer in relation to an eligible scheme is unlikely to continue as a going concern, and
  - (b) the requirements mentioned in subsection (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 subsection (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 subsection (1) does not apply where the trustees or managers of an eligible scheme become aware as mentioned in that subsection by reason of a notice given to them under subsection (5).
- (7) The duty imposed by subsection (4) does not apply where the Regulator becomes aware as mentioned in that subsection 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 subsection (2).
- (8) Regulations may require notices under this section to be in the prescribed form and contain the prescribed information.

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

**C13** S. 129 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 65(1)

**Commencement Information**

**I43** S. 129(1)(a)(2)(4)-(7) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**I44** S. 129(1)(b)(3)(8) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

## **130 Board’s duty where application or notification received under section 129**

- (1) This section applies where the Board—
  - (a) receives an application under subsection (1) of section 129 and is satisfied that paragraphs (a) and (b) of that subsection are satisfied in relation to the application, or
  - (b) is notified by the Regulator under section 129(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 subsection (2) or (3) to—
  - (a) the Regulator,
  - (b) the trustees or managers of the scheme, and
  - (c) the employer.

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- (5) For the purposes of this section—
- (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 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 paragraph.
- (6) For the purposes of this Part a notice issued under subsection (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 subsection (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 section must be in the prescribed form and contain such information as may be prescribed.
- (9) A notice given under subsection (7) in relation to a withdrawal notice under subsection (3) which has become binding must state the time from which the Board ceases to be involved with the scheme (see section 149).

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

- C14** S. 130 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 65(2)

**Commencement Information**

- I45** S. 130(1)-(4)(6)(7) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**
- I46** S. 130(5)(8) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

**131 Protected liabilities**

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

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- (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 section 162) 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 subsection (1)(a), references in sections 140 to 142 and Schedule 7 (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.

**Commencement Information**

**I47** S. 131 in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

*Restrictions on schemes during the assessment period*

**132 Assessment periods**

- (1) In this Part references to an assessment period are to be construed in accordance with this section.
- (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 section 149),
    - (ii) the trustees or managers of the scheme receive a transfer notice under section 160, or
    - (iii) the conditions in section 154(2) (no scheme rescue but sufficient assets to meet protected liabilities etc) are satisfied in relation to the scheme,whichever first occurs.
- (3) In subsection (2) “qualifying insolvency event” has the meaning given by section 127(3).
- (4) Where, in relation to an eligible scheme, an application is made under section 129(1) or a notification is received under section 129(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 section 149),
    - (ii) the trustees or managers of the scheme receive a transfer notice under section 160, or
    - (iii) the conditions in section 154(2) (no scheme rescue but sufficient assets to meet protected liabilities etc) are satisfied in relation to the scheme,

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whichever first occurs.

- (5) For the purposes of subsection (4) an application under section 129(1) or notification under section 129(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 section is subject to section 159 (which provides for further assessment periods to begin in certain circumstances where schemes are required to wind up or continue winding up under section 154).

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

**C15** S. 132 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, **66**

**Commencement Information**

**I48** S. 132(1)-(5) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

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

- (1) This section 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 section 49(8) of the Pensions Act 1995 (c. 26) to pay amounts deducted corresponding to such contributions) is to be read subject to subsection (3) and section 150 (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) Subsection (5) does not prevent any increase, in a benefit, which would otherwise accrue in accordance with the scheme or any enactment.

This subsection is subject to section 138 (which limits the scheme benefits payable during an assessment period).

- (7) Subsection (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 section prevents the trustees or managers of the scheme discharging their liability in respect of the credit under Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 (c. 30) (sharing of rights under pension arrangements) by conferring appropriate rights under the scheme on that person.

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- (9) In subsection (8)—  
“appropriate rights” has the same meaning as in paragraph 5 of Schedule 5 to that Act (pension credits: mode of discharge);  
“shareable rights” has the same meaning as in Chapter 1 of Part 4 of that Act (sharing of rights under pension arrangements).
- (10) Any action taken in contravention of this section is void.
- (11) Disregarding subsection (10), section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with this section.

#### Commencement Information

- I49** S. 133(1)(2)(4)-(11) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)
- I50** S. 133(3) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#)

## 134 Directions

- (1) This section 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—
- the investment of the scheme’s assets,
  - the incurring of expenditure,
  - the instigation or conduct of legal proceedings, and
  - such other matters as may be prescribed.
- (3) In subsection (2)—
- “relevant person” in relation to a scheme means—
    - the trustees or managers of the scheme,
    - the employer in relation to the scheme, or
    - such other persons as may be prescribed, and
  - 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 section.
- (5) Where a direction under this section given to the trustees or managers of a scheme is not complied with, section 10 of the Pensions Act 1995 (c. 26) (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 section also applies to any other person who, without reasonable excuse, fails to comply with a direction given to him under this section.

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

- C16** S. 134 applied (with modifications) (6.4.2005) by [The Pension Protection Fund \(Hybrid Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/449\)](#), regs. 1(1), **3(1)**

#### **Commencement Information**

- I51** S. 134(1)(2)(a)-(c)(4)-(6) in force in so far as not already in force except subsection (2)(d) at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**
- I52** S. 134(3) in force in so far as it relates to paragraph (iii) of the definition of "relevant person" in paragraph (a) for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes in relation to that definition in that paragraph at 6.4.2005 for specified purposes by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**
- I53** S. 134(3) in force in so far as not already in force except subsection (2)(d) at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

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

- (1) This section applies where there is an assessment period in relation to an eligible scheme.
- (2) Subject to subsection (3), the winding up of the scheme must not begin during the assessment period.
- (3) Subsection (2) does not apply to the winding up of the scheme in pursuance of an order by the Regulator under section 11(3A) of the Pensions Act 1995 (Regulator's powers to wind up occupational pension schemes to protect Pension Protection Fund) directing the scheme to be wound up (and section 219 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) Subsection (4)—
  - (a) is subject to section 138, and
  - (b) applies whether or not the scheme was being wound up immediately before the assessment period or began winding up by virtue of subsection (3).
- (6) Subsection (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 4 of the Pension Schemes Act 1993 (c. 48) (early leavers: cash transfer sums and contribution refunds) applies.

Section 150(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within paragraph (a) or (b).



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- (7) Where this subsection 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 4 under of the Welfare Reform and Pensions Act 1999 (c. 30) (sharing of rights under pension arrangements)) under the scheme, nothing in subsection (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 section is void, except to the extent that the Board validates the action (see section 136).
- (10) Disregarding subsection (9), where there is a contravention of this section, section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance with this section.
- (11) The Regulator may not make a freezing order (see section 23) in relation to the scheme during the assessment period.

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

**C17** S. 135 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 67(1)

**Commencement Information**

**I54** S. 135(1)-(3)(5)-(11) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**I55** S. 135(4) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

**136 Power to validate contraventions of section 135**

- (1) The Board may validate an action for the purposes of section 135(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 subsection (2) must contain a statement of the Board’s reasons for the determination.
- (4) The validation of an action does not take effect—

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- (a) until—
    - (i) the Board has issued a notice under subsection (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 subsection (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.

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

**C18** S. 136 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 67(2)

**Commencement Information**

**I56** S. 136 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

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

- (1) Subsection (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 section 75 of the Pensions Act 1995 (c. 26) (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 subsection (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.

**Commencement Information**

**I57** S. 137 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**138 Payment of scheme benefits**

- (1) Subsections (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—

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- (a) the Board assumed responsibility for the scheme in accordance with this Chapter, and
  - (b) the assessment date referred to in Schedule 7 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 4 of the Pension Schemes Act 1993 (c. 48) (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) Section 150(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within paragraph (a) or (b) of subsection (3).
- (5) Nothing in subsection (3) prevents the payment of benefits attributable (directly or indirectly) to a pension credit, during the assessment period, in accordance with subsection (2).
- (6) Where at any time during the assessment period the scheme is being wound up, subject to any reduction required under subsection (2) and to subsection (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) Subsections (2), (3) and (6) are subject to sections 150(1) to (3) and 154(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 subsections (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) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with subsections (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 subsection (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 subsection (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

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- 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) subsection (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 subsection 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 subsection (2), to be treated as having become payable before the commencement of the assessment period.
- (13) Nothing in subsection (2) or (3) applies to money purchase benefits.

#### Commencement Information

- I58** S. 138(1)-(9)(11)(13) in force in so far as not already in force except subsection (10)(a) at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)
- I59** S. 138(10)(b)(12) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)

### 139 Loans to pay scheme benefits

- (1) Subsection (2) applies where section 138(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 section 138(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 subsection (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 section 11(3A) of the Pensions Act 1995 (c. 26) 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 section 154(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.

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- (4) No loan may be made under subsection (2) after the time mentioned in subsection (3)(b)(i).
- (5) In subsection (2) the reference to “benefits” does not include money purchase benefits.
- (6) In subsection (3) “the appropriate interest” on an amount lent under subsection (2) means interest at the prescribed rate from the time the amount was so lent until repayment.
- (7) Subject to this section, the Board may make a loan under subsection (2) on such terms as it thinks fit.

#### Commencement Information

- I60** S. 139(1)-(5)(7) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)
- I61** S. 139(6) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)

### *Ill health pensions*

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

- (1) This section 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 section 141, the member would be entitled to compensation under paragraph 3 of Schedule 7 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 subsection (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 subsection (3)(b),

section 10 of the Pensions Act 1995 (c. 26) (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.

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- (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 subsection (3) (b), and
  - (b) in the absence of this subsection, 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 section and any subsequent decision under section 141.

#### Commencement Information

**I62** S. 140(1)(2)(3)(a)(4)(5) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

**I63** S. 140(3)(b)(6) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)

## 141 Effect of a review

- (1) This section applies where, during an assessment period in relation to an eligible scheme, the Board reviews an ill health pension by virtue of section 140.
- (2) Where the conditions of subsection (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.

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- (4) For the purposes of subsection (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 subsection (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 section 144 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 subsection (2) may, in particular, include provision applying any provision of Schedule 7 with such modifications as may be prescribed.

#### Commencement Information

- I64** S. 141(1)(3)-(5) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)
- I65** S. 141(2)(6) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)

## 142 Sections 140 and 141: interpretation

- (1) For the purposes of sections 140 and 141—
  - “admissible rules” is to be construed in accordance with Schedule 7;
  - “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 7 apply in relation to this section 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 section 141(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 7;
  - “scheme valuation”, in relation to a scheme, means a valuation under section 143 of the assets and protected liabilities of the scheme as at the time immediately before the assessment period begins.

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- (2) For the purposes of section 140(4)—
  - (a) the definition of “normal pension age” in subsection (1), and
  - (b) sub-paragraphs (2) and (3) of paragraph 34 of Schedule 7 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 7 (references to “ill health” to be construed in accordance with regulations) applies in relation to sections 140 and 141 and this section as if, in that provision, the reference to that Schedule included a reference to those sections and this section.
- (4) In those sections 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.

#### **Commencement Information**

**I66** S. 142 in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)

### *Valuation of assets and liabilities*

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

- (1) This section applies in a case within subsection (1) of section 127 or 128.
- (2) For the purposes of determining whether the condition in subsection (2)(a) of the section 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 section 38, 47 or 55 during the pre-approval period;
  - (b) an obligation arising under financial support for the scheme (within the meaning of section 45) put in place during the pre-approval period in accordance with a financial support direction issued under section 43;
  - (c) an obligation imposed by a restoration order made under section 52 during the pre-approval period in respect of a transaction involving assets of the scheme.
- (4) For the purposes of this section, 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 subsection (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—



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- (a) a debt (including any contingent debt) due to the trustees or managers of the scheme from the employer under section 75 of the Pensions Act 1995 (c. 26) (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 section 38, 47 or 55,
- (c) an obligation arising under financial support for the scheme (within the meaning of section 45) put in place in accordance with a financial support direction issued under section 43, or
- (d) an obligation imposed by a restoration order made under section 52 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.

[<sup>F1</sup>(5A) Subsection (5B) applies if–

- (a) during the pre-approval period any liability to provide pensions or other benefits to or in respect of any member or members under the scheme is discharged by virtue of regulations under section 135(4) or the Board validating any action mentioned in section 135(9), and
- (b) at the relevant time the protected liabilities of the scheme include any cost within section 131(1)(a) relating to compensation in respect of those pensions or other benefits.

(5B) If this subsection applies, for the purposes mentioned in subsection (2)–

- (a) in determining that cost the effect of the discharge on the compensation payable in respect of those pensions or other benefits under paragraph 23A of Schedule 7 must be taken into account,
- (b) in a case where assets of the scheme at the relevant time were transferred from the scheme during the pre-approval period in consideration for the discharge, those assets are not to be regarded as assets of the scheme at the relevant time, and
- (c) in a case where assets that were not assets of the scheme at that time (“later-acquired assets”) were so transferred, the value of the assets of the scheme at that time is to be reduced by the value of the later-acquired assets at the time of the discharge.]

- (6) Subject to any provision made under subsection (4), the matters mentioned in paragraphs (a) and (b) of that subsection 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 section, 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 subsection (2) ceases to apply if and when the Board ceases to be involved with the scheme.
- (9) Nothing in subsection (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 subsection (3) or (4) [<sup>F2</sup>or by virtue of subsection (5B) ], may affect the value of the assets or the amount of the protected liabilities of the scheme for the purposes of the valuation.

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- (10) In a case where there are one or more reviewable ill health pensions (within the meaning of section 140), nothing in subsection (2) requires the actuarial valuation to be obtained during the period mentioned in section 141(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 section—
- (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 Secretary of State,
  - (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 section 144 after the relevant time,
  - (c) “the relevant time”—
    - (i) in a case within subsection (1) of section 127, has the meaning given in subsection (4)(b) of that section, and
    - (ii) in a case within subsection (1) of section 128, has the meaning given in subsection (3)(b) of that section, 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.

#### Textual Amendments

- F1** S. 143(5A)(5B) inserted (6.4.2005) by [The Occupational Pension Schemes \(Modification of Pension Protection Provisions\) Regulations 2005 \(S.I. 2005/705\)](#), regs. 1(2), **2(2)**
- F2** Words in s. 143(9) inserted (6.4.2005) by [The Occupational Pension Schemes \(Modification of Pension Protection Provisions\) Regulations 2005 \(S.I. 2005/705\)](#), regs. 1(2), **2(3)**

#### Commencement Information

- I67** S. 143(1)(2)(6)-(10) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**
- I68** S. 143(3)-(5) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**
- I69** S. 143(11) in force in so far as it relates to paragraphs (i) and (ii)(a) of the definition of "actuarial valuation" in paragraph (a) for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes in relation to those paragraphs of that definition at 6.4.2005 for specified purposes by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**
- I70** S. 143(11) in force in so far as not already in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

## 144 Approval of valuation

- (1) This section applies where the Board obtains a valuation in respect of a scheme under section 143.

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- (2) Where the Board is satisfied that the valuation has been prepared in accordance with that section, 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 section.

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

**C19** S. 144 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 68(1)

**Commencement Information**

**I71** S. 144 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**No Binding valuations**

**commentary**

**item** (1) For the purposes of this Chapter a valuation obtained under section 143 is not binding until—

**could**

**be**

**found**

**for**

**this**

**reference**

**key-43d9eabe3df85b97ee1578372e3ef214145**

- (a) it is approved under section 144,
- (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) For the purposes of determining whether or not the condition in section 127(2)(a) or, as the case may be, section 128(2)(a) (condition that scheme assets are less than protected liabilities) is satisfied in relation to a scheme, a binding valuation is conclusive.

This subsection is subject to section 172(3) and (4) (treatment of fraud compensation payments).

- (3) Where a valuation becomes binding under this section 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 subsection (3) must be in the prescribed form and contain the prescribed information.

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#### **Commencement Information**

**I72** S. 145(1)-(3) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)

**I73** S. 145(4) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)

### *Refusal to assume responsibility*

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

- (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 subsection (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 section 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 section 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 section must be in the prescribed form and contain such information as may be prescribed.
- (6) A notice given under subsection (4) must state the time from which the Board ceases to be involved with the scheme (see section 149).

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

- C20** S. 146 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, **69**

**Commencement Information**

- I74** S. 146(1)(5) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**
- I75** S. 146(2)-(4)(6) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

## 147 New schemes created to replace existing schemes

- (1) The Board must refuse to assume responsibility for a scheme (“the new scheme”) under this Chapter where it is satisfied that—
- the new scheme was established during such period as may be prescribed,
  - 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”),
  - 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
  - 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 section 146 would have operated to prevent such payments in respect of their rights under the old scheme.
- (2) Where, under subsection (1), the Board is required to refuse to assume responsibility for a scheme, it—
- must issue a notice to that effect (a “withdrawal notice”), and
  - give a copy of that notice to—
    - the Regulator,
    - the trustees or managers of the scheme, and
    - 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 section is not binding until—
- the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
  - if the issue of the notice is so reviewed—
    - the review and any reconsideration,
    - any reference to the PPF Ombudsman in respect of the issue of the notice, and
    - any appeal against his determination or directions,

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

- (4) Where a withdrawal notice issued under this section 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 section must be in the prescribed form and contain such information as may be prescribed.
- (6) A notice given under subsection (4) must state the time from which the Board ceases to be involved with the scheme (see section 149).

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

- C21** S. 147 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 69(2)

**Commencement Information**

- I76** S. 147(1)(a)(5) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**
- I77** S. 147(1)(b)-(d)(2)-(4)(6) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**148 Withdrawal following issue of section 122(4) notice**

- (1) This section applies where—
- (a) a notice under section 122(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 section 122(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 section 149).
- (2) The Board must determine whether any insolvency event—
- (a) has occurred in relation to the employer since the issue of the notice under section 122(4), or
  - (b) is likely to so occur before the end of the period of six months beginning with the date on which this section applies.
- (3) If the Board determines under subsection (2) that no insolvency event has occurred or is likely to occur as mentioned in that subsection, it must issue a notice to that effect (a “withdrawal notice”).

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**Status:** Point in time view as at 06/04/2005. This version of this part contains provisions that are not valid for this point in time.  
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- (4) Where—
- (a) no withdrawal notice is issued under subsection (3) before the end of the period mentioned in subsection (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 section, 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 section 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 section 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 section must be in the prescribed form and contain such information as may be prescribed.
- (9) A notice given under subsection (7) must state the time from which the Board ceases to be involved with the scheme (see section 149).

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

**C22** S. 148 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 69(3)

**Commencement Information**

**I78** S. 148(1)-(7)(9) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**I79** S. 148(8) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

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### *Cessation of involvement with a scheme*

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

- (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 section 122(2)(b) (scheme rescue has occurred) becoming binding;
  - (b) a withdrawal notice issued under section 130(3) (scheme rescue has occurred) becoming binding;
  - (c) a withdrawal notice issued under or by virtue of section 146 or 147 (refusal to assume responsibility) becoming binding;
  - (d) a withdrawal notice issued under section 148 (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) Subsection (4) applies where a withdrawal notice mentioned in subsection (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 subsection (4) did not apply, the event would not be a qualifying insolvency event within the meaning given by subsection (3) of section 127 solely because the condition in sub-paragraph (ii) of paragraph (b) of that subsection would not be satisfied, or
  - (b) an application under section 129(1) is made, or a notification under section 129(5)(a) is given, in relation to the scheme during the interim period and, if subsection (4) did not apply, the application or notification would be disregarded for the purposes of—
    - (i) subsection (1) of section 128 by virtue of subsection (4) of that section, and
    - (ii) subsection (4) of section 132 by virtue of subsection (5) of that section.
- (4) In such a case, the withdrawal notice is to be treated for the purposes of subsections (1) and (2), as if the time when it became binding was the time immediately before—
  - (a) in a case falling within subsection (3)(a), the occurrence of the insolvency event, and
  - (b) in a case falling within subsection (3)(b), the making of the application under section 129(1) or, as the case may be, the giving of the notification under section 129(5)(a).
- (5) For the purposes of subsection (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 are no longer reviewable—



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- (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 subparagraph (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.

#### Commencement Information

**180** S. 149 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), Sch. Pt. 7

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

- (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 section 138 (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 section 219 (backdating the winding up of eligible schemes) or otherwise), the reference in subsection (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 sections 73 to 73B of the Pensions Act 1995 (c. 26) (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

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- that would have been payable in the absence of section 138(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) Subsections (1) to (3) are without prejudice to section 73A(2)(b) of the Pensions Act 1995 (c. 26) (requirement to adjust benefits paid to reflect liabilities which can be met on winding up).
- (5) Regulations may provide that, in cases within paragraph (a) of subsection (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 section 133(5), would have qualified the member in question for those benefits under the scheme rules.
- (6) Regulations under subsection (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 section 133, 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 paragraph (a) or (b) are accepted for the assessment period or any part of that period;
  - (d) modifying section 31 of the Welfare Reform and Pensions Act 1999 (c. 30) (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 subsection (5).
- (7) In this section “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 section 227 in respect of the scheme.

#### **Commencement Information**

- I81** S. 150(1)-(4)(7) in force in so far as not already in force except subsection (6)(d) at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)
- I82** S. 150(5)(6)(a)-(c) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)

### *Reconsideration*

#### **151 Application for reconsideration**

- (1) Where subsection (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 section for it to assume responsibility for the scheme in accordance with this Chapter.
- (2) This subsection applies where—

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**Status:** Point in time view as at 06/04/2005. This version of this part contains provisions that are not valid for this point in time.

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- (a) a scheme failure notice has been issued under section 122(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 section 125(3),
  - (b) the valuation obtained by the Board under section 143 in respect of the scheme has become binding, and
  - (c) the Board would have been required to assume responsibility for the scheme under section 127 but for the fact that the condition in subsection (2)(a) of that section was not satisfied.
- (3) This subsection applies where—
- (a) the Board has issued a scheme failure notice under subsection (2) of section 130 in relation to the scheme, that notice has become binding and the trustees or managers have received a copy of the binding notice under subsection (7) of that section,
  - (b) the valuation obtained by the Board under section 143 in respect of the scheme has become binding, and
  - (c) the Board would have been required to assume responsibility for the scheme under section 128 but for the fact that the condition in subsection (2)(a) of that section was not satisfied.
- (4) An application under this section 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 section must be made within the authorised period.
- (6) In this section “the authorised period” means the prescribed period which begins—
- (a) where subsection (2) applies, with the later of—
    - (i) the day on which the trustees or managers received the copy of the binding notice mentioned in paragraph (a) of that subsection, and
    - (ii) the day on which they received a copy of the binding valuation mentioned in paragraph (b) of that section, and
  - (b) where subsection (3) applies, with the later of—
    - (i) the day on which the trustees or managers received the copy of the binding notice mentioned in paragraph (a) of that subsection, and
    - (ii) the day on which they received a copy of the binding valuation mentioned in paragraph (b) of that subsection.
- (7) Where the Board receives an application under subsection (1), it must give a copy of the application to the Regulator.
- (8) For the purposes of this section—
- “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 subsections (9) to (11) and audited by the auditor in relation to the scheme, and

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(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 section 47 of the Pensions Act 1995 (c. 26);

“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 section, or

(b) benefits in accordance with the member’s entitlement or accrued rights (including pension credit rights within the meaning of section 124(1) of the Pensions Act 1995 (c. 26)) 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 section, means the time immediately before the end of the period to which the audited scheme accounts mentioned in subsection (4)(b) relate.

(9) The scheme accounts are prepared in accordance with this subsection if, subject to subsections (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 subsection (11), regulations under subsection (4) of section 143 (other than regulations made by virtue of subsection (5) of that section), and guidance under subsection (6) of that section, apply to the scheme accounts as they apply for the purposes of a valuation under that section.

(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 section—

(a) regulations may prescribe how the cost of securing the benefits mentioned in paragraph (a) of the definition of “protected benefits quotation” in subsection (8) is to be determined, calculated and verified, and

(b) subject to any provision made under 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 subsection (8) no account is to be taken of the winding up of the scheme.

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### Commencement Information

- 183** S. 151(1)-(3)(5)(7)(9)(a)(10)(11)(12)(b)(13) in force in so far as not already in force except paragraph (a) in the definition of “audited scheme accounts” [which is in s. 151(8)] and (12)(a) at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)
- 184** S. 151(4)(6)(9)(b) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)
- 185** S. 151(8) in force in so far as it relates to paragraph (b) of the definition of “audited scheme accounts” for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes in relation to that paragraph of that definition at 6.4.2005 for specified purposes by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)
- 186** S. 151(8) in force in so far as not already in force except paragraph (a) in the definition of “audited scheme accounts” [which is in s. 151(8)] and (12)(a) at 6.4.2005 for specified purposes by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)

## 152 Duty to assume responsibility following reconsideration

- (1) This section applies where an application is made in respect of a scheme in accordance with section 151.
- (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 subsection (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 subsection (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 subsection (2), it is not required to assume responsibility for the scheme under subsection (2) until the determination notice issued under subsection (3) becomes binding.
- (6) For the purposes of subsection (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,

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

- (7) Where a determination notice issued under subsection (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 subsection (7) must be in the prescribed form and contain such information as may be prescribed.
- (9) The Board may—
- (a) for the purposes of subsection (2), obtain its own valuation of the assets of the scheme as at the reconsideration time (within the meaning of section 151), and
  - (b) for the purposes of subsection (2)(b), obtain its own valuation of the liabilities of the scheme as at that time;
- and where it does so, subsections (9)(b), (10) and (11) of section 151 apply in relation to the valuation as they apply in relation to the scheme accounts (within the meaning of that section).
- (10) Regulations under subsection (4) of section 143, and guidance under subsection (6) of that section, apply for the purposes of this section in relation to the estimated costs within subsection (2)(c) as they apply for the purposes of section 143 in relation to protected liabilities within section 131(1)(c).
- (11) In this section 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 section is subject to sections 146 and 147 (refusal to assume responsibility for a scheme).

#### Commencement Information

**I87** S. 152(1)-(3)(5)-(7)(9)-(12) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

**I88** S. 152(4)(8) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)

VALID FROM 01/11/2006

#### *Closed schemes*

#### **153 Closed schemes**

- (1) This section applies where section 151(2) or (3) (scheme rescue not possible but scheme has sufficient assets to meet the protected liabilities) applies in relation to an eligible scheme.

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- (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 subsection (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 subsection (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 subsection (3) but were unable to obtain a full buy-out quotation.
- (5) Where the Board receives an application under subsection (2), if it is satisfied that the trustees or managers have complied with the obligation under subsection (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 section, 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 section—
  - “authorised period” has the same meaning as in section 151;
  - “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 section 124(1) of the Pensions Act 1995 (c. 26);
  - “relevant date” means a date within the authorised period.
- (8) If the trustees or managers of the scheme fail to comply with subsection (2) or (3), section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

### *Winding up*

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

- (1) Where, in relation to an eligible scheme, an assessment period within section 132(2) or (4) comes to an end because the conditions in subsection (2) of this section are satisfied, the trustees or managers of the scheme must—

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- (a) wind up the scheme, or
  - (b) where the winding up of the scheme began before the assessment period (whether by virtue of section 219 or otherwise), continue the winding up of the scheme.
- (2) The conditions are—
- (a) that subsection (2) or (3) of section 151 (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 section or section 153(2) within the authorised period (within the meaning of section 151(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 section 151, the Board is not required to assume responsibility for the scheme by virtue of section 152(2).
- (3) For the purposes of subsection (2)(b)(ii) an application is not finally determined until—
- (a) the Board has issued a determination notice in respect of the application under section 152 or, as the case may be, section 153,
  - (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 section 159(3) comes to an end because the conditions in subsection (5) of this section are satisfied, the trustees or managers of the scheme must continue the winding up of the scheme begun (whether in accordance with this section 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 section 157 (applications and notifications where closed schemes have insufficient assets),
  - (b) that the valuation obtained by the Board in respect of the scheme under section 158(3) has become binding, and
  - (c) that the Board is not required to assume responsibility for the scheme by virtue of section 158(1) (duty to assume responsibility for closed scheme).
- (6) Where a scheme is wound up in accordance with subsection (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 section 134, but subject to any order made under subsection (8), the Board may give the trustees or managers of the



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scheme directions relating to the manner of the winding up of the scheme under this section (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 subsection (6), immediately before the assessment period, or
    - (ii) the winding up of the scheme being continued under subsection (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 subsection (7), or contained in an order under subsection (8), section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (10) That section also applies to any other person who, without reasonable excuse, fails to comply with a direction to him contained in an order under subsection (8).
- (11) The winding up of a scheme under this section is as effective in law as if it had been made under powers conferred by or under the scheme.
- (12) This section must be complied with in relation to a scheme—
- (a) in spite of any enactment 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 enactment, 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 subsection (2) or (5) being satisfied, subsections (1) to (4) of section 150 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 subsection (2) of that section the reference to section 219 is to be read as a reference to subsection (6) of this section.
- (14) Where a public service pension scheme is required to be wound up under this section, the appropriate authority may by order make provision modifying any enactment in which the scheme is contained or under which it is made.
- (15) In subsection (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 as having responsibility for the particular scheme.

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**Commencement Information**

**189** S. 154(1)(2)(a)(c)(6)-(15) in force at 6.4.2005 by S.I. 2005/275, art. 2(7), Sch. Pt. 7

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VALID FROM 01/11/2006

*Provisions applying to closed schemes*

**155 Treatment of closed schemes**

- (1) In this section “closed scheme” means an eligible scheme which is authorised under section 153 to continue as a closed scheme.
- (2) The provisions mentioned in subsection (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 section 154 as if that time fell within an assessment period in relation to the scheme.
- (3) The provisions are—
  - (a) section 40(5) and (6) (Board to act as creditor for debt due by virtue of a contribution notice under section 38);
  - (b) section 49(5) and (6) (Board to act as creditor for debt due by virtue of a contribution notice under section 47);
  - (c) section 54(5) and (6) (Board to act as creditor for debt due by virtue of a restoration order under section 52);
  - (d) section 56(5) and (6) (Board to act as creditor for debt due by virtue of a contribution notice under section 55);
  - (e) section 133 (admission of new members, payment of contributions etc);
  - (f) section 134 (directions);
  - (g) section 137 (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 subsection (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.

**156 Valuations of closed schemes**

- (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 section 157.
- (2) Regulations under this section 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 subsection (2), those matters are to be determined, calculated and verified in accordance with guidance issued by the Board.

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- (4) In calculating the amount of any liabilities for the purposes of a valuation required by virtue of this section, 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 section 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 section 153(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 section, 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 section 47(1)(b) of the Pensions Act 1995 (c. 26) (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 Secretary of State;
  - “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 section 155;
  - “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” does not include liabilities in respect of money purchase benefits under the scheme rules.

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VALID FROM 01/11/2006

### *Reconsideration of closed schemes*

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

- (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 subsection (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 subsection (3), it must give the trustees or managers of the scheme a notice to that effect.
- (5) The duty imposed by subsection (1) does not apply where the trustees or managers of a closed scheme become aware as mentioned in that subsection by reason of a notice given to them under subsection (4).
- (6) The duty imposed by subsection (3) does not apply where the Regulator becomes aware as mentioned in that subsection by reason of a copy of an application made by the trustees or managers of the closed scheme being given to it under subsection (2).
- (7) Regulations may require notices and applications under this section to be in the prescribed form and contain the prescribed information.
- (8) If the trustees or managers of a closed scheme fail to comply with subsection (1), section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (9) In this section—
  - “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 section 155.

VALID FROM 06/04/2007

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

- (1) Where the trustees or managers of a closed scheme—
  - (a) make an application under subsection (1) of section 157, or
  - (b) receive a notice from the Board under subsection (4) of that section,

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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 subsection (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 subsection (1) is satisfied, the Board must, as soon as reasonably practicable, obtain an actuarial valuation (within the meaning of section 143) of the scheme as at the relevant time.
- (4) Subject to subsection (6), subsection (3) of section 143 applies for those purposes as it applies for the purposes mentioned in subsection (2) of that section (and the definitions contained in paragraphs (b) and (d) of subsection (11) of that section apply accordingly).
- (5) Subject to subsection (6), the following provisions apply in relation to a valuation obtained under subsection (3) as they apply in relation to a valuation obtained under section 143—
  - (a) subsections (4) to (7) and (11)(b) and (d) of that section;
  - (b) section 144 (approval of valuation), other than subsection (2)(b)(iii) (duty to give copy of approved valuation to employer’s insolvency practitioner);
  - (c) section 145 (binding valuations), other than subsection (3)(c) (duty to give copy of binding valuation to employer’s insolvency practitioner).
- (6) In the application of sections 143 and 145 by virtue of subsection (4) or (5)—
  - (a) <sup>F3</sup>subsections (3), (5), (5A), (5B) and (11)(b) and (c) of section 143] apply as if the references to “the relevant time” were references to that term as defined in subsection (8) below, and
  - (b) subsection (2) of section 145 applies as if the reference to section 128(2)(a) included a reference to subsection (1) of this section.
- (7) An application under subsection (1) of section 157, or notification under subsection (4) of that section, is to be disregarded for the purposes of subsection (1) if it is made or given during an assessment period (see sections 132 and 159) in relation to the scheme which began before the application was made or notification was given.
- (8) In this section—

“closed scheme” has the same meaning as in section 155;

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

#### Textual Amendments

- F3** Words in s. 158(6)(a) substituted (6.4.2005) by [The Occupational Pension Schemes \(Modification of Pension Protection Provisions\) Regulations 2005 \(S.I. 2005/705\)](#), regs. 1(2), 2(4)

*Status: Point in time view as at 06/04/2005. This version of this part contains provisions that are not valid for this point in time.*

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VALID FROM 06/04/2007

### **159 Closed schemes: further assessment periods**

- (1) Subsection (3) applies where—
  - (a) an application is made under subsection (1) of section 157 in relation to a closed scheme, or
  - (b) the trustees or managers of the scheme receive a notice under subsection (4) of that section.
- (2) For the purposes of subsection (1) an application under subsection (1) of section 157, or notification under subsection (4) of that section, is to be disregarded if it is made or given during an assessment period (see section 132 and this section) 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 section 160, or
    - (ii) the conditions in section 154(5) (closed scheme with sufficient assets to meet protected liabilities etc) are satisfied in relation to the scheme,
 whichever first occurs.
- (4) In this section “closed scheme” has the same meaning as in section 155.

#### *Assumption of responsibility for a scheme*

### **160 Transfer notice**

- (1) This section applies where the Board is required to assume responsibility for a scheme under section 127, 128, 152 or 158.
- (2) The Board must give the trustees or managers a notice (a “transfer notice”).
- (3) In a case to which section 127 or 128 applies, a transfer notice may not be given until the valuation obtained under section 143 is binding.
- (4) In a case to which section 158 applies, a transfer notice may not be given until the valuation obtained under subsection (3) of that section 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 section 146 or 147 (refusal to assume responsibility) is reviewable (see section 149(6)(b)).
- (6) The Board must give a copy of any notice given under subsection (2) to—
  - (a) the Regulator, and

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**Status:** Point in time view as at 06/04/2005. This version of this part contains provisions that are not valid for this point in time.  
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- (b) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (7) This section is subject to section 172(1) and (2) (no transfer notice within first 12 months of assessment period or when fraud compensation application is pending).

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

**C23** S. 160 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 70(1)

**Commencement Information**

**I90** S. 160(1)-(3)(5)(6) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**I91** S. 160(7) in force in so far as it relates to section 172(1) at 6.4.2005 for specified purposes by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

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

- (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—
- 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,
  - the trustees or managers of the scheme are discharged from their pension obligations from that time, and
  - 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 subsection (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—
- liabilities in respect of money purchase benefits, and
  - such other liabilities as may be prescribed.
- (4) In subsection (2)(b) “pension obligations” in relation to the trustees or managers of the scheme means—
- 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 1993 (c. 48)), and
  - their obligations to administer the scheme in accordance with the scheme rules and this or any other enactment.
- (5) Schedule 6 makes provision in respect of the transfer of the property, rights and liabilities of a scheme under subsection (2)(a).
- (6) Regulations may make further provision regarding such transfers.
- (7) Without prejudice to the generality of subsection (6), regulations may authorise the Board to modify a term of a relevant contract of insurance if—

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- (a) any rights or liabilities under the contract are transferred to the Board by virtue of subsection (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 subsection (2)(a), was a member of the scheme or a person entitled to benefits in respect of such a member.
- (8) In subsection (7)—
- “relevant contract of insurance” means a contract of insurance which—
- (a) is entered 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.

**Commencement Information**

**I92** S. 161(2)(c) in force at 6.4.2005 by S.I. 2005/275, art. 2(7), Sch. Pt. 7

**162 The pension compensation provisions**

- (1) Schedule 7 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 section, sections 140 to 142, 161(2)(c), 164 and 168 and Schedule 7.
- (Those references do not include any provision of, or made by virtue of, section 170 (discharge of liabilities in respect of money purchase benefits).)

**Commencement Information**

**I93** S. 162 in force in so far as it relates to specified paragraphs of Schedule 7 for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other



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purposes in so far as it relates to those specified paragraphs of Schedule 7 at 6.4.2005 for specified purposes by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)

**194** S. 162 in force in so far as not already in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)

VALID FROM 01/01/2006

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

- (1) This section 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 subsection (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 subsection (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 subsection (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 subsection (4) references to an amount paid do not include—

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- (a) an amount paid in respect of any money purchase benefit, or
  - (b) any other amount of a prescribed description.
- (6) Nothing in subsection (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 section “assessment date” is to be construed in accordance with Schedule 7.

## 164 Postponement of compensation entitlement for the assessment period

- (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 subsection (1) may provide that the postponement is on such terms and conditions (including those relating to increments) as may be prescribed.
- (3) In subsection (1) the reference to “normal pension age” is to normal pension age, within the meaning of paragraph 34 of Schedule 7, in relation to the pension or lump sum in respect of which the entitlement to compensation arises.

### Commencement Information

**I95** S. 164 in force at 6.4.2005 by [S.I. 2005/1108](#), art. 2(2), [Sch.](#)

VALID FROM 06/04/2006

## 165 Guaranteed minimum pensions

- (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 1993 (c. 48)) to or in respect of a member of the scheme.
- (2) Notification under subsection (1) must be given as soon as reasonably practicable.
- (3) In section 47 of the Pension Schemes Act 1993 (further provision concerning entitlement to a guaranteed minimum pension for the purposes of section 46), after subsection (7) insert—
  - “(8) For the purposes of section 46, 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.”

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VALID FROM 01/01/2006

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

- (1) This section applies where the Board assumes responsibility for a scheme in accordance with this Chapter.
- (2) Subject to subsection (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, subsection (2) does not apply.
- (4) Subsection (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 subsection (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 subsection (6)—
  - (a) this Chapter (other than this subsection), and
  - (b) the scheme rules (including any relevant legislative provision within the meaning of section 318(3)),are to have effect subject to such modifications as may be prescribed.
- (8) In this section “assessment date” is to be construed in accordance with Schedule 7.

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

- (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 section 135(4), or
    - (ii) the Board validating any action mentioned in section 135(9), or

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- (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 section “assessment date” is to be construed in accordance with Schedule 7.

#### Commencement Information

- I96** S. 167(1) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)
- I97** S. 167(2) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)

VALID FROM 20/07/2005

#### 168 Administration of compensation

- (1) Regulations may make further provision regarding the operation and administration of this Chapter.
- (2) Regulations under subsection (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 section “compensation” means compensation payable under Schedule 7 or under section 141(2).

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VALID FROM 01/01/2006

### *Discharge of Board's liabilities*

VALID FROM 06/04/2006

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

- (1) This section 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.

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

- (1) This subsection 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 subsection (1) applies requiring the Board to secure that liabilities in respect of such benefits transferred to the Board under section 161 are discharged by it in the prescribed manner.
- (3) The provision made under subsection (2) must include provision prescribing the manner in which protected rights are to be given effect to.
- (4) In this section—

“accrued rights”, under the scheme rules of a scheme, include pension credit rights within the meaning of section 124(1) of the Pensions Act 1995 (c. 26);

“protected rights” has the meaning given by section 10 of the Pension Schemes Act 1993 (c. 48) (protected rights and money purchase benefits).

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VALID FROM 01/01/2006

### *Equal treatment*

#### **171 Equal treatment**

- (1) This section 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 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 subsection, 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) Subsection (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) Subsection (2) does not apply in such circumstances as may be prescribed.
- (5) This section 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 section—
- “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) section 166 (duty to pay scheme benefits unpaid at assessment date etc),
  - (c) section 169 (discharge of liabilities in respect of compensation), or
  - (d) section 170 (discharge of liabilities in respect of money purchase benefits);
- “pensionable service” has the meaning given by section 124(1) of the Pensions Act 1995 (c. 26).

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### *Relationship with fraud compensation regime*

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

- (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 section 182 (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) Subsection (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 of this Part.
- (4) For the purposes of determining whether the condition in section 127(2)(a), 128(2)(a), 152(2) or 158(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 subsection (4) “the relevant time”—
  - (a) in the case of section 127(2)(a), has the same meaning as in that provision,
  - (b) in the case of section 128(2)(a), has the same meaning as in that provision,
  - (c) in the case of section 152(2) means the reconsideration time (within the meaning of section 151), and
  - (d) in the case of section 158(1), has the same meaning as in that provision.
- (6) Subsection (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.

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#### **Commencement Information**

**198** S. 172(1) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### *The fund*

#### **173 Pension Protection Fund**

- (1) The Pension Protection Fund shall consist of—
  - (a) property and rights transferred to the Board under section 161(2)(a),

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- (b) contributions levied under section 174 or 175 (initial and pension protection levies),
  - (c) money borrowed by the Board under section 115 for the purposes of this Chapter,
  - (d) any income or capital gain credited under subsection (2),
  - (e) any amount paid to the Board by virtue of section 139 (repayment of loans to trustees or managers and payment of interest),
  - (f) amounts recovered under section 163(4)(a) or by virtue of section 168(2)(e) (overpayments),
  - (g) any amount paid to the Board in respect of a debt due to the Board under section 40(7) by virtue of a contribution notice under section 38,
  - (h) any property transferred or amounts paid to the Board as required by a restoration order under section 52,
  - (i) any amount paid to the Board in respect of a debt due to the Board under section 56(7) by virtue of a contribution notice under section 55,
  - (j) amounts transferred from the Fraud Compensation Fund under section 187 (fraud compensation transfer payments), and
  - (k) amounts of a prescribed description (other than amounts paid, directly or indirectly, to the Board by the Crown).
- (2) The Board must credit to the Pension Protection Fund any income or capital gain arising from the assets in the Fund.
- (3) The following are to be paid or transferred out of the Pension Protection Fund—
- (a) any sums required to meet liabilities transferred to the Board under section 161(2)(a),
  - (b) any sums required to make payments in accordance with the pension compensation provisions,
  - (c) any sums required for the repayment of, and the payment of interest on, money within subsection (1)(c),
  - (d) any sums required to make loans under section 139 (loans to trustees or managers),
  - (e) any sums required to make payments under section 163(4)(b) (underpayments during the assessment period),
  - (f) any sums required to make payments under section 166 (payment of unpaid scheme benefits etc),
  - (g) any sums required to discharge liabilities under section 169 or 170 (discharge of liabilities in respect of compensation or money purchase benefits),
  - (h) any sums required to meet any liabilities arising from obligations imposed on the Board by a restoration order under section 52,
  - (i) any property (other than sums) required to meet any liabilities—
    - (i) transferred to the Board as mentioned in paragraph (a) and arising from obligations imposed by a restoration order under section 52, or
    - (ii) arising from obligations imposed on the Board by such an order,
  - (j) any sums required to meet expenditure incurred by virtue of section 161(5) and paragraph 7 of Schedule 6 (expenditure associated with transfer of property, rights and liabilities to the Board), and
  - (k) sums required for prescribed purposes.
- (4) No other amounts are to be paid or transferred out of the Pension Protection Fund.



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- (5) In subsection (1) (other than paragraph (d)) and subsection (3) (other than paragraph (c)) any reference to a provision of this Act is to be read as including a reference to any provision in force in Northern Ireland corresponding to that provision.

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**Commencement Information**

**I99** S. 173(1)(c)-(e)(g)(i)(3)(b)-(d)(h)(i) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

*The levies*

**174 Initial levy**

- (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 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 section may only be made with the approval of the Treasury.

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**Commencement Information**

**I100** S. 174(1)-(3) in force at 10.2.2005 for specified purposes and at 1.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(2), [Sch. Pt. 2](#)

**175 Pension protection levies**

- (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 section.

- (2) For the purposes of this section—
- (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,

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*Status: Point in time view as at 06/04/2005. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Pensions Act 2004, Part 2 is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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- (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 subsection (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 subsection (4).
- (3) The other risk factors referred to in subsection (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 subsection (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 section—
  - “initial period” is to be construed in accordance with section 174;
  - “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 subsection (4)(b) is to be assessed.
- (9) In this section and sections 176 to 181 “financial year” means a period of 12 months ending with 31st March.
- (10) The Board’s duty to impose pension protection levies in respect of any financial year is subject to—
  - (a) section 177 (amounts to be raised by the pension protection levies), and

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(b) section 180 (transitional provision).

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

**C24** Ss. 175-181 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 for specified purposes in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, [73-75](#)

**Commencement Information**

**I101** S. 175(2)(a)(i)(iii)(3)(a) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

VALID FROM 27/05/2005

**176 Supplementary provisions about pension protection levies**

- (1) The Board must consult such persons as it considers appropriate in the prescribed manner before making a determination under section 175(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 section 175,
  - (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 subsection 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 section 175(5) in the prescribed manner.

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

**C24** Ss. 175-181 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 for specified purposes in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, [73-75](#)

VALID FROM 09/12/2005

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

- (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.

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- (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 subsection (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 subsection (1) in respect of the pension protection levies imposed for the previous financial year.
- (6) The Secretary of State may by order substitute a different percentage for the percentage for the time being specified in subsection (5).
- (7) Before making an order under subsection (6), the Secretary of State must consult such persons as he considers appropriate.
- (8) Regulations under subsection (4), or an order under subsection (6), may be made only with the approval of the Treasury.
- (9) In this section—
  - (a) “risk-based pension protection levy” and “scheme-based pension protection levy” are to be construed in accordance with section 175, and
  - (b) “transitional period” has the meaning given by section 180(3).

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

**C24** Ss. 175-181 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 for specified purposes in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, [73-75](#)

VALID FROM 09/12/2005

**178 The levy ceiling**

- (1) The Secretary of State must, before the beginning of each financial year for which levies are required to be imposed under section 175, specify by order the amount which is to be the levy ceiling for that year for the purposes of section 177.
- (2) An order under subsection (1) in respect of the first financial year for which levies are imposed under section 175 may be made only with the approval of the Treasury.
- (3) Subject to subsection (8), the amount specified under subsection (1) for a financial year (“the current year”) after the first year for which levies are imposed under section 175 must be—
  - (a) where it appears to the Secretary of State that the level of earnings in the review period has increased, the amount specified under subsection (1) for the previous financial year increased by the earnings percentage for that review period specified under subsection (6), and

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- (b) in any other case, the amount specified under subsection (1) for the previous financial year.
- (4) In subsection (3)—
  - “level of earnings” means the general level of earnings obtaining in Great Britain;
  - “review period” in relation to the current year means the period of 12 months ending with the prescribed date in the previous financial year.
- (5) For the purposes of subsection (3), the Secretary of State must, in respect of each review period, review the general level of earnings obtaining in Great Britain and any changes in that level; and for the purposes of such a review the Secretary of State may estimate the general level of earnings in such manner as he thinks appropriate.
- (6) Where it appears to the Secretary of State that the general level of earnings has increased during the review period, he must by order specify the percentage by which that level has so increased (“the earnings percentage”).
- (7) The Secretary of State must discharge the duties imposed by subsections (5) and (6) in respect of a review period before the beginning of the prescribed period which ends at the time the first financial year after the review period begins.
- (8) The Secretary of State may, on the recommendation of the Board and with the approval of the Treasury, make an order under subsection (1) in respect of a financial year which specifies an amount exceeding the amount required to be specified under subsection (3).
- (9) Before making a recommendation for the purposes of subsection (8), the Board must consult such persons as it considers appropriate in the prescribed manner.

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

**C24** Ss. 175-181 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 for specified purposes in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, **73-75**

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

- (1) For the purposes of enabling risk-based pension protection levies (within the meaning of section 175) 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 section, 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—

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- (a) the actuary appointed under section 47(1)(b) of the Pensions Act 1995 (c. 26) (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 Secretary of State.
- (3) Regulations under this section 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 subsection (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 section, 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 section references to “assets” do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

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

**C24** Ss. 175-181 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 for specified purposes in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, [73-75](#)

#### Commencement Information

- I102** S. 179(1)(a)(3) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#)
- I103** S. 179(2) in force in so far as it relates to paragraph (b)(i) of the definition of "the actuary" for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes in relation to that paragraph of that definition at 6.4.2005 for specified purposes by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#)
- I104** S. 179(2) in force in so far as not already in force except subsection (1)(b) at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)
- I105** S. 179(4)-(6) in force in so far as not already in force except subsection (1)(b) at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

VALID FROM 09/12/2005

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

- (1) Regulations may provide that in respect of any financial year during the transitional period—
- (a) sections 175 and 177(3) are to apply with such modifications as may be prescribed;

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- (b) section 177(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 subsection (1)(b) may only be made with the approval of the Treasury.
- (3) For the purposes of this section “the transitional period” means the prescribed period beginning immediately after the initial period (within the meaning of section 174).
- (4) If the transitional period begins with a date other than 1st April, regulations may provide that any provision of this section or of sections 175 to 179 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.

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

**C24** Ss. 175-181 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 for specified purposes in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, [73-75](#)

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

- (1) This section applies in relation to—
  - (a) the initial levy imposed under section 174 in respect of a scheme, and
  - (b) any pension protection levy imposed under section 175 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 subsection (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—

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- (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 section applies;
  - (b) the circumstances in which any such amount may be waived.

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

**C24** Ss. 175-181 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 for specified purposes in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, **73-75**

**C25** S. 181(5) excluded (1.4.2005) by [The Occupational Pension Schemes \(Levies\) Regulations 2005 \(S.I. 2005/842\)](#), regs. 1(2), **12(2)**

**Commencement Information**

**I106** S. 181(1)(a)(2)(a)(3)(4)(6)(7) in force at 1.4.2005 by [S.I. 2005/275](#), art. 2(6), **Sch. Pt. 6**

**I107** S. 181(5)(8) in force at 10.2.2005 for specified purposes and at 1.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(2), **Sch. Pt. 2**

## CHAPTER 4

### FRAUD COMPENSATION

VALID FROM 12/07/2005

#### *Entitlement to fraud compensation*

**182 Cases where fraud compensation payments can be made**

- (1) The Board shall, in accordance with this section, make one or more payments (in this Part referred to as “fraud compensation payments”) in respect of an occupational pension scheme if—
- (a) the scheme is not a prescribed scheme or a scheme of a prescribed description,
  - (b) the value of the assets of the scheme has been reduced since the relevant date and the Board considers that there are reasonable grounds for believing that the reduction was attributable to an act or omission constituting a prescribed offence,
  - (c) subsection (2), (3) or (4) applies,
  - (d) an application is made which meets the requirements of subsection (5), and
  - (e) the application is made within the authorised period.
- (2) This subsection applies where—
- (a) a qualifying insolvency event has occurred in relation to the employer in relation to the scheme,



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- (b) after that event, a scheme failure notice has been issued under section 122(2)(a) in relation to the scheme and that notice has become binding, and
  - (c) a cessation event has not occurred in relation to the scheme in respect of a cessation notice which has been issued during the period—
    - (i) beginning with the occurrence of the insolvency event, and
    - (ii) ending immediately before the issuing of the scheme failure notice under section 122(2)(a),and the occurrence of such a cessation event in respect of a cessation notice issued during that period is not a possibility.
- (3) This subsection applies where—
- (a) in relation to the scheme, an application has been made under subsection (1), or a notification has been given under subsection (5)(a), of section 129, and
  - (b) in response to that application, or the notice given by the Regulator under subsection (4) of that section, the Board has issued a scheme failure notice under section 130(2) in relation to the scheme and that notice has become binding.
- (4) This subsection applies where—
- (a) the scheme is not an eligible scheme,
  - (b) the employer in relation to the scheme is unlikely to continue as a going concern,
  - (c) the prescribed requirements are met in relation to the employer,
  - (d) the application under this section states that the case is one in relation to which paragraphs (b) and (c) apply, and
  - (e) in response to that application the Board has issued a notice under section 183(2) confirming that a scheme rescue is not possible in relation to the scheme and that notice has become binding.
- (5) An application meets the requirements of this subsection if—
- (a) it is made by a prescribed person, and
  - (b) it is made in the prescribed manner and contains the prescribed information.
- (6) Subject to subsection (7), an application is made within the authorised period if it is made within the period of 12 months beginning with the later of—
- (a) the time of the relevant event, or
  - (b) the time when the auditor or actuary of the scheme, or the trustees or managers, knew or ought reasonably to have known that a reduction of value falling within subsection (1)(b) had occurred,
- or within such longer period as the Board may determine in any case.
- (7) No application for fraud compensation may be made under this section in respect of a scheme once a transfer notice is given in relation to the scheme under section 160.
- (8) For the purposes of this section, 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 section 126(2), and
  - (b) either—
    - (i) it is the first insolvency event to occur in relation to the employer on or after that day, or

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- (ii) a cessation event has occurred in relation to the scheme in respect of a cessation notice issued during the period—
  - (a) beginning with the occurrence of the last insolvency event which occurred before the current event, and
  - (b) ending with the occurrence of the current event.
- (9) For the purposes of this section—
  - (a) a cessation event in relation to a scheme occurs when a cessation notice in relation to the scheme becomes binding,
  - (b) a “cessation notice” means—
    - (i) a withdrawal notice issued in relation to the scheme under section 122(2)(b) (scheme rescue has occurred),
    - (ii) a withdrawal notice issued in relation to the scheme under section 130(3) (scheme rescue has occurred),
    - (iii) a withdrawal notice issued in relation to the scheme under section 148 (no insolvency event has occurred or is likely to occur),
    - (iv) a notice issued in relation to the scheme under section 183(2)(b) (scheme rescue has occurred), or
    - (v) a notice issued under section 122(4) (inability to confirm status of scheme) in a case where the notice has become binding and section 148 does not apply,
  - (c) the occurrence of a cessation event in relation to a scheme in respect of a cessation notice issued during a particular period (“the specified period”) is a possibility until each of the following are no longer reviewable—
    - (i) any cessation notice which has been issued in relation to the scheme during the specified period,
    - (ii) any failure to issue such a cessation notice during the specified period,
    - (iii) any notice which has been issued by the Board under Chapter 2 or 3 which is relevant to the issue of a cessation notice in relation to the scheme during the specified period or to such a cessation notice which has been issued during that period becoming binding,
    - (iv) any failure to issue such a notice as is mentioned in subparagraph (iii), and
  - (d) 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.
- (10) In this section—
  - “auditor” and “actuary”, in relation to an occupational pension scheme, have the meaning given by section 47 of the Pensions Act 1995 (c. 26);
  - “the relevant event” means—

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- (a) in a case where subsection (2) applies in relation to an eligible scheme, the event within paragraph (a) of that subsection,
  - (b) in any other case where subsection (2) applies, the issue of the scheme failure notice under section 122(2)(a) mentioned in paragraph (b) of that subsection,
  - (c) in a case where subsection (3) applies, the event within paragraph (a) of that subsection, and
  - (d) in a case where subsection (4) applies, the trustees or managers becoming aware that paragraphs (b) and (c) of that subsection apply in relation to the scheme;  
“the relevant date” means—
    - (a) in the case of an occupational pension scheme established under a trust, 6th April 1997, and
    - (b) in any other case, the day appointed by the Secretary of State by order for the purposes of this section.
- (11) This section is subject to section 184(2) (no fraud compensation payments to be made until settlement date determined).

### **183 Board’s duties in respect of certain applications under section 182**

- (1) This section applies where, in a case to which paragraphs (a) to (c) of subsection (4) of section 182 apply (employer not likely to continue as going concern etc), the Board receives an application within paragraph (d) of that subsection.
- (2) If the Board is able to confirm—
  - (a) that a scheme rescue is not possible, or
  - (b) that a scheme rescue has occurred,it must, as soon as reasonably practicable, issue a notice to that effect.
- (3) Where the Board issues a notice under subsection (2), it must, as soon as reasonably practicable, give a copy of the notice to—
  - (a) the Regulator,
  - (b) the trustees or managers of the scheme,
  - (c) if the trustees or managers did not make the application mentioned in subsection (1), the person who made that application, and
  - (d) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (4) For the purposes of this Chapter a notice issued under subsection (2) 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.

*Status: Point in time view as at 06/04/2005. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: Pensions Act 2004, Part 2 is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) Where a notice issued under subsection (2) 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 the persons to whom it is required to give a copy notice under subsection (3).
- (6) A notice under subsection (5) must be in the prescribed form and contain such information as may be prescribed.
- (7) Section 130(5) (circumstances in which scheme rescue can or cannot be confirmed) applies for the purposes of this section.

VALID FROM 01/09/2005

#### **184 Recovery of value**

- (1) Where an application for a fraud compensation payment is made, the trustees or managers must obtain any recoveries of value, to the extent that they may do so without disproportionate cost and within a reasonable time.
- (2) No fraud compensation payment may be made until the date (“the settlement date”) determined by the Board, after consulting the trustees or managers of the scheme in question, as the date after which further recoveries of value are unlikely to be obtained without disproportionate cost or within a reasonable time.
- (3) In this section “recovery of value” means any increase in the value of the assets of the scheme, being an increase attributable to any payment received (otherwise than from the Board) by the trustees or managers of the scheme in respect of any act or omission—
  - (a) which there are reasonable grounds for believing constituted an offence prescribed for the purposes of paragraph (b) of section 182(1), and
  - (b) to which any reduction in value falling within that paragraph was attributable.
- (4) It is for the Board to determine whether anything received by the trustees or managers of the scheme is to be treated as a payment received in respect of any such act or omission.

For this purpose “payment” includes any money or money’s worth.

#### **185 Fraud compensation payments**

- (1) Where the Board determines to make one or more fraud compensation payments, it must make the payment or payments to the trustees or managers of the scheme in accordance with this section.
- (2) A fraud compensation payment may be made on such terms (including terms requiring repayment in whole or in part) and on such conditions as the Board considers appropriate.
- (3) The amount of the payment (or, if there is more than one, the aggregate) must not exceed the difference between—

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- (a) the amount of the reduction (or, if more than one, the aggregate amount of the reductions) within section 182(1)(b), and
  - (b) the amount of any recoveries of value obtained before the settlement date (within the meaning of section 184(2)).
- (4) Subject to subsection (3), the Board—
- (a) must determine the amount of any fraud compensation payment in accordance with regulations made for the purposes of this subsection, and
  - (b) must take account of any interim payment already made under section 186.
- (5) The Board must give written notice of its determination under subsection (4) to—
- (a) the Regulator,
  - (b) the trustees or managers of the scheme,
  - (c) if the trustees or managers did not make the application under section 182 (fraud compensation payments), the person who made that application, and
  - (d) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.

#### **186 Interim payments**

- (1) The Board may, on an application under section 182, make a payment or payments to the trustees or managers of an occupational pension scheme if—
- (a) it is of the opinion that—
    - (i) the case is one to which subsection (1) of that section applies or may apply, and
    - (ii) the trustees or managers would not otherwise be able to meet liabilities of a prescribed description, but
  - (b) it has not determined the settlement date under section 184.
- (2) Amounts payable under this section must not exceed the amounts determined in accordance with regulations.
- (3) The Board may, except in prescribed circumstances, recover so much of any payment made under subsection (1) as it considers appropriate if, after the payment is made, it determines—
- (a) that the case is not one to which section 182(1) applies, or
  - (b) that the amount of the payment was excessive.
- (4) Subject to that, a payment under subsection (1) may be made on such terms (including terms requiring repayment in whole or in part) and on such conditions as the Board considers appropriate.

VALID FROM 25/02/2010

#### **187 Board's powers to make fraud compensation transfer payments**

- (1) This section applies where—
- (a) the Board assumes responsibility for a scheme in accordance with Chapter 3,

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- (b) the value of the assets of the scheme was reduced after the relevant date but before the transfer notice (within the meaning of section 160) was received by the trustees or managers of the scheme and there are reasonable grounds for believing that the reduction was attributable to an act or omission constituting an offence prescribed for the purposes of section 182(1)(b), and
  - (c) no application was made under section 182 in respect of that reduction (or any such application was withdrawn before it was determined).
- (2) The Board may transfer an amount from the Fraud Compensation Fund to the Pension Protection Fund (“fraud compensation transfer payment”) in respect of the reduction in value, subject to the provisions of this section.
- (3) The Board must obtain any recoveries of value, to the extent that it may do so without disproportionate cost and within a reasonable time.
- (4) No fraud compensation transfer payment may be made until the date determined by the Board as the date after which further recoveries of value are unlikely to be obtained without disproportionate cost and within a reasonable time.
- (5) In this section “recovery of value” means any increase in the value of the Pension Protection Fund, being an increase attributable to any payment received (otherwise than under this section) by the Board in respect of any act or omission—
- (a) which there are reasonable grounds for believing constituted an offence prescribed for the purposes of section 182(1)(b), and
  - (b) to which any reduction in value falling within subsection (1)(b) above was attributable.
- (6) It is for the Board to determine whether anything received by it is to be treated as a payment received in respect of any such act or omission.
- For this purpose “payment” includes any money or money’s worth.
- (7) The amount of any fraud compensation transfer payment (or, if there is more than one, the aggregate) must not exceed the difference between—
- (a) the amount of the reduction (or, if more than one, the aggregate amount of the reductions) within subsection (1)(b), and
  - (b) the amount of any recoveries of value obtained by the Board before the date determined by the Board under subsection (4).
- (8) Subject to subsection (7), the Board must determine the amount of any fraud compensation transfer payment in accordance with regulations made for the purposes of this subsection.
- (9) In this section “the relevant date” has the meaning given by section 182(10).

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VALID FROM 01/09/2005

### *The fund*

#### **188 Fraud Compensation Fund**

- (1) The Fraud Compensation Fund shall consist of—
  - (a) any property and rights transferred under section 302 (dissolution of the Pensions Compensation Board) which the Board designates as assets of the Fund,
  - (b) contributions levied under section 189 (fraud compensation levy),
  - (c) money borrowed by the Board under section 115 for the purposes of this Chapter,
  - (d) amounts recovered under section 186 (recovery of interim payments), and
  - (e) any income or capital gain credited under subsection (2).
- (2) The Board must credit to the Fraud Compensation Fund any income or capital gain arising from the assets in the Fund.
- (3) The following are payable out of the Fraud Compensation Fund—
  - (a) sums required to meet liabilities transferred to the Board under section 302 (dissolution of the Pensions Compensation Board), which the Board designates as liabilities of the Fund,
  - (b) payments under section 185 (fraud compensation payments),
  - (c) payments under section 186(1) (interim payments),
  - (d) amounts required to be transferred to the Pension Protection Fund under section 187 (fraud compensation transfer payments),
  - (e) money required for the repayment of, and the payment of interest on, money within subsection (1)(c).
- (4) No other amounts are payable out of the Fraud Compensation Fund.
- (5) In subsection (1) (other than paragraphs (a) and (e)) and subsection (3) (other than paragraphs (a) and (e)) any reference to a provision of this Act is to be read as including a reference to any provision in force in Northern Ireland corresponding to that provision.

### *The levy*

#### **189 Fraud compensation levy**

- (1) For the purposes of meeting expenditure payable out of the Fraud Compensation Fund, regulations may provide for the imposition of a levy (“fraud compensation levy”) in respect of occupational pension schemes.
- (2) Subsection (1) does not apply in relation to any scheme which is prescribed or of a description prescribed under section 182(1)(a) (schemes not eligible for fraud compensation).

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- (3) A fraud compensation levy imposed in respect of a scheme is payable to the Board by or on behalf of—
  - (a) the trustees or managers of the scheme, or
  - (b) any other prescribed person.
- (4) A fraud compensation levy is so payable at prescribed times and at a rate, not exceeding the prescribed rate, determined by the Board.
- (5) In determining the amount of expenditure in respect of which a fraud compensation levy is to be imposed, the Board may take one year with another (and, in doing so, must have regard to expenditure estimated to be incurred in current or future periods and to actual expenditure incurred in previous periods).
- (6) Notice of the rates determined by the Board under subsection (4) must be given to prescribed persons in the prescribed manner.
- (7) The Board must in respect of any fraud compensation levy imposed under this section—
  - (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.
- (8) The Board may require the Regulator to discharge, on the Board's behalf, its functions under subsection (7) in respect of the levy.
- (9) An amount payable by a person on account of a fraud compensation levy is a debt due from him to the Board.
- (10) An amount so payable may be recovered—
  - (a) by the Board, or
  - (b) if the Board so determines, by the Regulator on its behalf.
- (11) Without prejudice to the generality of subsection (1), (9) or (10), regulations under this section may include provision relating to—
  - (a) the collection and recovery of amounts payable by way of levy under this section;
  - (b) the circumstances in which any such amount may be waived.

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**Commencement Information**

**I108** S. 189(11)(a) in force at 10.2.2005 for specified purposes and at 1.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(2), [Sch. Pt. 2](#)



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## CHAPTER 5

### GATHERING INFORMATION

#### 190 Information to be provided to the Board etc

- (1) Regulations may require such persons as may be prescribed to provide—
  - (a) to the Board, or
  - (b) to a person—
    - (i) with whom the Board has made arrangements under paragraph 18 of Schedule 5, and
    - (ii) who is authorised by the Board for the purposes of the regulations, information of a prescribed description at such times, or in such circumstances, as may be prescribed.
- (2) Regulations under subsection (1) may in particular make provision for requiring such persons as may be prescribed to provide any information or evidence needed for a determination of entitlement to compensation under Chapter 3 of this Part.
- (3) Regulations made by virtue of paragraph (b) of that subsection must make provision regarding the manner in which the persons required to provide information are to be notified of the identity of the person authorised as mentioned in sub-paragraph (ii) of that paragraph.

#### Commencement Information

**I109** S. 190 in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#)

#### 191 Notices requiring provision of information

- (1) Any person to whom subsection (3) applies may be required by a notice in writing to produce any document, or provide any other information, which is—
  - (a) of a description specified in the notice, and
  - (b) relevant to the exercise of the Board's functions in relation to an occupational pension scheme.
- (2) A notice under subsection (1) may be given by—
  - (a) the Board, or
  - (b) a person authorised by the Board for the purposes of this section in relation to the scheme.
- (3) This subsection applies to—
  - (a) a trustee or manager of the scheme,
  - (b) a professional adviser in relation to the scheme,
  - (c) the employer in relation to the scheme,
  - (d) an insolvency practitioner in relation to the employer, and
  - (e) any other person appearing to the Board, or person giving the notice, to be a person who holds, or is likely to hold, information relevant to the discharge of the Board's functions in relation to the scheme.

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- (4) Where the production of a document, or the provision of information, is required by a notice given under subsection (1), the document must be produced, or information must be provided, in such a manner, at such a place and within such a period as may be specified in the notice.

#### **Commencement Information**

**I110** S. 191 in force at 17.12.2004 by S.I. 2004/3350, art. 2, Sch.

## **192 Entry of premises**

- (1) An appointed person may, for the purpose of enabling or facilitating the performance of any function of the Board in relation to an occupational pension scheme, at any reasonable time enter scheme premises and, while there—
- (a) may make such examination and inquiry as may be necessary for such purpose,
  - (b) may require any person on the premises to produce, or secure the production of, any document relevant to that purpose for inspection by the appointed person,
  - (c) may take copies of any such document,
  - (d) may take possession of any document appearing to be such a document or take in relation to any such document any other steps which appear necessary for preserving it or preventing interference with it,
  - (e) may, in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, require the information to be produced in a form—
    - (i) in which it can be taken away, and
    - (ii) in which it is legible or from which it can readily be produced in a legible form, and
  - (f) may, as to any matter relevant to the exercise of the Board's functions in relation to the scheme, examine, or require to be examined, either alone or in the presence of another person, any person on the premises whom he has reasonable cause to believe to be able to give information relevant to that matter.
- (2) Premises are scheme premises for the purposes of subsection (1) if the appointed person has reasonable grounds to believe that—
- (a) they are being used for the business of the employer,
  - (b) an insolvency practitioner in relation to the employer is acting there in that capacity,
  - (c) documents relevant to—
    - (i) the administration of the scheme, or
    - (ii) the employer,
 are being kept there, or
  - (d) the administration of the scheme, or work connected with the administration of the scheme, is being carried out there,
- unless the premises are a private dwelling-house not used by, or by permission of, the occupier for the purposes of a trade or business.

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- (3) An appointed person applying for admission to any premises for the purposes of this section must, if so required, produce his certificate of appointment.
- (4) When exercising a power under this section an appointed person may be accompanied by such persons as he considers appropriate.
- (5) Any document of which possession is taken under this section may be retained until the end of the period comprising—
  - (a) the period of 12 months beginning with the date on which possession was taken of the document, and
  - (b) any extension of that period under subsection (6).
- (6) The Board may before the end of the period mentioned in subsection (5) (including any extension of it under this subsection) extend it by such period not exceeding 12 months as the Board considers appropriate.
- (7) In this section “appointed person” means a person appointed by the Board for the purposes of this section in relation to the scheme.

**Commencement Information**

**1111** S. 192 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### 193 Penalties relating to sections 191 and 192

- (1) A person who, without reasonable excuse, neglects or refuses to provide information or produce a document when required to do so under section 191 is guilty of an offence.
- (2) A person who without reasonable excuse—
  - (a) intentionally delays or obstructs an appointed person exercising any power under section 192,
  - (b) neglects or refuses to produce, or secure the production of, any document when required to do so under that section, or
  - (c) neglects or refuses to answer a question or to provide information when so required,is guilty of an offence.
- (3) In subsection (2)(a) “appointed person” has the same meaning as it has in section 192.
- (4) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) An offence under subsection (1) or (2)(b) or (c) may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction of the offence.
- (6) Any person who intentionally and without reasonable excuse alters, suppresses, conceals or destroys any document which he is or is liable to be required to produce under section 191 or 192 is guilty of an offence.
- (7) Any person guilty of an offence under subsection (6) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;

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- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

#### Commencement Information

- I112** S. 193 in force in so far as it relates to s. 192 at 6.4.2005 for specified purposes by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)
- I113** S. 193(1) in force at 17.12.2004 by [S.I. 2004/3350](#), [art. 2](#), [Sch.](#)
- I114** S. 193(4)-(7) in force at 17.12.2004 for specified purposes by [S.I. 2004/3350](#), [art. 2](#), [Sch.](#)

## 194 Warrants

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Board that there are reasonable grounds for believing—
- (a) that there is on, or accessible from, any premises any document—
    - (i) whose production has been required under section 191 or 192, or any corresponding provision in force in Northern Ireland, and
    - (ii) which has not been produced in compliance with that requirement,
  - (b) that there is on, or accessible from, any premises any document relevant to the exercise of the Board’s functions in relation to an occupational pension scheme whose production could be so required and, if its production were so required, the document—
    - (i) would not be produced, but
    - (ii) would be removed, or made inaccessible, from the premises, hidden, tampered with or destroyed, or
  - (c) that a person will do any act which constitutes a misuse or misappropriation of the assets of an occupational pension scheme and that there is on, or accessible from, any premises any document—
    - (i) which relates to whether the act will be done, and
    - (ii) whose production could be required under section 191 or 192, or any corresponding provision in force in Northern Ireland.
- (2) A warrant under this section shall authorise an inspector—
- (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose,
  - (b) to search the premises and—
    - (i) take possession of any document appearing to be such a document as is mentioned in subsection (1), or
    - (ii) take in relation to such a document any other steps which appear necessary for preserving it or preventing interference with it,
  - (c) to take copies of any such document,
  - (d) to require any person named in the warrant to provide an explanation of any such document or to state where it may be found or how access to it may be obtained, and
  - (e) in the case of any such document which consists of information which is stored in electronic form and is on, or accessible from, the premises, to require the information to be produced in a form—
    - (i) in which it can be taken away, and

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- (ii) in which it is legible or from which it can readily be produced in a legible form.
- (3) When executing a warrant under this section, an inspector may be accompanied by such persons as he considers appropriate.
- (4) A warrant under this section continues in force until the end of the period of one month beginning with the day on which it is issued.
- (5) Any document of which possession is taken under this section may be retained until the end of the period comprising—
  - (a) the period of 12 months beginning with the date on which possession was taken of the document, and
  - (b) any extension of that period under subsection (6).
- (6) The Board may before the end of the period mentioned in subsection (5) (including any extension of it under this subsection) extend it by such period not exceeding 12 months as the Board considers appropriate.
- (7) In this section “inspector” means a person appointed by the Board as an inspector.
- (8) In the application of this section in Scotland—
  - (a) the reference to a justice of the peace is to be read as a reference to the sheriff, and
  - (b) the references in subsections (1) and (2)(a) to information are to be read as references to evidence.

#### **Commencement Information**

**I115** S. 194 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### *Provision of false or misleading information*

#### **195 Offence of providing false or misleading information to the Board**

- (1) Any person who knowingly or recklessly provides information which is false or misleading in a material particular is guilty of an offence if the information—
  - (a) is provided in purported compliance with a requirement under—
    - (i) section 190 (information to be provided to the Board etc),
    - (ii) section 191 (notices requiring provision of information), or
    - (iii) section 192 (entry of premises), or
  - (b) is provided otherwise than as mentioned in paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Board for the purposes of exercising its functions under this Act.
- (2) Any person guilty of an offence under subsection (1) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.

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**Commencement Information**

**I116** S. 195 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

*Use of information*

**196 Use of information**

Information held by the Board in the exercise of any of its functions may be used by the Board for the purposes of, or for any purpose connected with or incidental to, the exercise of its functions.

**Commencement Information**

**I117** S. 196 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

*Disclosure of information*

**197 Restricted information**

- (1) Restricted information must not be disclosed—
  - (a) by the Board, or
  - (b) by any person who receives the information directly or indirectly from the Board.
- (2) Subsection (1) is subject to—
  - (a) subsection (3), and
  - (b) sections 198 to 203 and 235.
- (3) Subject to section 202(4), restricted information may be disclosed with the consent of the person to whom it relates and (if different) the person from whom the Board obtained it.
- (4) For the purposes of this section and sections 198 to 203, “restricted information” means any information obtained by the Board in the exercise of its functions which relates to the business or other affairs of any person, except for information—
  - (a) which at the time of the disclosure is or has already been made available to the public from other sources, or
  - (b) which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
- (5) Any person who discloses information in contravention of this section is guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years, or both.
- (6) Information which—

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- (a) is obtained under section 191 by a person authorised under subsection (2)(b) of that section, but
  - (b) if obtained by the Board, would be restricted information,
- is treated for the purposes of subsections (1) and (3) and sections 198 to 203 as restricted information which the person has received from the Board.

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**Commencement Information**

**I118** S. 197 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### **198 Disclosure for facilitating exercise of functions by the Board**

- (1) Section 197 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Board to exercise its functions.
- (2) Subsection (3) applies where, in order to enable or assist the Board properly to exercise any of its functions, the Board considers it necessary to seek advice from any qualified person on any matter of law, accountancy, valuation or other matter requiring the exercise of professional skill.
- (3) Section 197 does not preclude the disclosure by the Board to a person qualified to provide that advice of such information as appears to the Board to be necessary to ensure that he is properly informed with respect to the matters on which his advice is sought.

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**Commencement Information**

**I119** S. 198 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### **199 Disclosure for facilitating exercise of functions by the Regulator**

Section 197 does not preclude the disclosure of restricted information in any case in which disclosure is for the purpose of enabling or assisting the Regulator to exercise its functions.

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**Commencement Information**

**I120** S. 199 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### **200 Disclosure for facilitating exercise of functions by other supervisory authorities**

- (1) Section 197 does not preclude the disclosure by the Board of restricted information to any person specified in the first column of Schedule 8 if the Board considers that the disclosure would enable or assist that person to exercise the functions specified in relation to him in the second column of that Schedule.
- (2) The Secretary of State may after consultation with the Board—
  - (a) by order amend Schedule 8 by—

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- (i) adding any person exercising regulatory functions and specifying functions in relation to that person,
- (ii) removing any person for the time being specified in the Schedule, or
- (iii) altering the functions for the time being specified in the Schedule in relation to any person, or
- (b) by order restrict the circumstances in which, or impose conditions subject to which, disclosure may be made to any person for the time being specified in the Schedule.

#### **Commencement Information**

**I121** S. 200 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), Sch. Pt. 7

## **201 Other permitted disclosures**

- (1) Section 197 does not preclude the disclosure by the Board of restricted information to—
- (a) the Secretary of State,
  - (b) the Commissioners of Inland Revenue or their officers, or
  - (c) the Department for Social Development in Northern Ireland,
- if the disclosure appears to the Board to be desirable or expedient in the interests of members of occupational pension schemes or in the public interest.
- (2) Section 197 does not preclude the disclosure of restricted information—
- (a) by or on behalf of—
    - (i) the Board, or
    - (ii) any public authority (within the meaning of section 6 of the Human Rights Act 1998 (c. 42)) which receives the information directly or indirectly from the Board,
 for any of the purposes specified in section 17(2)(a) to (d) of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (criminal proceedings and investigations),
  - (b) in connection with any proceedings arising out of—
    - (i) this Act,
    - (ii) the Welfare Reform and Pensions Act 1999 (c. 30),
    - (iii) the Pensions Act 1995 (c. 26), or
    - (iv) the Pension Schemes Act 1993 (c. 48),
 or any corresponding enactment in force in Northern Ireland, or any proceedings for breach of trust in relation to an occupational pension scheme,
  - (c) with a view to the institution of, or otherwise for the purposes of, proceedings under—
    - (i) section 7 or 8 of the Company Directors Disqualification Act 1986 (c. 46), or
    - (ii) Article 10 or 11 of the Companies (Northern Ireland) Order 1989 (S.I. 1989/2404 (N.I. 18)) or of the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)),
  - (d) in connection with any proceedings under—
    - (i) the Insolvency Act 1986 (c. 45), or



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- (ii) the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),  
which the Board has instituted or in which it has a right to be heard,
- (e) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by a solicitor, an actuary, an accountant or an insolvency practitioner,
- (f) with a view to the institution of, or otherwise for the purpose of, any disciplinary proceedings relating to the exercise by a public servant of his functions, or
- (g) in pursuance of a Community obligation.
- (3) In subsection (2)(f), “public servant” means an officer or servant of the Crown or of any prescribed authority.
- (4) Section 197 does not preclude the disclosure by the Board of restricted information to—
- (a) the Director of Public Prosecutions,
- (b) the Director of Public Prosecutions for Northern Ireland,
- (c) the Lord Advocate,
- (d) a procurator fiscal, or
- (e) a constable.
- (5) Section 197 does not preclude the disclosure of restricted information in any case where the disclosure is required by or by virtue of an enactment.
- (6) Section 197 does not preclude the disclosure of restricted information in any case where the disclosure is to a Regulator-appointed trustee of an occupational pension scheme for the purpose of enabling or assisting him to exercise his functions in relation to the scheme.
- (7) In subsection (6), “Regulator-appointed trustee” means a trustee appointed by the Regulator under section 7 or 23(1) of the Pensions Act 1995 (c. 26) or any corresponding provision in force in Northern Ireland.
- (8) Section 197 does not preclude the disclosure by any person mentioned in subsection (1) or (4) of restricted information obtained by the person by virtue of that subsection, if the disclosure is made with the consent of the Board.
- (9) Section 197 does not preclude the disclosure by any person specified in the first column of Schedule 8 of restricted information obtained by the person by virtue of section 200(1), if the disclosure is made—
- (a) with the consent of the Board, and
- (b) for the purpose of enabling or assisting the person to exercise any functions specified in relation to him in the second column of the Schedule.
- (10) Before deciding whether to give its consent to such a disclosure as is mentioned in subsection (8) or (9), the Board must take account of any representations made to it, by the person seeking to make the disclosure, as to the desirability of the disclosure or the necessity for it.
- (11) Section 18 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (restriction on disclosure of information for overseas purposes) has effect in relation to a disclosure authorised by subsection (2) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.

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**Commencement Information**

**I122** S. 201 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**202 Tax information**

- (1) This section applies to information held by any person in the exercise of tax functions about any matter which is relevant, for the purposes of those functions, to tax or duty in the case of an identifiable person (in this section referred to as “tax information”).
- (2) No obligation as to secrecy imposed by section 182 of the Finance Act 1989 (c. 26) or otherwise shall prevent the disclosure of tax information to the Board for the purpose of enabling or assisting the Board to discharge its functions.
- (3) Where tax information is disclosed to the Board by virtue of subsection (2) above or section 19 of the Anti-terrorism, Crime and Security Act 2001 (disclosure of information held by revenue departments), it must, subject to subsection (4), be treated for the purposes of section 197 as restricted information.
- (4) Sections 197(3), 198 to 201, 203 and 235 do not apply to tax information which is disclosed to the Board as mentioned in subsection (3), and such information may not be disclosed by the Board or any person who receives the information directly or indirectly from the Board except—
  - (a) to, or in accordance with authority given by, the Commissioners of Inland Revenue or the Commissioners of Customs and Excise, or
  - (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings.
- (5) In this section “tax functions” has the same meaning as in section 182 of the Finance Act 1989 (c. 26).

**Commencement Information**

**I123** S. 202 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

*Provision of information to members of schemes etc*

**203 Provision of information to members of schemes etc**

- (1) Regulations may—
  - (a) require the Board to provide information of prescribed descriptions to such persons as may be prescribed at prescribed times, or
  - (b) require trustees or managers of occupational pension schemes to provide such information—
    - (i) relating to the exercise of the Board’s functions in relation to any scheme of which they are trustees or managers,
    - (ii) relating to any notice issued or application or determination made under Chapter 2, 3 or 4 which relates to any such scheme, or
    - (iii) otherwise relating to the Board’s involvement with any such scheme,

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as may be prescribed to prescribed persons at prescribed times or in prescribed circumstances.

- (2) Section 197 does not preclude the disclosure of restricted information by the Board which relates to the entitlement of a particular individual to compensation under Chapter 3 if the disclosure is made to that individual or to a person authorised by him.
- (3) Section 197 does not preclude the disclosure of restricted information by the Board if—
  - (a) the information relates to the exercise of the Board’s functions in relation to an occupational pension scheme,
  - (b) the disclosure is made to—
    - (i) all affected persons, or
    - (ii) all affected persons of a particular description, and
  - (c) the Board is satisfied that, in all the circumstances, it is reasonable to make the disclosure.
- (4) In subsection (3) “affected person”, in relation to an occupational pension scheme, means a person—
  - (a) who is a member of the scheme, or
  - (b) who is for the time being nominated by a member of the scheme for the purposes of that subsection.
- (5) A nomination by a member of the scheme under subsection (4)(b)—
  - (a) may be made by notice in writing given by the member,
  - (b) becomes effective when the notice is received by the Board, and
  - (c) ceases to be effective when the Board receives a further notice from the member withdrawing the nomination.
- (6) In the case of an occupational pension scheme, section 197 does not preclude the disclosure of restricted information by the Board if—
  - (a) the disclosure is made to any of the following in relation to the scheme—
    - (i) a trustee or manager,
    - (ii) any professional adviser,
    - (iii) the employer,
    - (iv) the insolvency practitioner in relation to the employer,
  - (b) the information is relevant to the exercise of that person’s functions in relation to the scheme, and
  - (c) the Board considers that it is reasonable in all the circumstances to make the disclosure for the purpose of facilitating the exercise of those functions.

#### Commencement Information

- I124** S. 203(1) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#)
- I125** S. 203(2)-(6) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

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### *Interpretation*

#### **204 Sections 190 to 203: interpretation**

- (1) This section applies for the purposes of sections 190 to 203.
- (2) “Document” includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in a legible form, is to producing a copy of the information—
  - (a) in a legible form, or
  - (b) in a form from which it can readily be produced in a legible form.
- (3) Where the Board has assumed responsibility for a scheme—
  - (a) any reference to the Board’s functions in relation to the scheme includes a reference to the functions which it has by virtue of having assumed responsibility for the scheme, and
  - (b) any reference to a trustee, manager, professional adviser or employer in relation to the scheme is to be read as a reference to a person who held that position in relation to the scheme before the Board assumed responsibility for it.

#### **Commencement Information**

**I126** S. 204(1)(2) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

### *Reports*

#### **205 Publishing reports etc**

- (1) The Board may, if it considers it appropriate to do so in any particular case, publish a report of the exercise of, or any matter arising out of or connected with the exercise of, any of its functions in that case.
- (2) The publication of a report under subsection (1) may be in such form and manner as the Board considers appropriate.
- (3) For the purposes of the law of defamation, the publication of any matter by the Board is privileged unless the publication is shown to be made with malice.

#### **Commencement Information**

**I127** S. 205 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

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## CHAPTER 6

### REVIEWS, APPEALS AND MALADMINISTRATION

#### *Review etc by the Board*

#### **206 Meaning of “reviewable matters”**

- (1) For the purposes of this Chapter, “reviewable matter” means a matter mentioned in Schedule 9.
- (2) Regulations may provide, in relation to any reference in that Schedule to a failure by the Board to do any act or make any determination, that—
  - (a) the reference is to be construed as a reference to a failure by the Board to do the act or make the determination within a prescribed period, and
  - (b) the reference is to be construed as not including a failure to do the act or make the determination which first occurs after a prescribed time.
- (3) Regulations may make provision suspending the effect of any determination, direction or other act of the Board, or any notice given or issued by it, which relates to a reviewable matter until—
  - (a) the period within which the matter may be reviewed by virtue of this Chapter has expired, and
  - (b) if the matter is so reviewed—
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the matter, and
    - (iii) any appeal against his determination or directions,has been finally disposed of.
- (4) Regulations may amend Schedule 9 by—
  - (a) adding to it any other description of determination, act or failure of, or matter determined or for determination by, the Board, or
  - (b) removing from it any such determination, act, failure or matter for the time being mentioned in it.
- (5) Regulations under subsection (4) may also modify any provision of this Part in consequence of provision made by virtue of paragraph (a) or (b) of that subsection.

#### **Commencement Information**

- I128** S. 206(1) in force in so far as not already in force except subsection (5) at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)
- I129** S. 206(2)-(4) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)

#### **207 Review and reconsideration by the Board of reviewable matters**

- (1) Regulations must—
  - (a) provide for the Board, on the written application of an interested person, to give a decision (“a review decision”) on any reviewable matter, and

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- (b) require a committee of the Board constituted for the purposes of this section (the “Reconsideration Committee”), on the written application of an interested person following a review decision, to reconsider the reviewable matter and give a decision (“a reconsideration decision”).
- (2) In subsection (1), “interested person” in relation to a reviewable matter, means a person of a description prescribed in relation to reviewable matters of that description.
- (3) Regulations under subsection (1) may—
- (a) permit a review decision in respect of a reviewable matter of a prescribed description to be made otherwise than on an application, and
  - (b) permit a reconsideration decision in respect of such a matter to be made otherwise than on an application.
- (4) Regulations under subsection (1) must provide for the Board’s powers on making a review decision or reconsideration decision to include power—
- (a) to vary or revoke the determination, direction or other decision already made by the Board in respect of the reviewable matter,
  - (b) to substitute a different determination, direction or decision,
  - (c) to provide for such variations, revocations or substitutions, or any determinations, directions or other decisions made as a result of the review decision or reconsideration decision, to be treated as if they were made at such time (which may be a time prior to the making of the review decision or reconsideration decision) as the Board considers appropriate,
  - (d) to provide for any notice varied, substituted, issued or given by the Board as a result of the review decision or reconsideration decision, to be treated as if it were issued or given at such time (which may be a time prior to the making of the review decision or reconsideration decision) as the Board considers appropriate,
  - (e) generally to deal with the matters arising on the review decision or reconsideration decision as if they had arisen on the original determination, direction or decision,
  - (f) to pay such compensation as the Board considers appropriate to such persons as it may determine, and
  - (g) to make savings and transitional provision.
- (5) Regulations under subsection (1) must include provision—
- (a) about applications under the regulations for a review decision or reconsideration decision in respect of a reviewable matter, including the times by which they are to be made,
  - (b) requiring notice—
    - (i) of such applications, or
    - (ii) of a decision of the Board or the Reconsideration Committee by virtue of subsection (3) to give a review decision or reconsider a reviewable matter otherwise than on such an application,
 to be given to interested persons in relation to the matter,
  - (c) with a view to securing that individuals concerned in giving a reconsideration decision were not concerned in the reviewable matter in respect of which the decision is to be made,
  - (d) as to the procedure for reaching and giving decisions under the regulations, including—

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- (i) rights of interested persons to make representations to the Reconsideration Committee on a reconsideration under regulations made under subsection (1)(b), and
  - (ii) the times by which decisions are to be given, and
  - (e) requiring notice of the review decision or the reconsideration decision in respect of a reviewable matter to be given to interested persons in relation to the matter.
- (6) Provision required by subsection (5)(c) may modify paragraphs 15 and 16 of Schedule 5 (membership and procedure of committees of the Board).

#### Commencement Information

**I130** S. 207 in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#)

## 208 Investigation by the Board of complaints of maladministration

- (1) Regulations must make provision for dealing with relevant complaints.
- (2) For the purposes of this Chapter, “relevant complaint” means a complaint—
  - (a) by a person who is or might become entitled to compensation under the pension compensation provisions, or
  - (b) by a person who has or may make an application under section 182 (fraud compensation),  
alleging that he has sustained injustice in consequence of maladministration in connection with any act or omission by the Board or any person exercising functions on its behalf.
- (3) Regulations under subsection (1) must—
  - (a) provide for the Board to investigate and give decisions on matters complained of in relevant complaints, and
  - (b) provide for a committee of the Board, on applications following such decisions, to investigate matters complained of and give decisions on them.
- (4) Such regulations may, in particular, make provision—
  - (a) about the making of relevant complaints and applications under the regulations, including the times by which they are to be made,
  - (b) with a view to securing that individuals concerned in giving a decision were not concerned in the matter which is the subject of the relevant complaint in question,
  - (c) as to the procedure for reaching and giving decisions under the regulations, including—
    - (i) rights of prescribed persons to make representations to the Board, on an investigation under regulations made under subsection (3)(b), and
    - (ii) the times by which decisions are to be given, and
  - (d) requiring notice—
    - (i) of a relevant complaint under the regulations, or
    - (ii) of a decision under the regulations in respect of the complaint,

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to be given to prescribed persons in relation to the matter.

- (5) Regulations under subsection (1) may confer power on the Board to pay such compensation as it considers appropriate to such persons as it considers have sustained injustice in consequence of the matters complained of.
- (6) The power conferred by subsection (4)(b) includes power to modify paragraphs 15 and 16 of Schedule 5 (membership and procedure of committees of the Board).

#### **Commencement Information**

**I131** S. 208(1)(3)-(6) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), **Sch. Pt. 3**

**I132** S. 208(2) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), **Sch. Pt. 7**

### *The PPF Ombudsman*

#### **209 The Ombudsman for the Board of the Pension Protection Fund**

- (1) There is to be a commissioner to be known as the Ombudsman for the Board of the Pension Protection Fund (in this Act referred to as “the PPF Ombudsman”).
- (2) The PPF Ombudsman is to be appointed by the Secretary of State on such terms and conditions as are determined by the Secretary of State.
- (3) The PPF Ombudsman—
  - (a) is to hold and vacate office in accordance with the terms and conditions of his appointment, and
  - (b) may resign or be removed from office in accordance with those terms and conditions.
- (4) The Secretary of State may by order make provision—
  - (a) about the payment, or provision for payment, of remuneration, compensation for loss of office, pension, allowances or gratuities to or in respect of the PPF Ombudsman;
  - (b) about the reimbursement of the PPF Ombudsman in respect of any expenses incurred by him in the performance of his functions;
  - (c) about the staff of the PPF Ombudsman and the provision of facilities (including additional staff) to him;
  - (d) about the delegation of the functions of the PPF Ombudsman to his staff or to any such additional staff;
  - (e) authorising the PPF Ombudsman—
    - (i) to charge such fees as are specified in the order;
    - (ii) to charge fees sufficient to meet such costs as are specified in the order;
  - (f) conferring powers to enable the PPF Ombudsman to obtain such information and documents as he may require for the performance of his functions;
  - (g) about restrictions on the disclosure of information held by him.
- (5) An order under subsection (4)(e)—



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- (a) may prescribe, or authorise the PPF Ombudsman to determine, the time at which any fee is due, and
  - (b) provide that any fee which is owed to the PPF Ombudsman by virtue of an order under subsection (4)(e) may be recovered as a debt due to the PPF Ombudsman.
- (6) The Secretary of State must pay to the PPF Ombudsman out of money provided by Parliament such sums as may be required to be paid by the Secretary of State to or in respect of the PPF Ombudsman by virtue of an order under subsection (4).
- (7) Regulations may provide for the imposition of a levy in respect of eligible schemes for the purpose of meeting expenditure of the Secretary of State under subsection (6).
- (8) Where regulations make such provision, subsections (2), (3), (5), (6) and (7) of section 117 (administration levy) apply in relation to the levy as they apply in relation to an administration levy (within the meaning of that section), except that in subsection (7) the reference to subsection (1) of that section is to be read as a reference to subsection (7) of this section.

#### Commencement Information

- I133** S. 209(1)-(3) in force at 17.12.2004 by [S.I. 2004/3350, art. 2, Sch.](#)
- I134** S. 209(4)(a)-(d)(f)(g) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\), Sch. Pt. 3](#)
- I135** S. 209(6) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\), Sch. Pt. 7](#)
- I136** S. 209(7)(8) in force at 10.2.2005 for specified purposes and at 1.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(2\), Sch. Pt. 2](#)

## 210 Deputy PPF Ombudsmen

- (1) The Secretary of State may appoint one or more persons to act as a deputy to the PPF Ombudsman (in this Chapter referred to as “a Deputy PPF Ombudsman”).
- (2) Any such appointment is to be on such terms and conditions as the Secretary of State determines.
- (3) A Deputy PPF Ombudsman—
  - (a) is to hold and vacate office in accordance with the terms and conditions of his appointment, and
  - (b) may resign or be removed from office in accordance with those terms and conditions.
- (4) A Deputy PPF Ombudsman may perform the functions of the PPF Ombudsman—
  - (a) during any vacancy in that office,
  - (b) at any time when the PPF Ombudsman is for any reason unable to discharge his functions, or
  - (c) at any other time, with the consent of the Secretary of State.
- (5) References to the PPF Ombudsman in relation to the performance of his functions are accordingly to be construed as including references to a Deputy PPF Ombudsman in relation to the performance of those functions.

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- (6) An order by the Secretary of State under section 209(4) may make provision—
- (a) about the payment, or provision for payment, of remuneration, compensation for loss of office, pension, allowances or gratuities to or in respect of a Deputy PPF Ombudsman;
  - (b) about the reimbursement of any expenses incurred by a Deputy PPF Ombudsman in the performance of any of the PPF Ombudsman’s functions.

#### Commencement Information

**I137** S. 210(1)-(3) in force at 17.12.2004 by [S.I. 2004/3350](#), [art. 2](#), [Sch.](#)

**I138** S. 210(4)(5) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

**I139** S. 210(6) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)

## 211 Status etc of the PPF Ombudsman and deputies

- (1) In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (c. 24) (other disqualifying offices), at the appropriate place insert— “ Ombudsman for the Board of the Pension Protection Fund and any deputy to that Ombudsman appointed under section 210 of the Pensions Act 2004. ”
- (2) In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (c. 25) (other disqualifying offices), at the appropriate place insert— “ Ombudsman for the Board of the Pension Protection Fund and any deputy to that Ombudsman appointed under section 210 of the Pensions Act 2004. ”
- (3) The persons to whom section 1 of the Superannuation Act 1972 (c. 11) (persons to or in respect of whom benefits may be provided by schemes under that section) applies are to include—
  - the PPF Ombudsman
  - a Deputy PPF Ombudsman
  - the employees of the PPF Ombudsman.
- (4) The PPF Ombudsman must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of the increase attributable to subsection (3) in the sums payable out of money provided by Parliament under that Act.
- (5) In Schedule 4 to the Parliamentary Commissioner Act 1967 (c. 13) (relevant tribunals for the purposes of section 5(7) of that Act), at the appropriate place insert— “ The Ombudsman for the Board of the Pension Protection Fund established under section 209 of the Pensions Act 2004. ”

#### Commencement Information

**I140** S. 211 in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

**Status:** Point in time view as at 06/04/2005. This version of this part contains provisions that are not valid for this point in time.  
**Changes to legislation:** Pensions Act 2004, Part 2 is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

VALID FROM 21/07/2005

## 212 Annual reports to Secretary of State

- (1) The PPF Ombudsman must prepare a report on the discharge of his functions for each financial year.
- (2) The PPF Ombudsman must send each report to the Secretary of State as soon as practicable after the end of the financial year for which it is prepared.
- (3) The Secretary of State must arrange for the publication of each report sent to him under subsection (2).
- (4) In this section “financial year” means—
  - (a) the period beginning with the date on which the PPF Ombudsman is established and ending with the next following 31st March, and
  - (b) each successive period of 12 months.

VALID FROM 01/07/2005

### *References to the PPF Ombudsman*

## 213 Reference of reviewable matter to the PPF Ombudsman

- (1) Regulations must make provision—
  - (a) for a reviewable matter to be referred to the PPF Ombudsman following a reconsideration decision under regulations made under subsection (1)(b) or by virtue of subsection (3)(b) of section 207 in respect of the matter, and
  - (b) for the PPF Ombudsman—
    - (i) to investigate and determine what (if any) is the appropriate action for the Board to take in relation to the matter, and
    - (ii) to remit the matter to the Board with directions for the purpose of giving effect to his determination.
- (2) Regulations under subsection (1) must make provision about the making of references to the PPF Ombudsman, including provision—
  - (a) about the descriptions of persons who may make them,
  - (b) about the manner of making such references, including the times by which they are to be made, and
  - (c) for prescribed persons to be notified of—
    - (i) references made under the regulations, and
    - (ii) determinations and directions given under the regulations.
- (3) Regulations under subsection (1) must—
  - (a) require the PPF Ombudsman to conduct an oral hearing in relation to any reviewable matter referred to him under the regulations or to dispose of the matter on the basis of written representations,
  - (b) enable the PPF Ombudsman to consider evidence relating to the matter which was not available to the Board or the Reconsideration Committee, and

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- (c) make other provision about the procedure for conducting investigations, and reaching and giving determinations, under the regulations, including the times by which determinations are to be given.
- (4) The provision that may be made by virtue of subsection (3)(c) includes provision—
- (a) conferring rights on prescribed persons—
    - (i) to make representations to the PPF Ombudsman in relation to a reviewable matter referred to him by virtue of this section,
    - (ii) to be heard or represented at any oral hearing by the PPF Ombudsman in relation to such a matter,
  - (b) about the consideration of evidence by the PPF Ombudsman, including—
    - (i) production of documents,
    - (ii) oral hearings,
    - (iii) expert evidence,
    - (iv) attendance of witnesses,
  - (c) conferring rights on prescribed persons to continue a reference made by a person who has died or is otherwise unable to act for himself,
  - (d) as to the costs or expenses of prescribed persons,
  - (e) conferring rights on prescribed persons to apply for a stay (or in Scotland, for a sist) in relation to prescribed legal proceedings which begin after the reference is made and conferring power on the relevant court to make an order staying (or sisting) the proceedings if it is satisfied of prescribed matters, and
  - (f) for securing that any determination or direction of the PPF Ombudsman under the regulations is binding on prescribed persons.
- (5) Regulations under subsection (1) may include provision—
- (a) conferring power on the PPF Ombudsman to direct the Board to pay such compensation as he considers appropriate to such persons as he may direct,
  - (b) conferring power on the Board to make such payments,
  - (c) conferring power on the PPF Ombudsman to direct that—
    - (i) any determinations, directions or other decisions which are made by the Board in accordance with any determination or direction given by him, or
    - (ii) any variations, revocations or substitutions of its determinations, directions or other decisions which are made by the Board in accordance with any determination or direction given by him,
 are to be treated as if they were made at such time (which may be a time prior to his determination or direction) as he considers appropriate,
  - (d) conferring power on the PPF Ombudsman to direct that any notice varied, substituted, issued or given by the Board in accordance with any determination or direction given by him is to be treated—
    - (i) as if it were issued or given at such time (which may be a time prior to his determination or direction) as he considers appropriate;
    - (ii) as if it became binding for the purposes of this Part at the time at which he gives his determination or direction or at such later time as he considers appropriate,
  - (e) prescribing the circumstances in which any determination or other act of the Board in accordance with any determination or direction given by the

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PPF Ombudsman, is not to be treated as being a reviewable matter for the purposes of this Chapter, and

- (f) conferring such other powers on the Board as may be required when a matter is remitted to it (including such powers as the Board may have on making a review decision or a reconsideration decision under regulations made under section 207(1)).

## **214 Investigation by PPF Ombudsman of complaints of maladministration**

- (1) Regulations must provide for the investigation and determination by the PPF Ombudsman of such matters as may be prescribed following decisions on relevant complaints given by the Board or the committee of the Board referred to in section 208(3)(b) under regulations made under that section.
- (2) Regulations under this section must make provision—
  - (a) prescribing the descriptions of person who may refer matters to the PPF Ombudsman under the regulations,
  - (b) about the manner in which such references may be made, including the times by which they are to be made,
  - (c) about the procedure for conducting investigations, and reaching and giving determinations, on such references, including the times by which the determinations are to be given,
  - (d) about the powers of the PPF Ombudsman on making such determinations, including—
    - (i) the power to direct the Board to pay such compensation as he considers appropriate to such persons as he considers have sustained injustice in consequence of the matters complained of, and
    - (ii) the power to direct the Board to take or refrain from taking such other steps as he may specify,
  - (e) conferring such powers on the Board as are necessary to comply with such requirements,
  - (f) for prescribed persons to be notified of—
    - (i) references to the PPF Ombudsman under the regulations, and
    - (ii) determinations and directions by the PPF Ombudsman under the regulations,
  - (g) conferring rights on prescribed persons—
    - (i) to make representations to the PPF Ombudsman in relation to a matter referred to him by virtue of this section,
    - (ii) to be heard or represented at any oral hearing by the PPF Ombudsman in relation to such a matter,
  - (h) about the consideration of evidence by the PPF Ombudsman, including—
    - (i) production of documents,
    - (ii) oral hearings,
    - (iii) expert evidence,
    - (iv) attendance of witnesses,
  - (i) conferring rights on prescribed persons to continue a reference made by a person who has died or is otherwise unable to act for himself,
  - (j) as to the costs or expenses of prescribed persons,

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- (k) conferring rights on prescribed persons to apply for a stay (or in Scotland, for a sist) in relation to prescribed legal proceedings which begin after the reference is made and conferring power on the relevant court to make an order staying (or sisting) the proceedings if it is satisfied of prescribed matters, and
- (l) for securing that any determination or direction of the PPF Ombudsman under the regulations is binding on prescribed persons.

VALID FROM 21/07/2005

### **215 Referral of questions of law**

The PPF Ombudsman may refer any question of law arising for determination in connection with—

- (a) a reviewable matter referred to him by virtue of regulations under section 213, or
- (b) a matter referred to him by virtue of regulations under section 214, to, in England and Wales, the High Court or, in Scotland, the Court of Session.

VALID FROM 21/07/2005

### **216 Publishing reports etc**

- (1) If the PPF Ombudsman considers it appropriate to do so in any particular case, he may publish in such form and manner as he considers appropriate a report of any investigation carried out by virtue of regulations under section 213 or 214 and of the result of that investigation.
- (2) For the purposes of the law of defamation, the publication of any matter by the PPF Ombudsman under or by virtue of any provision of this Chapter shall be absolutely privileged.

VALID FROM 21/07/2005

### **217 Determinations of the PPF Ombudsman**

- (1) A person bound by a determination or direction by the PPF Ombudsman by virtue of regulations made under section 213 or 214 may appeal on a point of law arising from the determination or direction—
  - (a) in England and Wales, to the High Court, or
  - (b) in Scotland, to the Court of Session.
- (2) Any determination or direction of the PPF Ombudsman is enforceable—
  - (a) in England and Wales, in a county court as if it were a judgment or order of that court, and

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- (b) in Scotland, in like manner as an extract registered decree arbitral bearing warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

VALID FROM 21/07/2005

## **218 Obstruction etc of the PPF Ombudsman**

- (1) This section applies if any person—
  - (a) without lawful excuse obstructs the PPF Ombudsman in the performance of his functions, or
  - (b) is guilty of any act or omission in relation to an investigation by the PPF Ombudsman under regulations made under section 213 or 214, which, if that investigation were a proceeding in the court, would constitute contempt of court.
- (2) The PPF Ombudsman may certify the offence to the court.
- (3) Where an offence is certified under subsection (2), the court may—
  - (a) inquire into the matter,
  - (b) hear any witnesses who may be produced against or on behalf of the person charged with the offence and any statement that may be offered in defence, and
  - (c) deal with him in any manner in which the court could deal with him if he had committed the like offence in relation to the court.
- (4) This section is to be construed, in its application to Scotland, as if contempt of court were categorised as an offence in Scots law.
- (5) In this section “the court” means—
  - (a) in England and Wales, a county court;
  - (b) in Scotland, the sheriff.

## **CHAPTER 7**

### **MISCELLANEOUS**

#### *Backdating the winding up of eligible schemes*

## **219 Backdating the winding up of eligible schemes**

- (1) Subsection (3) applies where—
  - (a) a qualifying insolvency event occurs in relation to the employer in relation to an eligible scheme, and
  - (b) the winding up of the scheme begins at or after the time of that event but not later than the first of the following events in relation to the scheme—
    - (i) a scheme failure notice or a withdrawal notice issued under section 122(2) in relation to the scheme becoming binding,

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- (ii) a withdrawal notice issued under section 148 in relation to the scheme becoming binding, or
  - (iii) a notice issued under section 122(4) becoming binding in a case where section 148 does not apply.
- (2) Subsection (3) also applies where—
- (a) the trustees or managers of an eligible scheme—
    - (i) make an application to the Board under subsection (1) of section 129, or
    - (ii) receive a notice from the Board under subsection (5)(a) of that section, and
  - (b) the winding up of the scheme begins—
    - (i) at or after the time the application is made or notice is received, but
    - (ii) not later than a scheme failure notice or a withdrawal notice issued under section 130(2) or (3) in relation to the scheme becoming binding.
- (3) The winding up of the scheme is to be taken as beginning immediately before the event within subsection (1)(a) or, as the case may be, subsection (2)(a) if—
- (a) the winding up is in pursuance of an order of the Regulator under section 11 of the Pensions Act 1995 (c. 26) directing the winding up of the scheme, or
  - (b) in any other case, the trustees or managers of the scheme so determine.
- (4) In a case where subsection (3) applies, 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 the winding up of the scheme beginning in accordance with that subsection, and
  - (b) to take those steps within a period specified in the order.
- (5) If the trustees or managers of a scheme fail to comply with a direction to them contained in an order under subsection (4), section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (6) That section also applies to any other person who, without reasonable excuse, fails to comply with a direction to him contained in an order under subsection (4).
- (7) For the purposes of this section “qualifying insolvency event” has the same meaning as in section 127.
- (8) Subsection (4) of section 128 applies for the purposes of subsection (2) of this section as it applies for the purposes of subsection (1) of that section.
- (9) This section is to be read subject to section 135 (which restricts the winding up of an eligible scheme during an assessment period).

**Commencement Information**

**I141** S. 219 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)



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VALID FROM 01/01/2006

### *Pension sharing*

#### **220 Pension sharing**

- (1) Regulations may modify any of the provisions of this Part as it applies in relation to—
  - (a) cases where a person’s shareable rights under an eligible scheme have (at any time) become subject to a pension debit;
  - (b) cases where—
    - (i) a pension sharing order or provision in respect of such rights is made before the time a transfer notice under section 160 is received by the trustees or managers of the eligible scheme, and
    - (ii) that order or provision takes effect on or after the receipt by them of the notice.
- (2) Regulations may also modify any of the provisions of Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 (c. 30) (pension sharing) as it applies in relation to—
  - (a) cases within subsection (1)(a) where any liability of the trustees or managers of the eligible scheme in respect of a pension credit was not discharged before the time a transfer notice under section 160 was received by the trustees or managers of the eligible scheme;
  - (b) cases within subsection (1)(b).
- (3) In this section—

“pension debit” and “shareable rights” have the same meaning as in Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 (c. 30) (pension sharing);

“pension sharing order or provision” means an order or provision falling within section 28(1) of that Act (activation of pension sharing).

**Status:**

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**Changes to legislation:**

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