



Pensions Act 2004

2004 CHAPTER 35

PART 2

THE BOARD OF THE PENSION PROTECTION FUND

CHAPTER 3

PENSION PROTECTION

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

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- (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).

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—
- (a) the property, rights and liabilities of the scheme are transferred to the Board, without further assurance, with effect from the time the trustees or managers receive the transfer notice,
 - (b) the trustees or managers of the scheme are discharged from their pension obligations from that time, and
 - (c) from that time the Board is responsible for securing that compensation is (and has been) paid in accordance with the pension compensation provisions,
- and, accordingly, the scheme is to be treated as having been wound up immediately after that time.
- (3) In 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—
- (a) liabilities in respect of money purchase benefits, and
 - (b) 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—
- (a) their obligations to provide pensions or other benefits to or in respect of persons (including any obligation to provide guaranteed minimum pensions within the meaning of the Pension Schemes Act 1993 (c. 48)), and
 - (b) 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—
- (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—

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- (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.

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).)

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,

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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—
- (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.

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

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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.”

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.

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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
 - (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.

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).