



Pensions Act 2004

2004 CHAPTER 35

PART 2

THE BOARD OF THE PENSION PROTECTION FUND

CHAPTER 3

PENSION PROTECTION

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
 - (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—

Status: This is the original version (as it was originally enacted).

- (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).

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—
 - (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

Status: This is the original version (as it was originally enacted).

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).

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—
- (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.

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

Status: This is the original version (as it was originally enacted).

- (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.
- (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).

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—

Status: This is the original version (as it was originally enacted).

- (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.