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DRAFT STATUTORY INSTRUMENTS

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**2005 No.**

**The Pensions (Northern Ireland) Order 2005**

**PART III**

**THE BOARD OF THE PENSION PROTECTION FUND**

**CHAPTER 1**

**THE BOARD**

*General provision about functions*

**Board's functions and supplementary powers etc.**

**101.**—(1) Articles 158 and 171 make provision for contributions to the Pension Protection Fund and the Fraud Compensation Fund to be levied by the Board.

(2) 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.

(3) Schedule 4 makes further provision about the Board.

*Financial matters*

**Grants**

**102.** The Department may pay the Board such sums as the Department may determine towards any of the Board's expenses, other than expenditure which by virtue of section 173(3) or 188(3) of the Pensions Act 2004 (c. 35) is payable out of—

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

**Administration levy**

**103.**—(1) Regulations may provide for the imposition of a levy (“administration levy”) in respect of eligible schemes (see Article 110) for the purpose of meeting—

- (a) expenditure relating to the establishment of the Board;
- (b) any expenditure of the Department under Article 102 or of the Secretary of State under section 116 of the Pensions Act 2004 (c. 35).

(2) An administration levy is payable to the Department 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 paragraph (3), the Department 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 Department.
- (6) An amount so payable is recoverable by the Department or, if the Department so determines, by the Regulator on its behalf.
- (7) Without prejudice to the generality of paragraphs (1), (5) and (6), regulations under this Article may include provision relating to—
  - (a) the collection and recovery of amounts payable by way of levy under this Article;
  - (b) the circumstances in which any such amount may be waived.

## CHAPTER 2

### INFORMATION RELATING TO EMPLOYER'S INSOLVENCY ETC.

#### *Insolvency events*

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

**104.**—(1) This Article 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 paragraph (2) the “notification period” is the prescribed period beginning with the later of—

- (a) the insolvency date, and
- (b) the date the insolvency practitioner becomes aware of the existence of the scheme.

(4) A notice under this Article must be in such form and contain such information as may be prescribed.

#### **Insolvency event, insolvency date and insolvency practitioner**

**105.**—(1) In this Part each of the following expressions has the meaning given to it by this Article—

- “insolvency event”,
- “insolvency date”,
- “insolvency practitioner”.

(2) An insolvency event occurs in relation to an individual where—

- (a) he is adjudged bankrupt;
- (b) the nominee in relation to a proposal for a voluntary arrangement under Chapter 2 of Part VIII of the Insolvency Order submits a report to the Court under Article 230(1) or 230A(3) of that Order 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, for, or in respect of the affairs of the individual is registered under Chapter 1 of Part VIII of that Order;
  - (d) he executes a trust deed for his creditors or enters into a composition contract;
  - (e) he has died and an insolvency administration order is made in respect of his estate in accordance with an order under Article 365 of that Order.
- (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 II of the Insolvency Order submits a report to the Court under Article 15 of that Order (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;
  - (b) the directors of the company file with the Court documents and statements in accordance with paragraph 18(1) of Schedule A1 to that Order (moratorium where directors propose voluntary arrangement);
  - (c) an administrative receiver within the meaning of Article 5 of that Order is appointed in relation to the company;
  - (d) the company enters administration within the meaning of paragraph 2(2)(b) of Schedule B1 to that Order;
  - (e) a resolution is passed for a voluntary winding up of the company without a declaration of solvency under Article 75 of that Order;
  - (f) a meeting of creditors is held in relation to the company under Article 81 of that Order (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 V or VI of that Order.
- (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 Order (as applied by an order under Article 364 of that Order (insolvent partnerships));
  - (b) the nominee in relation to a proposal for a voluntary arrangement under Part II of that Order (as applied by an order under Article 364 of that Order) submits a report to the Court under Article 15 of that Order (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;
  - (c) the members of the partnership file with the Court documents and statements in accordance with paragraph 18(1) of Schedule A1 to that Order (moratorium where directors propose voluntary arrangement) (as applied by an order under Article 364 of that Order);
  - (d) an administration order under Part III of that Order (as applied by Article 364 of that Order) 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 paragraphs (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 Department may by order amend paragraph (4)(d) to make provision consequential upon any order under Article 364 of the Insolvency Order (insolvent partnerships) applying the provisions of Part III of that Order (administration) as amended by the Insolvency (Northern Ireland) Order 2005.

(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 Article 3 of the Insolvency Order,
- (b) in such circumstances as may be prescribed, a person of a prescribed description.

(10) In this Article—

“company” means a company within the meaning given by Article 3(1) of the Companies Order or a company which may be wound up under Part VI of the Insolvency Order (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 Article 3 of the Insolvency Order under paragraph (9), Article 3(5) of that Order (which includes provision that nothing in the Article applies to anything done by the official receiver) must be ignored.

(12) In relation to any time before the coming into operation of Article 3 of the Insolvency (Northern Ireland) Order 2005, paragraph (3) shall have effect as if for sub-paragraph (d) there were substituted—

“(d) an administration order is made by the Court under Article 21 of that Order;”.

#### *Status of scheme*

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

**106.**—(1) This Article 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) Paragraph (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 paragraph applies has not been able to confirm in relation to the scheme—

- (a) that a scheme rescue is not possible, or
- (b) that a scheme rescue has occurred,

he must issue a notice to that effect.

(5) For the purposes of this Article—

- (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 sub-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 sub-paragraph.
- (6) Where an insolvency practitioner or former insolvency practitioner in relation to the employer issues a notice under this Article, 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 paragraph (2), (4) or (6) as soon as reasonably practicable.
- (8) Regulations may require notices issued under this Article—
  - (a) to be in a prescribed form;
  - (b) to contain prescribed information.

#### **Approval of notices issued under Article 106**

- 107.**—(1) This Article applies where the Board receives a notice under Article 106(6) (“the Article 106 notice”).
- (2) The Board must determine whether to approve the Article 106 notice.
  - (3) The Board must approve the Article 106 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 Article, and
    - (b) that the notice complies with any requirements imposed by virtue of paragraph (8) of that Article.
  - (4) Where the Board makes a determination for the purposes of paragraph (2), it must issue a determination notice and give a copy of that notice to—
    - (a) the Regulator,
    - (b) the trustees or managers of the scheme,
    - (c) the insolvency practitioner or the former insolvency practitioner who issued the Article 106 notice,
    - (d) any insolvency practitioner in relation to the employer (who does not fall within sub-paragraph (c)), and
    - (e) if there is no insolvency practitioner in relation to the employer, the employer.
  - (5) In paragraph (4) “determination notice” means a notice which is in the prescribed form and contains such information about the determination as may be prescribed.

#### *Board’s duties*

#### **Board’s duty where there is a failure to comply with Article 106**

- 108.**—(1) This Article applies where, in relation to an occupational pension scheme—
- (a) the Board determines under Article 107 not to approve a notice issued under Article 106 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 Article 106 and the Board is satisfied that such a notice ought to have been issued under that Article.

(2) The obligations on the insolvency practitioner or former insolvency practitioner imposed by paragraphs (2) and (4) of Article 106 are to be treated as obligations imposed on the Board and the Board must accordingly issue a notice as required under that Article.

(3) Subject to paragraphs (4) and (5), where a notice is issued under Article 106 by the Board by virtue of this Article, it has effect as if it were a notice issued under Article 106 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 Article 106 by virtue of this Article, Article 106(6) does not apply and the Board 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) the insolvency practitioner or former insolvency practitioner mentioned in paragraph (1),
- (d) any insolvency practitioner in relation to the employer (who does not fall within subparagraph (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 Article 106 by virtue of this Article, 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.

### **Binding notices confirming status of scheme**

**109.**—(1) Subject to paragraph (2), for the purposes of this Part, a notice issued under Article 106 is not binding until—

- (a) the Board issues a determination notice under Article 107 approving the notice,
- (b) the period within which the issue of the determination notice under that Article 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 Article 106 by the Board by virtue of Article 108, 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.

(3) Where a notice issued under Article 106 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 Article 106 or, where that notice was issued by the Board by virtue of Article 108, the insolvency practitioner or former insolvency practitioner mentioned in paragraph (1) of that Article,
  - (d) any insolvency practitioner in relation to the employer (who does not fall within subparagraph (c)), and
  - (e) if there is no insolvency practitioner in relation to the employer, the employer.
- (4) A notice under paragraph (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 Article 106(2)(b) which has become binding, must state the time from which the Board ceases to be involved with the scheme (see Article 133).

## CHAPTER 3

### PENSION PROTECTION

#### *Eligible schemes*

#### **Eligible schemes**

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

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

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

(3) Regulations may provide that where—

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

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

(4) Those provisions are—

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

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

#### *Circumstances in which Board assumes responsibility for eligible schemes*

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

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

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

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

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



(ii) ending immediately before the issuing of the scheme failure notice under Article 114(2),

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

(3) In paragraph (2)—

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

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

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

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

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

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

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

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

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

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

(a) the Regulator, and

(b) the employer.

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

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

(b) be made within the prescribed period.

(4) Where the Regulator becomes aware that—

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

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

it must give the Board a notice to that effect.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) For the purposes of this Article—

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

(6) For the purposes of this Part a notice issued under paragraph (2) or (3) is not binding until—

- (a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
- (b) if the issue of the notice is so reviewed—
  - (i) the review and any reconsideration,
  - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
  - (iii) any appeal against his determination or directions,

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

(7) Where a notice issued under paragraph (2) or (3) becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—

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

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

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

## Protected liabilities

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

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

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

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

## Assessment periods

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

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

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

whichever first occurs.

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

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

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

whichever first occurs.

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

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

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

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

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

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

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

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

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

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

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

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

(9) In paragraph (8)—

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

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

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

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

### **Directions**

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

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

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

(3) In paragraph (2)—

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

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

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

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

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

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

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

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

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

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

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

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

(5) Paragraph (4)—

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

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

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

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

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

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

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

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

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

(10) Disregarding paragraph (9), where there is a contravention of this Article, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance with this Article.

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

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

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

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

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

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

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

- (a) until—
  - (i) the Board has issued a notice under paragraph (2) relating to the determination, and
  - (ii) the period within which the issue of that notice may be reviewed by virtue of Chapter 6 has expired, and
- (b) if the issue of the notice is so reviewed, until—
  - (i) the review and any reconsideration,
  - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
  - (iii) any appeal against his determination or directions,has been finally disposed of.

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

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

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

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

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

### **Payment of scheme benefits**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



### *Ill health pensions*

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

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

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

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

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

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

(4) Where—

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

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

(5) Where—

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

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

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

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

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

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

(3) The conditions are—

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

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

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

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

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

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

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

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

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

“pensionable service” is to be construed in accordance with Schedule 6;

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

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

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

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

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

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

#### *Valuation of assets and liabilities*

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

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

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

(3) For those purposes, regulations may provide that any of the following are to be regarded as assets or protected liabilities of the scheme at the relevant time if prescribed requirements are met—

- (a) a debt due to the trustees or managers of the scheme by virtue of a contribution notice issued under Article 34, 43 or 51 during the pre-approval period;
- (b) an obligation arising under financial support for the scheme (within the meaning of Article 41) put in place during the pre-approval period in accordance with a financial support direction issued under Article 39;
- (c) an obligation imposed by a restoration order under Article 48 during the pre-approval period in respect of a transaction involving assets of the scheme.

(4) For the purposes of this Article, regulations may prescribe how—

- (a) the assets and the protected liabilities of eligible schemes, and
- (b) their amount or value,

are to be determined, calculated and verified.

(5) Regulations under paragraph (4) may provide, in particular, that when calculating the amount or value of assets or protected liabilities of an eligible scheme at the relevant time which consist of any of the following—

- (a) a debt (including any contingent debt) due to the trustees or managers of the scheme from the employer under Article 75 of the 1995 Order (deficiencies in the scheme assets),
- (b) a debt due to the trustees or managers of the scheme by virtue of a contribution notice issued under Article 34, 43 or 51,
- (c) an obligation arising under financial support for the scheme (within the meaning of Article 41) put in place in accordance with a financial support direction issued under Article 39, or

(d) an obligation imposed by a restoration order made under Article 48 in respect of a transaction involving assets of the scheme,  
account must be taken in the prescribed manner of prescribed events which occur during the pre-approval period.

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

(7) In calculating the amount of any liabilities for the purposes of this Article, a provision of the scheme rules which limits the amount of the scheme's liabilities by reference to the value of its assets is to be disregarded.

(8) The duty imposed by paragraph (2) ceases to apply if and when the Board ceases to be involved with the scheme.

(9) Nothing in paragraph (2) requires the actuarial valuation to be obtained during any period when the Board considers that an event may occur which, by virtue of regulations under paragraph (3) or (4), may affect the value of the assets or the amount of the protected liabilities of the scheme for the purposes of the valuation.

(10) In a case where there are one or more reviewable ill health pensions (within the meaning of Article 124), nothing in paragraph (2) requires the actuarial valuation to be obtained during the period mentioned in Article 125(5)(b) (period during which Board may exercise its power to make a decision following a review) relating to any such pension.

(11) For the purposes of this Article—

- (a) “actuarial valuation”, in relation to the scheme, means a written valuation of the assets and protected liabilities of the scheme which—
  - (i) is in the prescribed form and contains the prescribed information, and
  - (ii) is prepared and signed by—
    - (a) a person with prescribed qualifications or experience, or
    - (b) a person approved by the Department,
- (b) “the pre-approval period”, in relation to the scheme, means the period which—
  - (i) begins immediately after the relevant time, and
  - (ii) ends immediately before the time the Board first approves a valuation of the scheme under Article 128 after the relevant time,
- (c) “the relevant time”—
  - (i) in a case within paragraph (1) of Article 111, has the meaning given in paragraph (4) (b) of that Article, and
  - (ii) in a case within paragraph (1) of Article 112, has the meaning given in paragraph (3) (b) of that Article, and
- (d) references to “assets” do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

### **Approval of valuation**

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

(2) Where the Board is satisfied that the valuation has been prepared in accordance with that Article, it must—

- (a) approve the valuation, and

- (b) give a copy of the valuation to—
  - (i) the Regulator,
  - (ii) the trustees or managers of the scheme, and
  - (iii) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (3) Where the Board is not so satisfied, it must obtain another valuation under that Article.

### **Binding valuations**

**129.**—(1) For the purposes of this Chapter a valuation obtained under Article 127 is not binding until—

- (a) it is approved under Article 128,
- (b) the period within which the approval may be reviewed by virtue of Chapter 6 has expired, and
- (c) if the approval is so reviewed—
  - (i) the review and any reconsideration,
  - (ii) any reference to the PPF Ombudsman in respect of the approval, and
  - (iii) any appeal against his determination or directions,has been finally disposed of.

(2) Subject to Article 156(3) and (4) (treatment of fraud compensation payments), for the purposes of determining whether or not the condition in Article 111(2)(a) or, as the case may be, 112(2)(a) (condition that scheme assets are less than protected liabilities) is satisfied in relation to a scheme, a binding valuation is conclusive.

(3) Where a valuation becomes binding under this Article the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding valuation to—

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

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

### *Refusal to assume responsibility*

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

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

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

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

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

(3) For the purposes of this Part a withdrawal notice issued by virtue of this Article is not binding until—

- (a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
- (b) if the issue of the notice is so reviewed—
  - (i) the review and any reconsideration,
  - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
  - (iii) any appeal against his determination or directions,
 has been finally disposed of and the notice has not been revoked, varied or substituted.

(4) Where a withdrawal notice issued by virtue of this Article becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—

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

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

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

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

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

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

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

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

- (iii) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (3) For the purposes of this Part a withdrawal notice issued under this Article is not binding until—
  - (a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
  - (b) if the issue of the notice is so reviewed—
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
    - (iii) any appeal against his determination or directions,has been finally disposed of and the notice has not been revoked, varied or substituted.
- (4) Where a withdrawal notice issued under this Article becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—
  - (a) the Regulator,
  - (b) the trustees or managers of the scheme, and
  - (c) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (5) Notices under this Article must be in the prescribed form and contain such information as may be prescribed.
- (6) A notice given under paragraph (4) must state the time from which the Board ceases to be involved with the scheme (see Article 133).

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

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

- (b) no further insolvency event occurs in relation to the employer during that period, the Board must issue a notice to that effect (a “withdrawal notice”).
- (5) Where the Board is required to issue a withdrawal notice under this Article, it must give a copy of the notice to—
- (a) the Regulator,
  - (b) the trustees or managers of the scheme, and
  - (c) the employer.
- (6) For the purposes of this Part, a withdrawal notice issued under this Article is not binding until—
- (a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
  - (b) if the issue of the notice is so reviewed—
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
    - (iii) any appeal against his determination or directions,
 has been finally disposed of and the notice has not been revoked, varied or substituted.
- (7) Where a withdrawal notice issued under this Article becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—
- (a) the Regulator,
  - (b) the trustees or managers of the scheme, and
  - (c) the employer.
- (8) Notices under this Article must be in the prescribed form and contain such information as may be prescribed.
- (9) A notice given under paragraph (7) must state the time from which the Board ceases to be involved with the scheme (see Article 133).

#### *Cessation of involvement with a scheme*

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

- 133.**—(1) Where an assessment period begins in relation to an eligible scheme, the Board ceases to be involved with the scheme, for the purposes of this Part, on the occurrence of the first withdrawal event after the beginning of that period.
- (2) For this purpose the following are withdrawal events in relation to a scheme—
- (a) a withdrawal notice issued under Article 106(2)(b) (scheme rescue has occurred) becoming binding;
  - (b) a withdrawal notice issued under Article 114(3) (scheme rescue has occurred) becoming binding;
  - (c) a withdrawal notice issued under or by virtue of Article 130 or 131 (refusal to assume responsibility) becoming binding;
  - (d) a withdrawal notice issued under Article 132 (no insolvency event has occurred or is likely to occur) becoming binding,
- and references in this Chapter to a “withdrawal event” are to be construed accordingly.



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

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

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

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

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

(6) For the purposes of this Chapter—

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

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

**134.**—(1) Where—

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

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

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

(3) Where—

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

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

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

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

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

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

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

## Reconsideration

### Application for reconsideration

**135.**—(1) Where paragraph (2) or (3) applies in relation to an eligible scheme, the trustees or managers of the scheme may make an application to the Board under this Article for it to assume responsibility for the scheme in accordance with this Chapter.

(2) This paragraph applies where—

- (a) a scheme failure notice has been issued under Article 106(2)(a) in relation to the scheme, that notice has become binding and the trustees or managers have received a copy of the binding notice under Article 109(3),
- (b) the valuation obtained by the Board under Article 127 in respect of the scheme has become binding, and
- (c) the Board would have been required to assume responsibility for the scheme under Article 111 but for the fact that the condition in paragraph (2)(a) of that Article was not satisfied.

(3) This paragraph applies where—

- (a) the Board has issued a scheme failure notice under paragraph (2) of Article 114 in relation to the scheme, that notice has become binding and the trustees or managers have received a copy of the binding notice under paragraph (7) of that Article,
- (b) the valuation obtained by the Board under Article 127 in respect of the scheme has become binding, and
- (c) the Board would have been required to assume responsibility for the scheme under Article 112 but for the fact that the condition in paragraph (2)(a) of that Article was not satisfied.

(4) An application under this Article must be in the prescribed form, contain the prescribed information and be accompanied by—

- (a) a protected benefits quotation in the prescribed form, and
- (b) audited scheme accounts for a period which—
  - (i) begins with such date as may be determined in accordance with regulations, and
  - (ii) ends with a date which falls within the prescribed period ending with the day on which the application is made.

(5) An application under this Article must be made within the authorised period.

(6) In this Article “the authorised period” means the prescribed period which begins—

- (a) where paragraph (2) applies, with the later of—
  - (i) the day on which the trustees or managers received the copy of the binding notice mentioned in sub-paragraph (a) of that paragraph, and
  - (ii) the day on which they received a copy of the binding valuation mentioned in sub-paragraph (b) of that paragraph, and
- (b) where paragraph (3) applies, with the later of—
  - (i) the day on which the trustees or managers received the copy of the binding notice mentioned in sub-paragraph (a) of that paragraph, and
  - (ii) the day on which they received a copy of the binding valuation mentioned in sub-paragraph (b) of that paragraph.

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

(8) For the purposes of this Article—

“audited scheme accounts”, in relation to a scheme, means—

- (a) accounts obtained by the trustees or managers of the scheme (“the scheme accounts”) which are prepared in accordance with paragraphs (9) to (11) and audited by the auditor in relation to the scheme, and
- (b) a report by the auditor, in the prescribed form, as to whether or not such requirements as may be prescribed are satisfied in relation to the scheme accounts;

“auditor”, in relation to a scheme, has the meaning given by Article 47 of the 1995 Order;

“protected benefits quotation”, in relation to a scheme, means a quotation for one or more annuities from one or more insurers, being companies willing to accept payment in respect of the members from the trustees or managers of the scheme, which would provide in respect of each member of the scheme from the reconsideration time—

- (a) benefits for or in respect of the member corresponding to the compensation which would be payable to or in respect of the member in accordance with the pension compensation provisions if the Board assumed responsibility for the scheme by virtue of this Article, or
- (b) benefits in accordance with the member’s entitlement or accrued rights (including pension credit rights within the meaning of Article 121(1) of the 1995 Order) under the scheme rules (other than his entitlement or rights in respect of money purchase benefits),

whichever benefits can, in the case of that member, be secured at the lower cost;

“the reconsideration time”, in relation to an application under this Article, means the time immediately before the end of the period to which the audited scheme accounts mentioned in paragraph (4)(b) relate.

(9) The scheme accounts are prepared in accordance with this paragraph if, subject to paragraphs (10) and (11), they—

- (a) include a statement of the assets of the scheme (excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules) as at the reconsideration time, and
- (b) are prepared in accordance with such other requirements as may be prescribed.

(10) Subject to paragraph (11), regulations under paragraph (4) of Article 127 (other than regulations made by virtue of paragraph (5) of that Article), and guidance under paragraph (6) of that Article, apply to the scheme accounts as they apply for the purposes of a valuation under that Article.

(11) Regulations may provide that, where an asset of a prescribed description has been acquired during the assessment period, the value assigned to the asset as at the reconsideration time is to be determined, for the purposes of the scheme accounts, in the prescribed manner.

(12) For the purposes of this Article—

- (a) regulations may prescribe how the cost of securing the benefits mentioned in paragraph (a) of the definition of “protected benefits quotation” in paragraph (8) is to be determined, calculated and verified, and
- (b) subject to any provision made under sub-paragraph (a), that cost is to be determined, calculated and verified in accordance with guidance issued by the Board.

(13) Where the scheme is being wound up, for the purposes of determining the benefits which fall within paragraph (b) of the definition of “protected benefits quotation” in paragraph (8) no account is to be taken of the winding up of the scheme.

### **Duty to assume responsibility following reconsideration**

**136.**—(1) This Article applies where an application is made in respect of a scheme in accordance with Article 135.

(2) The Board must assume responsibility for the scheme in accordance with this Chapter if it is satisfied that the value of the assets of the scheme at the reconsideration time is less than the aggregate of—

- (a) the amount quoted in the protected benefits quotation accompanying the application,
- (b) the amount at that time of the liabilities of the scheme which are not liabilities to, or in respect of, members of the scheme, and
- (c) the estimated costs of winding up the scheme at that time.

(3) Where the Board makes a determination for the purposes of paragraph (2), it must issue a determination notice and give a copy of that notice to—

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

(4) In paragraph (3) “determination notice” means a notice which is in the prescribed form and contains such information about the determination as may be prescribed.

(5) But where the Board is satisfied of the matters mentioned in paragraph (2), it is not required to assume responsibility for the scheme under paragraph (2) until the determination notice issued under paragraph (3) becomes binding.

(6) For the purposes of paragraph (5) a determination notice is not binding until—

- (a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
- (b) if the issue of the notice is so reviewed—
  - (i) the review and any reconsideration,
  - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
  - (iii) any appeal against his determination or directions,

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

(7) Where a determination notice issued under paragraph (3) becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—

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

(8) A notice under paragraph (7) must be in the prescribed form and contain such information as may be prescribed.

(9) The Board may—

- (a) for the purposes of paragraph (2), obtain its own valuation of the assets of the scheme as at the reconsideration time (within the meaning of Article 135), and
- (b) for the purposes of paragraph (2)(b), obtain its own valuation of the liabilities of the scheme as at that time;

and where it does so, paragraphs (9)(b), (10) and (11) of Article 135 apply in relation to the valuation as they apply in relation to the scheme accounts (within the meaning of that Article).

(10) Regulations under paragraph (4) of Article 127, and guidance under paragraph (6) of that Article, apply for the purposes of this Article in relation to the estimated costs within paragraph (2) (c) as they apply for the purposes of Article 127 in relation to protected liabilities within Article 115(1)(c).

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

(12) This Article is subject to Articles 130 and 131 (refusal to assume responsibility for a scheme).

### *Closed schemes*

#### **Closed schemes**

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

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

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

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

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

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

(6) Where the Board determines an application in respect of a scheme under this Article, it must issue a determination notice and give a copy of that notice to—

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

(7) In this Article—

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

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

“full buy-out quotation”, in relation to a scheme, means a quotation for one or more annuities from one or more insurers (being companies willing to accept payment in respect of the members from the trustees or managers of the scheme) which would provide in respect of each member of the scheme, from a relevant date, benefits in accordance with the member’s entitlement or accrued rights, including pension credit rights, under the scheme rules (other than his entitlement or rights in respect of money purchase benefits);

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

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

(8) If the trustees or managers of the scheme fail to comply with paragraph (2) or (3), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

### *Winding up*

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

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

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

(2) The conditions are—

- (a) that paragraph (2) or (3) of Article 135 (scheme rescue not possible but scheme has sufficient assets to meet the protected liabilities) applies in relation to the scheme,
- (b) that—
  - (i) the trustees or managers did not make an application under that Article or Article 137(2) within the authorised period (within the meaning of Article 135(6)) (or any such application has been withdrawn), or
  - (ii) if such an application was made, it has been finally determined, and
- (c) that, if an application was made under Article 135, the Board is not required to assume responsibility for the scheme by virtue of Article 136(2).

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

- (a) the Board has issued a determination notice in respect of the application under Article 136 or, as the case may be, 137,
- (b) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
- (c) if the issue of the notice is so reviewed—
  - (i) the review and any reconsideration,
  - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
  - (iii) any appeal against his determination or directions,has been finally disposed of.

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

(5) The conditions are—

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

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

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

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

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

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

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

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

(12) This Article must be complied with in relation to a scheme—

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

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

(14) Where a public service pension scheme is required to be wound up under this Article, the appropriate authority may by order make provision modifying any statutory provision in which the scheme is contained or under which it is made.

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

#### *Provisions applying to closed schemes*

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

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

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

(3) The provisions are—



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

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

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

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

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

(2) Regulations under this Article may prescribe how—

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

are to be determined, calculated and verified.

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

(4) In calculating the amount of any liabilities for the purposes of a valuation required by virtue of this Article, a provision of the scheme rules which limits the amount of the scheme's liabilities by reference to the value of its assets is to be disregarded.

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

- (a) the period within which the issue of the determination notice, under Article 137(6), in respect of the Board's determination to authorise the scheme to continue as a closed scheme, may be reviewed by virtue of Chapter 6 has expired, and
- (b) if the issue of the notice is so reviewed—
  - (i) the review and any reconsideration,
  - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
  - (iii) any appeal against his determination or directions,

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

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

“actuarial valuation” means a written valuation of—

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

“the actuary” means—

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

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

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

“full scheme liabilities” means—

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

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

#### *Reconsideration of closed schemes*

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

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

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

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

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

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

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

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

(8) If the trustees or managers of a closed scheme fail to comply with paragraph (1), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(9) In this Article—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) In this Article—

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

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

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

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

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

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

(3) An assessment period—

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

whichever first occurs.

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

### *Assumption of responsibility for a scheme*

#### **Transfer notice**

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

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

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

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

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

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

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

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

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

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

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

- (a) the property, rights and liabilities of the scheme are transferred to the Board, without further assurance, with effect from the time the trustees or managers receive the transfer notice,
- (b) the trustees or managers of the scheme are discharged from their pension obligations from that time, and
- (c) from that time the Board is responsible for securing that compensation is (and has been) paid in accordance with the pension compensation provisions,

and, accordingly, the scheme is to be treated as having been wound up immediately after that time.

(3) In paragraph (2)(a) the reference to liabilities of the scheme does not include any liability to, or in respect of, any member of the scheme, other than—

- (a) liabilities in respect of money purchase benefits, and
- (b) such other liabilities as may be prescribed.

(4) In paragraph (2)(b) “pension obligations” in relation to the trustees or managers of the scheme means—

- (a) their obligations to provide pensions or other benefits to or in respect of persons (including any obligation to provide guaranteed minimum pensions within the meaning of the Pension Schemes Act), and
- (b) their obligations to administer the scheme in accordance with the scheme rules and this or any other statutory provision.

(5) Schedule 5 makes provision in respect of the transfer of the property, rights and liabilities of a scheme under paragraph (2)(a).

(6) Regulations may make further provision regarding such transfers.

(7) Without prejudice to the generality of paragraph (6), regulations may authorise the Board to modify a term of a relevant contract of insurance if—

- (a) any rights or liabilities under the contract are transferred to the Board by virtue of paragraph (2)(a), and
- (b) as a result of the transfer, the Board is required, by reason of that term, to pay a specified amount or specified amounts to a specified person who, immediately before the time mentioned in paragraph (2)(a), was a member of the scheme or a person entitled to benefits in respect of such a member.

(8) In paragraph (7)—

“relevant contract of insurance” means a contract of insurance which—

- (a) is entered into with a view to securing the whole or part of the scheme’s liability for—
  - (i) any pension or other benefit payable to or in respect of one particular person whose entitlement to payment of a pension or other benefit has arisen, and
  - (ii) any benefit which will be payable in respect of that person on his death, and
- (b) is a contract—
  - (i) which may not be surrendered, or
  - (ii) in respect of which the amount payable on surrender does not exceed the liability secured;

“specified” means specified in, or determined in accordance with, the contract of insurance.

### **The pension compensation provisions**

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

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

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

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

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

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

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

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

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

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

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

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

(4) The Board must—

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

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

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

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

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

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

### **Guaranteed minimum pensions**

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

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

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

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

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

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

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

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

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

- (a) any transfer payment, or
  - (b) any payment in respect of a refund of contributions.
- (5) Regulations may provide that, in prescribed circumstances, where—
- (a) a member of the scheme died before the commencement of the assessment period, and
  - (b) during the period beginning with the assessment date and ending with the receipt by the trustees or managers of the transfer notice, a person became entitled under the scheme rules to a benefit of a prescribed description in respect of the member,

that person's entitlement to the benefit, or to any part of it, is, for the purposes of paragraph (2), to be treated as having arisen before the assessment date.

(6) Regulations may make provision requiring the Board, in such circumstances as may be prescribed, to take such steps (including making payments) as may be prescribed in respect of rights of prescribed descriptions to which members of the scheme were entitled immediately before the commencement of the assessment period.

- (7) For the purposes of regulations made under paragraph (6)—
- (a) this Chapter (other than this paragraph), and
  - (b) the scheme rules (including any relevant legislative provision within the meaning of Article 2(4)),

are to have effect subject to such modifications as may be prescribed.

- (8) In this Article “assessment date” is to be construed in accordance with Schedule 6.

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

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

#### **Administration of compensation**

152.—(1) Regulations may make further provision regarding the operation and administration of this Chapter.

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



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

### *Discharge of Board’s liabilities*

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

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

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

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

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

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

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

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

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

(4) In this Article—

- “accrued rights”, under the scheme rules, include pension credit rights within the meaning of Article 121(1) of the 1995 Order;
- “protected rights” has the meaning given by section 6 of the Pension Schemes Act (protected rights and money purchase benefits).

### *Equal treatment*

#### **Equal treatment**

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

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

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

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

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

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

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

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

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

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

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

(6) In this Article—

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

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

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

### *Relationship with fraud compensation regime*

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

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

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

- (a) the Board has determined the application,
- (b) the period within which the Board’s determination may be reviewed by virtue of Chapter 6 has expired, and
- (c) if the determination is so reviewed—
  - (i) the review and any reconsideration,
  - (ii) any reference to the PPF Ombudsman in respect of the determination, and

(iii) any appeal against his determination or directions,  
has been finally disposed of.

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

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

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

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

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

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

### *The levies*

#### **Initial levy**

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

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

(2) The regulations must prescribe—

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

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

#### **Pension protection levies**

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

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

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

(2) For the purposes of this Article—

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) In this Article—

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

### **The levy ceiling**

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

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

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

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

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

are to be determined, calculated and verified.

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

(5) In calculating the amount of any liabilities for the purposes of a valuation required by virtue of this Article, a provision of the scheme rules which limits the amount of the scheme's liabilities by reference to the value of its assets is to be disregarded.

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

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

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

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

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

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

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

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

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

- 164.**—(1) This Article applies in relation to—
- (a) the initial levy imposed under Article 157 in respect of a scheme, and
  - (b) any pension protection levy imposed under Article 158 in respect of a scheme.
- (2) The levy is payable to the Board by or on behalf of—
- (a) the trustees or managers of the scheme, or
  - (b) any other prescribed person.
- (3) The Board must in respect of the levy—
- (a) determine the schemes in respect of which it is imposed,
  - (b) calculate the amount of the levy in respect of each of those schemes, and
  - (c) notify any person liable to pay the levy in respect of the scheme of the amount of the levy in respect of the scheme and the date or dates on which it becomes payable.
- (4) The Board may require the Regulator to discharge, on the Board’s behalf, its functions under paragraph (3) in respect of the levy.
- (5) Where a scheme is an eligible scheme for only part of the period for which the levy is imposed, except in prescribed circumstances, the amount of the levy payable in respect of the scheme for that period is such proportion of the full amount as that part bears to that period.
- (6) An amount payable by a person on account of the levy is a debt due from him to the Board.
- (7) An amount so payable may be recovered—
- (a) by the Board, or
  - (b) if the Board so determines, by the Regulator on its behalf.
- (8) Regulations may make provision relating to—
- (a) the collection and recovery of amounts payable by way of any levy in relation to which this Article applies;
  - (b) the circumstances in which any such amount may be waived.

## **CHAPTER 4**

### **FRAUD COMPENSATION**

#### *Entitlement to fraud compensation*

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

- 165.**—(1) The Board shall, in accordance with this Article, 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) paragraph (2), (3) or (4) applies,
  - (d) an application is made which meets the requirements of paragraph (5), and
  - (e) the application is made within the authorised period.
- (2) This paragraph applies where—

- (a) a qualifying insolvency event has occurred in relation to the employer in relation to the scheme,
  - (b) after that event, a scheme failure notice has been issued under Article 106(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 Article 106(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 paragraph applies where—
- (a) in relation to the scheme, an application has been made under paragraph (1), or a notification has been given under paragraph (5)(a), of Article 113, and
  - (b) in response to that application, or the notice given by the Regulator under paragraph (4) of that Article, the Board has issued a scheme failure notice under Article 114(2) in relation to the scheme and that notice has become binding.
- (4) This paragraph 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 Article states that the case is one in relation to which subparagraphs (b) and (c) apply, and
  - (e) in response to that application the Board has issued a notice under Article 166(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 paragraph 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 paragraph (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 paragraph (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 Article in respect of a scheme once a transfer notice is given in relation to the scheme under Article 144.
- (8) For the purposes of this Article, an insolvency event (“the current event”) in relation to the employer is a qualifying insolvency event if—
- (a) it occurs on or after the day appointed under Article 110(2), and
  - (b) either—
    - (i) it is the first insolvency event to occur in relation to the employer on or after that day, or



- (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 Article—
  - (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 Article 106(2)(b) (scheme rescue has occurred),
    - (ii) a withdrawal notice issued in relation to the scheme under Article 114(3) (scheme rescue has occurred),
    - (iii) a withdrawal notice issued in relation to the scheme under Article 132 (no insolvency event has occurred or is likely to occur),
    - (iv) a notice issued in relation to the scheme under Article 166(2)(b) (scheme rescue has occurred), or
    - (v) a notice issued under Article 106(4) (inability to confirm status of scheme) in a case where the notice has become binding and Article 132 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 is 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 head (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 Article—
  - “auditor” and “actuary”, in relation to an occupational pension scheme, have the meaning given by Article 47 of the 1995 Order;
  - “the relevant event” means—
    - (a) in a case where paragraph (2) applies in relation to an eligible scheme, the event within sub-paragraph (a) of that paragraph,

- (b) in any other case where paragraph (2) applies, the issue of the scheme failure notice under Article 106(2)(a) mentioned in sub-paragraph (b) of that paragraph,
- (c) in a case where paragraph (3) applies, the event within sub-paragraph (a) of that paragraph, and
- (d) in a case where paragraph (4) applies, the trustees or managers becoming aware that sub-paragraphs (b) and (c) of that paragraph 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 Department by order for the purposes of this Article.

(11) This Article is subject to Article 167(2) (no fraud compensation payments to be made until settlement date determined).

### **Board’s duties in respect of certain applications under Article 165**

**166.**—(1) This Article applies where, in a case to which sub-paragraphs (a) to (c) of paragraph (4) of Article 165 apply (employer not likely to continue as going concern etc.), the Board receives an application within sub-paragraph (d) of that paragraph.

(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 paragraph (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 paragraph (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 paragraph (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.

(5) Where a notice issued under paragraph (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 paragraph (3).

(6) A notice under paragraph (5) must be in the prescribed form and contain such information as may be prescribed.

(7) Article 114(5) (circumstances in which scheme rescue can or cannot be confirmed) applies for the purposes of this Article.

### **Recovery of value**

**167.**—(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 Article “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 sub-paragraph (b) of Article 165(1), and
- (b) to which any reduction in value falling within that sub-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.

### **Fraud compensation payments**

**168.**—(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 Article.

(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—

- (a) the amount of the reduction (or, if more than one, the aggregate amount of the reductions) within Article 165(1)(b), and
- (b) the amount of any recoveries of value obtained before the settlement date (within the meaning of Article 167(2)).

(4) Subject to paragraph (3), the Board—

- (a) must determine the amount of any fraud compensation payment in accordance with regulations made for the purposes of this paragraph, and
- (b) must take account of any interim payment already made under Article 169.

(5) The Board must give written notice of its determination under paragraph (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 Article 165 (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.

### **Interim payments**

**169.**—(1) The Board may, on an application under Article 165, 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 paragraph (1) of that Article 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 Article 167.

(2) Amounts payable under this Article 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 paragraph (1) as it considers appropriate if, after the payment is made, it determines—

- (a) that the case is not one to which Article 165(1) applies, or
- (b) that the amount of the payment was excessive.

(4) Subject to that, a payment under paragraph (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.

### **Board’s powers to make fraud compensation transfer payments**

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

- (a) the Board assumes responsibility for a scheme in accordance with Chapter 3,
- (b) the value of the assets of the scheme was reduced after the relevant date but before the transfer notice (within the meaning of Article 144) 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 Article 165(1)(b), and
- (c) no application was made under Article 165 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 Article.

(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 Article “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 Article) 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 Article 165(1)(b), and
- (b) to which any reduction in value falling within paragraph (1)(b) 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 paragraph (1)(b), and
- (b) the amount of any recoveries of value obtained by the Board before the date determined by the Board under paragraph (4).

(8) Subject to paragraph (7), the Board must determine the amount of any fraud compensation transfer payment in accordance with regulations made for the purposes of this paragraph.

(9) In this Article “the relevant date” has the meaning given by Article 165(10).

### *The levy*

#### **Fraud compensation levy**

**171.**—(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) Paragraph (1) does not apply in relation to any scheme which is prescribed or of a description prescribed under Article 165(1)(a) (schemes not eligible for fraud compensation).

(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 paragraph (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 Article—

- (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 paragraph (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 paragraph (1), (9) or (10), regulations under this Article may include provision relating to—

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

## CHAPTER 5

### GATHERING INFORMATION

#### **Information to be provided to the Board etc.**

**172.**—(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 2 of Schedule 4, 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 paragraph (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.

(3) Regulations made by virtue of sub-paragraph (b) of that paragraph 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 head (ii) of that sub-paragraph.

#### **Notices requiring provision of information**

**173.**—(1) Any person to whom paragraph (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 paragraph (1) may be given by—

- (a) the Board, or
- (b) a person authorised by the Board for the purposes of this Article in relation to the scheme.

(3) This paragraph 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.

(4) Where the production of a document, or the provision of information, is required by a notice given under paragraph (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.

## Entry of premises

174.—(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 paragraph (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.

(3) An appointed person applying for admission to any premises for the purposes of this Article must, if so required, produce his certificate of appointment.

(4) When exercising a power under this Article an appointed person may be accompanied by such persons as he considers appropriate.

(5) Any document of which possession is taken under this Article 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 paragraph (6).

(6) The Board may before the end of the period mentioned in paragraph (5) (including any extension of it under this paragraph) extend it by such period not exceeding 12 months as the Board considers appropriate.

(7) In this Article “appointed person” means a person appointed by the Board for the purposes of this Article in relation to the scheme.

### **Penalties relating to Articles 173 and 174**

**175.**—(1) A person who, without reasonable excuse, neglects or refuses to provide information or produce a document when required to do so under Article 173 is guilty of an offence.

(2) A person who without reasonable excuse—

- (a) intentionally delays or obstructs an appointed person exercising any power under Article 174,
- (b) neglects or refuses to produce, or secure the production of, any document when required to do so under that Article, or
- (c) neglects or refuses to answer a question or to provide information when so required,

is guilty of an offence.

(3) In paragraph (2)(a) “appointed person” has the same meaning as it has in Article 174.

(4) A person guilty of an offence under paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) An offence under paragraph (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 Article 173 or 174 is guilty of an offence.

(7) Any person guilty of an offence under paragraph (6) 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.

### **Warrants**

**176.**—(1) A justice of the peace may issue a warrant under this Article if satisfied on complaint 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 Article 173 or 174, or any corresponding provision in force in Great Britain, 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 Article 173 or 174 or any corresponding provision in force in Great Britain.
- (2) A warrant under this Article shall authorise an inspector—
  - (a) to enter the premises specified in the complaint, 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 paragraph (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
    - (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 Article, an inspector may be accompanied by such persons as he considers appropriate.
- (4) A warrant under this Article 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 Article 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 paragraph (6).
- (6) The Board may before the end of the period mentioned in paragraph (5) (including any extension of it under this paragraph) extend it by such period not exceeding 12 months as the Board considers appropriate.
- (7) In this Article “inspector” means a person appointed by the Board as an inspector.

*Provision of false or misleading information*

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

- 177.—(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) Article 172 (information to be provided to the Board etc.),
    - (ii) Article 173 (notices requiring provision of information), or
    - (iii) Article 174 (entry of premises), or
  - (b) is provided otherwise than as mentioned in sub-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 Order.

- (2) Any person guilty of an offence under paragraph (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.

### *Use of information*

#### **Use of information**

**178.** 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.

### *Disclosure of information*

#### **Restricted information**

**179.—**(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) Paragraph (1) is subject to—

- (a) paragraph (3), and
- (b) Articles 180 to 185 and section 235 of the Pensions Act 2004 (c. 35).

(3) Subject to Article 184(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 Article and Articles 180 to 185, “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 Article 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—

- (a) is obtained under Article 173 by a person authorised under paragraph (2)(b) of that Article, but
- (b) if obtained by the Board, would be restricted information,

is treated for the purposes of paragraphs (1) and (3) and Articles 180 to 185 as restricted information which the person has received from the Board.

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

**180.**—(1) Article 179 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) Paragraph (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) Article 179 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.

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

**181.** Article 179 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.

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

**182.**—(1) Article 179 does not preclude the disclosure by the Board of restricted information to any person specified in the first column of Schedule 7 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 Department may after consultation with the Board—

(a) by order amend Schedule 7 by—

(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 that Schedule, or

(iii) altering the functions for the time being specified in that 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 that Schedule.

### **Other permitted disclosures**

**183.**—(1) Article 179 does not preclude the disclosure by the Board of restricted information to—

(a) the Department,

(b) the Commissioners of Inland Revenue or their officers, or

(c) the Secretary of State,

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) Article 179 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 Order,
  - (ii) the 1999 Order,
  - (iii) the 1995 Order, or
  - (iv) the Pension Schemes Act,
- or any corresponding enactment in force in Great Britain, 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) Article 10 or 11 of the [Company Directors Disqualification \(Northern Ireland\) Order 2002 \(NI 4\)](#), or
    - (ii) section 7 or 8 of the [Company Directors Disqualification Act 1986 \(c. 46\)](#),
  - (d) in connection with any proceedings under—
    - (i) the Insolvency Order, or
    - (ii) the [Insolvency Act 1986 \(c. 45\)](#),
 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 (within the meaning of Schedule 1 to the [European Communities Act 1972 \(c. 68\)](#)).
- (3) In paragraph (2)(f), “public servant” means an officer or servant of the Crown or of any prescribed authority.
- (4) Article 179 does not preclude the disclosure by the Board of restricted information to—
- (a) the Director of Public Prosecutions for Northern Ireland,
  - (b) the Director of Public Prosecutions,
  - (c) the Lord Advocate,
  - (d) a procurator fiscal, or
  - (e) a constable.
- (5) Article 179 does not preclude the disclosure of restricted information in any case where the disclosure is required by or by virtue of a statutory provision.
- (6) Article 179 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 paragraph (6), “Regulator-appointed trustee” means a trustee appointed by the Regulator under Article 7 or 23(1) of the 1995 Order or any corresponding provision in force in Great Britain.
- (8) Article 179 does not preclude the disclosure by any person mentioned in paragraph (1) or (4) of restricted information obtained by the person by virtue of that paragraph, if the disclosure is made with the consent of the Board.
- (9) Article 179 does not preclude the disclosure by any person specified in the first column of Schedule 7 of restricted information obtained by the person by virtue of Article 182(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 paragraph (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 paragraph (2) as it has effect in relation to a disclosure authorised by any of the provisions to which section 17 of that Act applies.

### **Tax information**

**184.**—(1) This Article 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 Article 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 paragraph (2) or section 19 of the Anti-terrorism, Crime and Security Act 2001 (c. 24) (disclosure of information held by revenue departments), it must, subject to paragraph (4), be treated for the purposes of Article 179 as restricted information.

(4) Articles 179(3), 180 to 183 and 185 and section 235 of the Pensions Act 2004 (c. 35) do not apply to tax information which is disclosed to the Board as mentioned in paragraph (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 Article “tax functions” has the same meaning as in section 182 of the Finance Act 1989.

### *Provision of information to members of schemes etc.*

### **Provision of information to members of schemes etc.**

**185.**—(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,

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

(2) Article 179 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) Article 179 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 paragraph (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 paragraph.

(5) A nomination by a member of the scheme under paragraph (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, Article 179 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.

### *Interpretation*

#### **Articles 172 to 185: interpretation**

**186.**—(1) This Article applies for the purposes of Articles 172 to 185.

(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.

### *Reports*

#### **Publishing reports etc.**

**187.**—(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 paragraph (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.

## CHAPTER 6

### REVIEWS, APPEALS AND MALADMINISTRATION

#### *Review etc. by the Board*

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

**188.**—(1) For the purposes of this Chapter, “reviewable matter” means a matter mentioned in Schedule 8.

(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 8 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 paragraph (4) may also modify any provision of this Part in consequence of provision made by virtue of sub-paragraph (a) or (b) of that paragraph.

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

**189.**—(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
- (b) require a committee of the Board constituted for the purposes of this Article (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 paragraph (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 paragraph (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 paragraph (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 paragraph (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 paragraph (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—
    - (i) rights of interested persons to make representations to the Reconsideration Committee on a reconsideration under regulations made under paragraph (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 paragraph (5)(c) may modify paragraphs 15 and 16 of Schedule 5 to the Pensions Act 2004 (c. 35) (membership and procedure of committees of the Board).

### **Investigation by the Board of complaints of maladministration**

- 190.**—(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 made or may make an application under Article 165 (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 paragraph (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 paragraph (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,to be given to prescribed persons in relation to the matter.
- (5) Regulations under paragraph (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 paragraph (4)(b) includes power to modify paragraphs 15 and 16 of Schedule 5 to the Pensions Act 2004 (c. 35) (membership and procedure of committees of the Board).

### *The PPF Ombudsman*

#### **The PPF Ombudsman**

**191.**—(1) The Department may by order make provision—

- (a) about the reimbursement of the PPF Ombudsman in respect of any expenses incurred by him in the performance of his functions;
- (b) about the staff of the PPF Ombudsman and the provision of facilities (including additional staff) to him;
- (c) about the delegation of the functions of the PPF Ombudsman to his staff or to any such additional staff;
- (d) conferring powers to enable the PPF Ombudsman to obtain such information and documents as he may require for the performance of his functions; and
- (e) about restrictions on the disclosure of information held by him.

(2) The Department must pay to the PPF Ombudsman such sums as may be required to be paid by the Department to or in respect of the PPF Ombudsman by virtue of an order under paragraph (1).

(3) Regulations may provide for the imposition of a levy in respect of eligible schemes for the purpose of meeting expenditure of the Department under paragraph (2) or of the Secretary of State under section 209(6) of the Pensions Act 2004 (c. 35).

(4) Where regulations make such provision, paragraphs (2), (3), (5), (6) and (7) of Article 103 (administration levy) apply in relation to the levy as they apply in relation to an administration levy (within the meaning of that Article), except that in paragraph (7) of that Article the reference to paragraph (1) of that Article is to be read as a reference to paragraph (3) of this Article.

### *References to the PPF Ombudsman*

#### **Reference of reviewable matter to the PPF Ombudsman**

**192.**—(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 paragraph (1)(b) of, or by virtue of paragraph (3) (b) of, Article 189 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 paragraph (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 paragraph (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
  - (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 paragraph (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 Article,
    - (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 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 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 paragraph (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 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 reconsideration decision under regulations made under Article 189(1)).

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

**193.**—(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 Article 190(3)(b) under regulations made under that Article.

- (2) Regulations under this Article 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 Article,
    - (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,
- (k) conferring rights on prescribed persons to apply for a stay 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 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.

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

**194.** 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 Article 192, or
- (b) a matter referred to him by virtue of regulations under Article 193,

to the High Court.

### **Publishing reports etc.**

**195.**—(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 Article 192 or 193 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.

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

**196.**—(1) A person bound by a determination or direction by the PPF Ombudsman by virtue of regulations made under Article 192 or 193 may appeal on a point of law arising from the determination or direction to the High Court.

(2) Any determination or direction of the PPF Ombudsman is enforceable in a county court as if it were a judgment or order of that court.

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

**197.**—(1) This Article 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 Article 192 or 193, 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 paragraph (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) In this Article “the court” means a county court.

## CHAPTER 7 MISCELLANEOUS

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

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

- 198.**—(1) Paragraph (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 Article 106(2) in relation to the scheme becoming binding,
    - (ii) a withdrawal notice issued under Article 132 in relation to the scheme becoming binding, or
    - (iii) a notice issued under Article 106(4) becoming binding in a case where Article 132 does not apply.
- (2) Paragraph (3) also applies where—
- (a) the trustees or managers of an eligible scheme—
    - (i) make an application to the Board under paragraph (1) of Article 113, or
    - (ii) receive a notice from the Board under paragraph (5)(a) of that Article, 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 Article 114(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 paragraph (1)(a) or, as the case may be, (2)(a) if—
- (a) the winding up is in pursuance of an order of the Regulator under Article 11 of the 1995 Order 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 paragraph (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 paragraph, 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 paragraph (4), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (6) That Article also applies to any other person who, without reasonable excuse, fails to comply with a direction to him contained in an order under paragraph (4).

(7) For the purposes of this Article “qualifying insolvency event” has the same meaning as in Article 111.

(8) Paragraph (4) of Article 112 applies for the purposes of paragraph (2) of this Article as it applies for the purposes of paragraph (1) of that Article.

(9) This Article is to be read subject to Article 119 (which restricts the winding up of an eligible scheme during an assessment period).

### *Pension sharing*

#### **Pension sharing**

**199.**—(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 Article 144 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 V of the 1999 Order (pension sharing) as it applies in relation to—

- (a) cases within paragraph (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 Article 144 was received by the trustees or managers of the eligible scheme;
- (b) cases within paragraph (1)(b).

(3) In this Article—

- (a) “pension debit” and “shareable rights” have the same meaning as in Chapter 1 of Part V of the 1999 Order (pension sharing), and
- (b) “pension sharing order or provision” means an order or provision falling within Article 25(1) of the 1999 Order (activation of pension sharing).