



Pensions Act 2004

2004 CHAPTER 35

PART 2

THE BOARD OF THE PENSION PROTECTION FUND

CHAPTER 3

PENSION PROTECTION

Valuation of assets and liabilities

143 Board's obligation to obtain valuation of assets and protected liabilities

(1) This section applies in a case within subsection (1) of section 127 or 128.

[^{F1}(2) The Board must, as soon as reasonably practicable—

- (a) determine whether the condition in subsection (2)(a) of the section in question is satisfied, or
- (b) for the purposes of determining whether that condition is satisfied, obtain an actuarial valuation of the scheme as at the relevant time.

(2A) Before doing so, it must give a notice stating whether it will make a determination under subsection (2)(a) or obtain an actuarial valuation under subsection (2)(b) to—

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

(3) For [^{F2}the purposes of this section], regulations may provide that any of the following are to be regarded as assets or protected liabilities of the scheme at the relevant time if prescribed requirements are met—

- (a) a debt due to the trustees or managers of the scheme by virtue of a contribution notice issued under section 38, 47 or 55 during the pre-approval period;

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- (b) an obligation arising under financial support for the scheme (within the meaning of section 45) put in place during the pre-approval period in accordance with a financial support direction issued under section 43;
 - (c) an obligation imposed by a restoration order made under section 52 during the pre-approval period in respect of a transaction involving assets of the scheme.
- (4) For the purposes of [^{F3}a determination made under subsection (2)(a) or an actuarial valuation obtained under subsection (2)(b)], regulations may prescribe how—
- (a) the assets and the protected liabilities of eligible schemes, and
 - (b) their amount or value,
- are to be determined, calculated and verified.
- (5) Regulations under subsection (4) may provide, in particular, that when calculating the amount or value of assets or protected liabilities of an eligible scheme at the relevant time which consist of any of the following—
- (a) a debt (including any contingent debt) due to the trustees or managers of the scheme from the employer under section 75 of the Pensions Act 1995 (c. 26) (deficiencies in the scheme assets),
 - (b) a debt due to the trustees or managers of the scheme by virtue of a contribution notice issued under section 38, 47 or 55,
 - (c) an obligation arising under financial support for the scheme (within the meaning of section 45) put in place in accordance with a financial support direction issued under section 43, or
 - (d) an obligation imposed by a restoration order made under section 52 in respect of a transaction involving assets of the scheme,
- account must be taken in the prescribed manner of prescribed events which occur during the pre-approval period.
- [^{F4}(5A) Subsection (5B) applies if—
- (a) during the pre-approval period any liability to provide pensions or other benefits to or in respect of any member or members under the scheme is discharged by virtue of regulations under section 135(4) or the Board validating any action mentioned in section 135(9), and
 - (b) at the relevant time the protected liabilities of the scheme include any cost within section 131(1)(a) relating to compensation in respect of those pensions or other benefits.
- (5B) If this subsection applies, for the purposes [^{F5}of this section]—
- (a) in determining that cost the effect of the discharge on the compensation payable in respect of those pensions or other benefits under paragraph 23A of Schedule 7 must be taken into account,
 - (b) in a case where assets of the scheme at the relevant time were transferred from the scheme during the pre-approval period in consideration for the discharge, those assets are not to be regarded as assets of the scheme at the relevant time, and
 - (c) in a case where assets that were not assets of the scheme at that time (“later-acquired assets”) were so transferred, the value of the assets of the scheme at that time is to be reduced by the value of the later-acquired assets at the time of the discharge.]

[^{F6}(5C) The Board must issue a statement setting out how (subject to any provision made under subsection (4)) it will make determinations under subsection (2)(a).]

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- (6) Subject to any provision made under subsection (4), [^{F7}for the purposes of an actuarial valuation obtained under subsection (2)(b)] the matters mentioned in [^{F8}subsection (4) (a) and (b)] are to be determined, calculated and verified in accordance with guidance issued by the Board.
- (7) In calculating the amount of any liabilities for the purposes of this section, a provision of the scheme rules which limits the amount of the scheme's liabilities by reference to the value of its assets is to be disregarded.
- (8) The duty imposed by subsection (2) ceases to apply if and when the Board ceases to be involved with the scheme.
- (9) Nothing in subsection (2) [^{F9}requires a determination to be made, or an] actuarial valuation to be obtained during any period when the Board considers that an event may occur which, by virtue of regulations under subsection (3) or (4) [^{F10}or by virtue of subsection (5B)], may affect the value of the assets or the amount of the protected liabilities of the scheme for the purposes of [^{F11}the determination or] the valuation.
- (10) In a case where there are one or more reviewable ill health pensions (within the meaning of section 140), nothing in subsection (2) [^{F12}requires a determination to be made, or an] actuarial valuation to be obtained during the period mentioned in section 141(5)(b) (period during which Board may exercise its power to make a decision following a review) relating to any such pension.
- (11) For the purposes of this section—
- (a) “actuarial valuation”, in relation to the scheme, means a written valuation of the assets and protected liabilities of the scheme which—
 - (i) is in the prescribed form and contains the prescribed information, and
 - (ii) is prepared and signed by—
 - (a) a person with prescribed qualifications or experience, or
 - (b) a person approved by the Secretary of State,
 - (b) “the pre-approval period”, in relation to the scheme, means the period which—
 - (i) begins immediately after the relevant time, and
 - (ii) ends immediately before the time the Board first [^{F13}makes a determination under subsection (2)(a) or] approves a valuation of the scheme under section 144 after the relevant time,
 - (c) “the relevant time”—
 - (i) in a case within subsection (1) of section 127, has the meaning given in subsection (4)(b) of that section, and
 - (ii) in a case within subsection (1) of section 128, has the meaning given in subsection (3)(b) of that section, and
 - (d) references to “assets” do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

Textual Amendments

- F1** S. 143(2)(2A) substituted for s. 143(2) (23.7.2012) by Pensions Act 2011 (c. 19), s. 38(4), **Sch. 4 para. 5(2)**; S.I. 2012/1681, art. 3(b)(ii)
- F2** Words in s. 143(3) substituted (23.7.2012) by Pensions Act 2011 (c. 19), s. 38(4), **Sch. 4 para. 5(3)**; S.I. 2012/1681, art. 3(b)(ii)

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- F3** Words in s. 143(4) substituted (23.7.2012) by Pensions Act 2011 (c. 19), s. 38(4), **Sch. 4 para. 5(4)**; S.I. 2012/1681, art. 3(b)(ii)
- F4** S. 143(5A)(5B) inserted (6.4.2005) by The Occupational Pension Schemes (Modification of Pension Protection Provisions) Regulations 2005 (S.I. 2005/705), regs. 1(2), **2(2)**
- F5** Words in s. 143(5B) substituted (23.7.2012) by Pensions Act 2011 (c. 19), s. 38(4), **Sch. 4 para. 5(5)**; S.I. 2012/1681, art. 3(b)(ii)
- F6** S. 143(5C) inserted (23.7.2012) by Pensions Act 2011 (c. 19), s. 38(4), **Sch. 4 para. 5(6)**; S.I. 2012/1681, art. 3(b)(ii)
- F7** Words in s. 143(6) inserted (23.7.2012) by Pensions Act 2011 (c. 19), s. 38(4), **Sch. 4 para. 5(7)(a)**; S.I. 2012/1681, art. 3(b)(ii)
- F8** Words in s. 143(6) substituted (23.7.2012) by Pensions Act 2011 (c. 19), s. 38(4), **Sch. 4 para. 5(7)(b)**; S.I. 2012/1681, art. 3(b)(ii)
- F9** Words in s. 143(9) substituted (23.7.2012) by Pensions Act 2011 (c. 19), s. 38(4), **Sch. 4 para. 5(8)(a)**; S.I. 2012/1681, art. 3(b)(ii)
- F10** Words in s. 143(9) inserted (6.4.2005) by The Occupational Pension Schemes (Modification of Pension Protection Provisions) Regulations 2005 (S.I. 2005/705), regs. 1(2), **2(3)**
- F11** Words in s. 143(9) inserted (23.7.2012) by Pensions Act 2011 (c. 19), s. 38(4), **Sch. 4 para. 5(8)(b)**; S.I. 2012/1681, art. 3(b)(ii)
- F12** Words in s. 143(10) substituted (23.7.2012) by Pensions Act 2011 (c. 19), s. 38(4), **Sch. 4 para. 5(9)**; S.I. 2012/1681, art. 3(b)(ii)
- F13** Words in s. 143(11)(b)(ii) inserted (23.7.2012) by Pensions Act 2011 (c. 19), s. 38(4), **Sch. 4 para. 5(10)**; S.I. 2012/1681, art. 3(b)(ii)

Modifications etc. (not altering text)

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

Commencement Information

- I1** S. 143(1)(2)(6)-(10) in force at 6.4.2005 by S.I. 2005/275, art. 2(7), **Sch. Pt. 7**
- I2** S. 143(3)-(5) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by S.I. 2005/275, art. 2(3), **Sch. Pt. 3**
- I3** S. 143(11) in force in so far as it relates to paragraphs (i) and (ii)(a) of the definition of "actuarial valuation" in paragraph (a) for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes in relation to those paragraphs of that definition at 6.4.2005 for specified purposes by S.I. 2005/275, art. 2(3), **Sch. Pt. 3**
- I4** S. 143(11) in force in so far as not already in force at 6.4.2005 by S.I. 2005/275, art. 2(7), **Sch. Pt. 7**

[^{F14}143A] Determinations under section 143

- (1) Where the Board makes a determination under section 143(2)(a) it must give a copy of the determination 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.

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- (2) For the purposes of this Chapter a determination under section 143(2)(a) is not binding until—
- (a) the period within which the determination may be reviewed by virtue of Chapter 6 has expired, and
 - (b) 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 the PPF Ombudsman's determination or directions, has been finally disposed of.
- (3) For the purposes of determining whether or not the condition in section 127(2)(a) or, as the case may be, section 128(2)(a) (condition that scheme assets are less than protected liabilities) is satisfied in relation to a scheme, a binding determination under section 143(2)(a) is conclusive.
- This subsection is subject to section 172(3) and (4) (treatment of fraud compensation payments).
- (4) Where a determination under section 143(2)(a) becomes binding under this section the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding determination 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) A notice under subsection (4) must be in the prescribed form and contain the prescribed information.]

Textual Amendments

F14 S. 143A inserted (23.7.2012) by [Pensions Act 2011 \(c. 19\)](#), s. 38(4), [Sch. 4 para. 6](#); S.I. 2012/1681, art. 3(b)(ii)

Modifications etc. (not altering text)

C3 S. 143A(4)(c) modified by S.I. 2005/441, reg. 68(1) (as amended (23.7.2012) by [The Pension Protection Fund \(Miscellaneous Amendments\) Regulations 2012 \(S.I. 2012/1688\)](#), regs. 1(2), **2(20)**)

144 Approval of valuation

- (1) This section applies where the Board obtains a valuation in respect of a scheme under section [F15]143(2)(b)].
- (2) Where the Board is satisfied that the valuation has been prepared in accordance with [F16]section 143], 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

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

(3) Where the Board is not so satisfied, it must obtain another valuation under that section.

Textual Amendments

F15 Word in s. 144(1) substituted (23.7.2012) by [Pensions Act 2011 \(c. 19\)](#), s. 38(4), **Sch. 4 para. 7(2)**; [S.I. 2012/1681](#), art. 3(b)(ii)

F16 Words in s. 144(2) substituted (23.7.2012) by [Pensions Act 2011 \(c. 19\)](#), s. 38(4), **Sch. 4 para. 7(3)**; [S.I. 2012/1681](#), art. 3(b)(ii)

Modifications etc. (not altering text)

C4 S. 144 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 68(1) and amendment to earlier affecting provision (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), **10(4)**

Commencement Information

I5 S. 144 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

145 Binding valuations

(1) For the purposes of this Chapter a valuation obtained under section [F17 143(2)(b)] is not binding until—

- (a) it is approved under section 144,
- (b) the period within which the approval may be reviewed by virtue of Chapter 6 has expired, and
- (c) if the approval is so reviewed—
 - (i) the review and any reconsideration,
 - (ii) any reference to the PPF Ombudsman in respect of the approval, and
 - (iii) any appeal against his determination or directions,
 has been finally disposed of.

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

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

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

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

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

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Textual Amendments

- F17** Word in s. 145(1) substituted (23.7.2012) by [Pensions Act 2011 \(c. 19\), s. 38\(4\), Sch. 4 para. 8](#); [S.I. 2012/1681, art. 3\(b\)\(ii\)](#)

Modifications etc. (not altering text)

- C5** S. 145 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\), regs. 1\(1\)\(d\), 61, 68\(2\)](#) and amendment to earlier affecting provision (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\), regs. 1\(2\), 10\(4\)](#)

Commencement Information

- I6** S. 145(1)-(3) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\), Sch. Pt. 7](#)
- I7** S. 145(4) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\), Sch. Pt. 3](#)

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