

PENSIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – the Board of the Pension Protection Fund

Summary

332. This part establishes a new non-departmental public body, called the Board of the Pension Protection Fund (and referred to in the Act and in these notes as “the Board”).
333. The Board has two main functions:
- it will administer the Pension Protection Fund from which compensation will be paid to members of defined benefit and hybrid occupational pension schemes which are underfunded and no longer have a solvent employer, and where the scheme has insufficient assets to pay benefits at a level equal to the amount of compensation the Pension Protection Fund would provide;
 - it will administer the Fraud Compensation Fund from which compensation will be paid to defined benefit and money purchase occupational pension schemes in cases of fraud and misappropriation of scheme assets. Similar functions were previously exercised by the Pensions Compensation Board, which is abolished under Part 9 of this Act.
334. **Part 2** also makes provision for charging four types of levy in respect of occupational pension schemes:
- pension protection levy (which will include both a scheme based and risk based levy) (see [sections 174 to 181](#));
 - administration levy (to cover the set-up and ongoing administration costs of the Board of the Pension Protection Fund (see [section 117](#));
 - fraud compensation levy (to be paid by both defined-benefit and money purchase schemes) (see [section 189](#));
 - levy to fund the expenditure of the Ombudsman for the Board of the Pension Protection Fund (see [section 209](#)).
335. The Board of the Pension Protection Fund will have a procedure for dealing with disputes and complaints of maladministration. This will include an internal dispute resolution procedure, followed if still disputed by referral to the Ombudsman for the Board of the Pension Protection Fund (the “PPF Ombudsman). There is a separate right of appeal (on points of law only) to the High Court if the dispute is still unresolved following the PPF Ombudsman’s determination.

Chapter 1 – The Board

Establishment

Sections 107, 108 and 109: The Board of the Pension Protection Fund; Membership of the Board, Further provision about the Board

336. A body corporate known as the Board of the Pension Protection Fund is established by *section 107*.
337. The Board is to consist of a chairman appointed by the Secretary of State; a Chief Executive appointed by the Board with the approval of the Secretary of State (although the first Chief Executive will be appointed by the Secretary of State); and at least five ordinary members appointed by the Board, at least two of which must be appointed from the staff of the Board. A maximum number of ordinary Board members may be prescribed by secondary legislation.
338. The executive members of the Board are the Chief Executive and the two or more members appointed from the staff of the Board. All other members of the Board, including the chairman, will be “non-executive members” and a majority of the Board must be non-executive members.
339. Further provision about the Board is set out in *Schedule 5*.

Schedule 5: The Board of the Pension Protection Fund

340. *Part 1* of *Schedule 5* deals with the membership of the Board.
341. The ordinary Board members who are non-executive members are the members who are not also members of the Board’s staff. The ordinary members who are executive members are members who are also members of the Board’s staff (see *section 108(7)*(membership of the Board))
342. *Paragraph 1* provides that the chairman of the Board is to be appointed by the Secretary of State. *Paragraph 2* provides that the first five appointments of ordinary members (all members other than the Chairman and the Chief Executive) will also be made by the Secretary of State, while subsequent appointments will be made by the Board in accordance with any procedure that may be set out in regulations. There must always be at least five ordinary members and should there be less at any time the Secretary of State must appoint the additional members required.
343. *Paragraph 3* provides that the terms and conditions of appointment of the Chairman and the ordinary members will be decided by the Secretary of State where he has appointed him. The terms and conditions of a Chairman appointed by the Board will be decided by it. *Paragraph 3* further states that the terms and conditions of non-executive Board members will be set by the Chairman with the approval of the Secretary of State, while the Chief Executive will set the terms and conditions of the executive members of the Board.
344. The terms and conditions of ordinary members who are non-executive members will be decided by the Chairman with the approval of the Secretary of State. The Chief Executive will decide the terms and conditions of the ordinary members who are executive members of the Board.
345. The terms and conditions of appointment under *Paragraphs 4, 5 and 6* will govern how long members stay in office, their leave, how they resign etc. However a person will cease to be a member of the Board if:
- in the case of the chairman he ceases to hold this position or if he becomes a member of staff of the Board;

*These notes refer to the Pensions Act 2004 (c.35)
which received Royal Assent on 18 November 2004*

- in the case of any other non-executive member he becomes a member of the staff of the Board;
- in the case of an ordinary executive member he ceases to be a member of the staff of the Board;
- in the case of the Chief Executive he ceases to be employed as such.

346. *Paragraphs 7-9* deal with remuneration. The Secretary of State determines the remuneration of the non-executive members of the Board. The Board can pay (as determined by the Secretary of State) this remuneration and can make provision for its payment. This includes allowances, gratuities or pensions.

347. The table below summarises the appointment procedures for the Board and its staff.

	<i>Initial appointment by</i>	<i>Subsequent appointments by</i>	<i>Terms and conditions set by</i>	<i>Remuneration set by</i>
Chairman	Secretary of State	Secretary of State	Secretary of State	Secretary of State
Chief Executive	Secretary of State	Board, with the approval of the Secretary of State	Secretary of State	Secretary of State for the first appointment; Subsequent appointments - the Board, through the committee responsible for the non-executive functions and with the approval of the Secretary of State
Non-executive Board members (other than Chairman)	Secretary of State	Board	Secretary of State for first appointment; Subsequent appointments - Chairman with the approval of the Secretary of State	Secretary of State
Executive Board members (other than Chief Executive and other employees)	Secretary of State	Board	Secretary of State for first appointment; Chief Executive	Board, with the approval of the Secretary of State
Other staff of the Board	Board with Secretary of State approval as to numbers	Board with Secretary of State approval as to numbers	Chief Executive	Chief Executive

348. *Part 2* of this Schedule sets out the detailed provisions on the staff of the Board.
349. *Paragraph 11* sets out that the staff of the Board consists of the Chief Executive, the other employees of the Board and any additional staff made available by the Secretary of State. Additional staff could include, for example, those on secondment from the Department for Work and Pensions.
350. The first Chief Executive will be appointed by the Secretary of State, who will also set the terms and conditions and remuneration. Subsequent appointments of the Chief Executive will be made by the Board who will also set the terms and conditions of these appointments. The Secretary of State must approve them. However, a committee established to exercise the non-executive functions under *section 112*(non-executive functions) will make recommendations on remuneration for the Chief Executive.
351. Other employees will be appointed by the Board with the Secretary of State's approval. The Chief Executive will determine the terms and conditions although in the case of an employee who is also to be an executive member or prescribed descriptions of employees the terms and conditions relating to remuneration will be determined on the Board's behalf by the committee established to exercise the non-executive functions (and with the Secretary of State's approval in the case of executive members).
352. Any additional staff made available to the Board will be on such terms as to payment as the Secretary of State may determine.
353. *Part 3* of *Schedule 5* covers proceedings and delegation.
354. *Paragraph 15* enables the Board to establish a committee for any purpose. Any committee established by the Board may further establish sub-committees. The members of such committees or sub-committees (other than the committee or sub-committee mentioned in *section 112*) can include people who are not members of the Board or members of the committee.
355. The Board will be responsible for setting procedures (and quorum) for itself, its committees and sub-committees.
356. *Paragraph 17* enables the Board to delegate any of its functions other than the non-executive functions described in *section 112*.
357. *Paragraph 18* gives the Board the power to outsource some of its functions. These are listed in *sub-paragraph (2)*.
358. *Part 4* of the Schedule covers the accounting requirements and authorises the Board to pay certain expenses.
359. *Paragraph 22* requires the Board to keep accounts and accounting records following any accounting directions given by the Secretary of State (with approval of Treasury). The Board must prepare an annual statement of accounts, which will include an actuarial valuation of the assets and liabilities of the Pension Compensation Fund. This actuarial valuation must be prepared by the a person appointed by the Board who meets the requirements specified in *sub-paragraph (4)(a)*. A copy of the annual accounts must be sent to the Secretary of State and the Comptroller and Auditor General. In turn, the Comptroller and Auditor General must examine, certify and report on the accounts, and lay both the accounts and his report before both Houses of Parliament.
360. *Paragraph 23* enables the Board to pay certain expenses, such as travel allowances. This includes the power to pay fees to persons providing professional advice.
361. *Part 5* deals with the status and liability of the Board.
362. By virtue of *paragraph 24* the Board is to be regarded as independent from the Crown. Therefore, the property of the Board is not property of the Crown (and the Crown will not be liable to meet any of the liabilities of the Board).

363. *Paragraph 25* provides that Board vacancies, or any problems arising out of appointments of members of the Board, committees, sub-committees or the Chief Executive will not affect the validity of any proceedings of the Board.
364. *Paragraphs 26 and 27* amend the appropriate legislation to disqualify members of the Board from membership of the House of Commons or Northern Ireland Assembly.
365. *Paragraph 28* amends the Superannuation Act 1972 so that the Chairman and the staff of the Board will be eligible for a government-backed pension for which the Board must pay the Minister for the Civil Service such sums as he may direct. This is a common provision for public bodies – for example the Regulator also has a similar provision, as did its predecessor Opra.
366. *Paragraph 29* sets out that no member of any Board, committee, sub-committee or staff is to be liable for damages for anything done or omitted in the discharge of the functions of the Board. Members of the committee which exercises the non-executive functions (*section 112*) will also not be liable for damages when exercising their functions. This does not apply if the action or omission was in bad faith and does not prevent the Board being required to pay compensation on a direction of the PPF Ombudsman or in respect of an act or omission on the grounds that it was unlawful as a result of the Human Rights Act 1998.

General provision about functions

Section 110: Board's functions

367. The functions of the Board are to hold and manage the Pension Protection Fund and the Fraud Compensation Fund; to levy contributions to those funds, and to carry out other functions as set out in this Act or other enactments.

Section 111: Supplementary powers

368. The Board may do anything which is designed to help it carry out its functions, or which is incidental to those functions. This power enables the Board to carry out all the minor and incidental administrative functions that are necessary for any public body, such as leasing office space and printing stationery.

Non-Executive functions

Section 112: Non-Executive functions

369. This section sets out the non-executive functions. These are reviewing the adequacy of the internal financial controls; determining the remuneration of the Chief Executive and other executive members of the Board (subject to the approval of the Secretary of State); and making recommendations on the remuneration of certain senior staff, identified in secondary legislation.
370. Under this section, the Board is required to establish a committee to discharge the non-executive functions. An executive member of the Board cannot be a member of that committee.
371. The committee must produce a report on the manner in which it has fulfilled its role, which will be included in the Board's annual report (*section 119*) (annual reports to the Secretary of State).
372. Any sub-committee to which the committee delegates its functions can include persons who are not members of the committee but cannot include executive members or other staff of the Board. Such sub-committees can discharge any of the committee's non-executive functions or its duty to prepare the report for inclusion in the Board's annual report

Financial matters

Section 113: Investment of funds

373. The Board is permitted to invest its funds for the purposes of the prudent management of its financial affairs. When making investment decisions in relation to the Pension Protection Fund, the Board must have regard to both the interests of current and potential beneficiaries of compensation from the Pension Protection Fund, the effect of its decisions on the rate for the levy and the interests of persons affected by the rate (such as the employers). When making decisions in relation to the Fraud Compensation Fund, the Board must have regard to the interests of members of occupational pension schemes and to the effect of its decisions on the rate of the levy and the interests of persons affected by the rate.
374. For the purposes of ensuring the prudent management of the Pension Protection Fund, the Board must appoint at least two fund managers to manage its investments. It must be satisfied that a fund manager has the appropriate knowledge and experience for managing the Pension Protection Fund, or if a firm is appointed has the necessary arrangements in place to ensure that any individual acting on its behalf has appropriate knowledge or experience.

Section 114: Investment principles

375. The Board must produce a written statement of its investment principles that is maintained and reviewed at prescribed intervals. The statement is to set out the investment principles governing decisions about investments made by and on behalf of the Board.

Section 115: Borrowing

376. This section enables the Board to borrow money subject to a prescribed limit (“the borrowing limit”) which will be specified by the Secretary of State by order. The Board is permitted to borrow money from a “deposit-taker” (the meaning of which is set out in *subsections (3) and (4)*). This section also enables the Board to provide security for any money it borrows.

Section 116: Grants

377. This provision allows the Secretary of State to pay the Board grants towards its administrative expenses. Such money can be used solely for this purpose and cannot be used for the payment of compensation from either the Pension Protection Fund (*section 173*) or the Fraud Compensation Fund (*section 188*).

Section 117: Administration levy

378. This section enables regulations to provide for a levy to reimburse the secretary of State’s expenditure under *section 116* and his expenditure on the Board’s set-up costs. This levy is in respect of schemes whose members are eligible for pension compensation (as defined under *section 162*). It is known as the “administration levy”. Regulations will set out how much must be paid and how often it will be paid. This levy will be payable by or on behalf of the trustees or managers of an eligible scheme or any other person as detailed in regulations. The administration levy is payable to the Secretary of State and is recoverable by him or by the Regulator on his behalf. *Subsection (4)* states that the Secretary of State must consult the Board before determining the rate of the administration levy. The details of how this levy is to be calculated, collected and recovered will be set out in secondary legislation.

Section 118: Fees

379. This section enables regulations to authorise the Board to charge fees specified by regulations or fees sufficient to meet costs specified in regulations.

Annual reports

Section 119: Annual reports to Secretary of State

380. The Board must produce an annual report (for each “financial year” as defined in *subsection (6)*) dealing with its activities during the reporting period. This includes the report prepared by the committee which exercises the non-executive functions (see *section 112(5)*). This report must be sent by the Board to the Secretary of State as soon as practicable after the end of the reporting period. The Secretary of State must then lay a copy of each report received by him before both Houses of Parliament.

Chapter 2 – Information Relating to Employer’s Insolvency etc

Insolvency events

Sections 120: Duty to notify insolvency events in respect of employers

381. This section applies where an insolvency event (see *section 121*) occurs in relation to the employer in relation to an occupational pension schemes. The insolvency practitioner appointed to act in relation to the employer must notify the Board and the Regulator and the trustees or managers of the pension scheme of the occurrence of the event within a specified period.
382. *Subsection (3)* defines the “notification period” in which the notification must be provided. This will be the period set out in regulations beginning with the insolvency date (see *section 121*) or, if later, the date on which the insolvency practitioner becomes aware that a scheme exists in relation to the insolvent employer. *Subsection (4)* allows regulations under this section to prescribe the form and content of the notice.

Section 121: Insolvency event, insolvency date and insolvency practitioner

383. This section defines an insolvency event and sets out when an insolvency event occurs in relation to an individual, a company and a partnership. These events trigger the involvement of the Board with an occupational pension scheme.
384. *Subsection (5)* enables regulations to be made prescribing additional events that are to be treated as insolvency events. These regulations may, for example, apply to insolvency proceedings occurring in respect of organisations (such as Banks, building societies and limited liability partnerships) that are not included as insolvency events (as defined).
385. *Subsection (7)* gives the Secretary of State a regulation making power to make amendments to *subsection (4)(e)* to deal with insolvent partnerships if the new administration regime introduced by the Enterprise Act 2002 is, in future, applied to partnerships under section 240 of the Insolvency Act 1986.
386. *Subsection (8)* defines the meaning of ‘insolvency date’ as the date on which the insolvency event occurs.
387. *Subsection (9)* defines “insolvency practitioner” to include those persons within section 388 of the Insolvency Act 1986 (meaning of “act as an insolvency practitioner”). It also enables regulations to provide that specific individuals may also be regarded as an insolvency practitioner in specific circumstances. This could for example be used in respect of deeds of arrangement or schemes of arrangement under the Companies Act 1985, if these were ever prescribed as an insolvency event. This is because these

schemes or deeds may not involve an “insolvency practitioner” within the meaning of section 388 of the Insolvency Act 1986:

- deeds of arrangement are very rare and it is unlikely the Board will encounter schemes whose employers are subject to these arrangements.
- schemes of arrangements are more common in terms of numbers. These are not dealt with under the Insolvency Act 1986. They are dealt with under the Companies Act 1985 and an “insolvency practitioner” within the meaning of section 388 of that Act is not involved in these cases.

Status of scheme

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

388. This section makes provision for an insolvency practitioner to confirm the status of an occupational pension scheme after the occurrence of an insolvency event in relation to the employer.
389. *Subsection (1)* provides that the section applies where an insolvency event has occurred in relation to the employer in relation to an occupational pension scheme. *Subsection (2)* states that, if an insolvency practitioner is able to confirm that a scheme rescue is not possible, he must issue a “scheme failure notice”. If he can confirm that a scheme rescue has occurred, he must issue a “withdrawal notice”.
390. *Subsections (3) and (4)* provide that the insolvency practitioner must issue a notice where he has not been able to confirm that a scheme rescue has occurred or is not possible. This applies in prescribed circumstances where insolvency proceedings are stayed or come to an end, or where a prescribed event occurs. *Subsection (5)* provides that a person is able to confirm that a scheme rescue has occurred or is not possible only if he is able to confirm such matters as are prescribed in regulations.

Section 123: Approval of notices issued under section 122

391. This section provides that where a “*section 122* notice” (“scheme failure notice” or “withdrawal notice” or notice under *section 122(4)*) is issued the Board must determine whether or not to approve it. Conditions for approval are provided in the section.
392. *Subsection (1)* sets out that this section applies where the Board receives a section 122 notice. *Subsection (2)* states that the Board must determine whether to approve the section 122 notice. Where the conditions in *subsection (3)* are satisfied the Board must approve the section 122 notice. These conditions are that the Board is satisfied that the insolvency practitioner was required to issue the notice and the notice complied with any requirements set out in regulations made under *section 122(8)*. *Subsection (4)* provides that when the Board has come to a decision about whether or not to approve the section 122 notice it must inform certain parties (which are listed under this subsection) by issuing a “determination notice”. *Subsection (5)* provides that the form and content of the determination notice will be prescribed by regulations.

Board’s duties

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

393. *Subsection (1)* states that this section applies where the Board has determined not to approve the section 122 notice or the Board is satisfied that an insolvency practitioner, or former insolvency practitioner, has failed to issue the notice required under *section 122*. The Board can issue a section 122 notice instead of the insolvency practitioner and the notice will be treated as if it had been given by the insolvency practitioner or former insolvency practitioner.

394. *Subsection (4)* states that where a notice is issued by the Board, it must give a copy to the Regulator, the trustees or managers of the scheme, the insolvency practitioner (or former insolvency practitioner) who issued or failed to issue the notice in question, any other insolvency practitioner in relation to the employer and, if there is no insolvency practitioner in relation to the employer, the employer.
395. A notice issued by virtue of this section can specify that it has effect from an earlier date than its issue date, if the Board is satisfied it ought to have been issued under [section 122](#) at an earlier date.

Section 125: Binding notices confirming status of scheme

396. This section sets out when a notice under [section 122](#) (confirming a scheme's status) becomes binding.
397. *Subsection (1)* states that a notice issued under [section 122](#) is not binding until the Board issues a determination notice under [section 123](#) approving the notice. In addition the notice is not binding until the period within which the issue of the notice may be reviewed has expired, and the review, any reconsideration, any reference to the PPF Ombudsman and any subsequent appeal to the court against his determination has been disposed of and the notice has not been revoked, varied or substituted.
398. If a notice becomes binding the Board must give a notice to that effect together with a copy of the binding notice, to the parties listed in *subsection (3)*.
399. *Subsection (4)* provides for regulations to prescribe the format of the notice given under *subsection (3)* and the information it must contain. Where a withdrawal notice under [section 122 \(2\)\(b\)](#) becomes binding, the *subsection (3)* notice must also state the time from which the Board ceases to be involved with the scheme (see [section 149](#)) (circumstances in which Board ceases to be involved with an eligible scheme).

Chapter 3 – Pension Protection

Eligible schemes

Section 126: Eligible schemes

400. This section defines those occupational pension schemes which are eligible to be taken over by the Board of the Pension Protection Fund. Eligible schemes are occupational pension schemes other than money purchase schemes and schemes specified, or of a description specified, in regulations. The section also clarifies that a scheme is not eligible if it is already being wound up immediately before the day appointed by the Secretary of State under *subsection (3)*. Regulations may also provide that a scheme which would cease to be an eligible scheme during the assessment period begins will be treated as remaining as an eligible scheme in such circumstances as may be prescribed. Regulations may also exclude schemes which would otherwise qualify as eligible schemes under this section.

Circumstances in which Board assumes responsibility for eligible schemes

Section 127: Duty to assume responsibility for schemes following insolvency event

401. For members of occupational pension schemes to be entitled to compensation under Chapter 3 of Part 2 the Board must assume responsibility for the scheme. There are a number of circumstances in which the Board will assume responsibility for a scheme. These are set out in this section, and in [sections 128](#), (duty to assume responsibility for a scheme) [152](#)(duty to assume responsibility following reconsideration) and [158](#) (duty to assume responsibility for closed schemes). These are the only circumstances in which the Board will assume responsibility for a scheme.

402. This section applies where a qualifying insolvency event (see *subsection (3)*) has occurred in relation to the employer in relation to an eligible scheme.
403. *Subsection (2)* states that the Board must assume responsibility for the scheme if:
- the assets of the scheme immediately before the insolvency date (see *section 121(8)*) were not sufficient to meet the scheme's protected liabilities (see *section 131*). (For this purpose assets relating to money purchase schemes are disregarded);
 - a scheme failure notice becomes binding; and
 - there has not been and there cannot be a withdrawal event resulting from a withdrawal notice issued before the schemes failure notice was issued.
404. By virtue of *subsection (3)(a)* an insolvency event which occurs before the day appointed under *section 126(2)* (eligible schemes) by order is not a qualifying "insolvency event" for these purposes. The insolvency event must also be the first insolvency event to occur in relation to the employer on or after that day, and must not occur during an assessment period (see *section 132*(assessment periods)) in relation to the scheme which began before the occurrence of the insolvency event in question. For example an employer in relation to a scheme could be subject to administration which then turns into liquidation. The commencement of the liquidation is an insolvency event. However, as the administration will already have been triggered the Board's involvement and started an assessment period, there is no need for the subsequent insolvency event to start the process again.

Section 128: Duty to assume responsibility for schemes following application or notification

405. See notes for *section 127* for information regarding the effect of the Board assuming responsibility for a scheme.
406. This section provides for the Board to assume responsibility for schemes whose sponsoring employers cease to be going concerns but cannot be subject to insolvency events as defined in *section 121* – for example public sector schemes without a crown guarantee and schemes with employers based overseas and subject to foreign insolvency proceedings.
407. *Subsection (1)* provides that this section applies where the trustees or managers of such schemes make an application to the Board under *section 129(1)* or receive a notice from the Board under *section 129(5)(a)*. *Subsection (2)* provides for the Board to assume responsibility for such a scheme if:
- the value of the assets of the scheme is less than the amount of the protected liabilities (*section 131*) (for this purpose assets relating to money purchase benefits are disregarded);
 - a scheme failure notice becomes binding; and
 - there has not been and cannot be a withdrawal event resulting from a withdrawal notice issued before the scheme failure notice was issued.
408. *Subsection (4)* provides that where such a scheme is already subject to an assessment period (see *section 132*), any further applications or notifications under *section 129* made during that period will be disregarded.

Section 129: Applications and notifications for the purposes of section 128

409. This section is directly linked to *section 128* and lays out the application and notification process for schemes whose employers cannot be subject to insolvency events as defined in *section 121*. It mirrors the regime for schemes whose employers are subject to insolvency events as defined in *section 121*.

410. *Subsection (1)* provides for the trustees or managers of an eligible scheme to make an application to the Board for it to assume responsibility for the scheme if they become aware that the employer in relation to the scheme is unlikely to continue as a going concern and requirements prescribed in regulations under *subsection (1)(b)* are met. This provision is intended to apply in cases where the employer cannot be subject to an insolvency event (as defined in *section 121*) are met. The Board must give a copy of the application under *subsection (1)* to the Regulator and the employer.
411. *Subsection (4)* also provides that the Regulator must issue a notice to the Board in circumstances where it becomes aware that an employer in relation to an eligible scheme is unlikely to continue as a going concern and the requirements prescribed in regulations under *subsection (1)(b)* are met. The Board must give a copy of this notice to the trustees or managers of the scheme and the employer.
412. *Subsections (6) and (7)* are intended to prevent both an application under *subsection (1)* and a notification under *subsection (4)* in relation to the same set of facts
413. Regulations will prescribe the form and content of notices under this section.

Section 130: Board's duty where application or notification received under section 129

414. This section relates to cases where an application is made under *section 129(1)* or a notification is given under *section 129(4)*. As there is no insolvency event or insolvency practitioner in these cases the Board takes responsibility for issuing notices confirming the status of the scheme.
415. If the Board is able to confirm a scheme rescue is not possible, *subsection (2)* provides for it to issue, as soon as reasonably practicable, a “scheme failure notice” confirming this. If the Board is able to confirm a scheme rescue has occurred *subsection (3)* provides for it to issue, as soon as reasonably practicable, a “withdrawal notice”. The Board must give a copy of any notice to the Regulator, the trustees or managers of the scheme and the employer. This notice is not binding until the period for review has expired and any review, reconsideration, reference to the PPF Ombudsman or appeal against the determination has been disposed of and the notice has not been revoked, varied or substituted.
416. *Subsection (5)* sets out that the Board can only confirm that a scheme rescue has occurred or is not possible when specific conditions (to be prescribed in regulations) are met.
417. Regulations will set out the format and contents of notices made under this section.
418. *Subsection (7)* states that where a notice issued under *subsection (2) or (3)* becomes binding, the Board must give a notice to that effect, along with a copy of the binding notice to the Regulator, the trustees or managers of the scheme and the employer. A notice in relation to a scheme rescue must also state when the Board ceases involvement with the scheme.

Section 131: Protected liabilities

419. This section explains how the “protected liabilities” of a scheme at any time are to be determined. The basic rule is that the Board will not assume responsibility for a scheme unless the assets of the scheme are insufficient to meet the protected liabilities at least equal to the value of compensation offered by the Pension Protection Fund.
420. Protected liabilities are:
- the cost of providing benefits equivalent to the compensation which would be payable by the Board in respect of the scheme, out of the Pension Compensation Fund, if it assumed responsibility for the scheme;

- any non-pension liabilities of the scheme;
- the estimated cost of winding up the scheme.

Restrictions on schemes during the assessment period

Section 132: Assessment periods

421. This section defines “assessment period”. The assessment period is the period of the Board’s involvement with a scheme, and during this period various restrictions are imposed on the scheme by *sections 133 to 138*.
422. *Subsection (1)* provides for references to an assessment period in Part 2 to be construed by reference to this section.
423. *Subsection (2)* provides for an assessment period to begin with the occurrence of a qualifying insolvency event in relation to the employer in relation to the scheme and to end once any of the following events occur:
- the Board ceasing to be involved with the scheme (and issuing a withdrawal notice – see *section 149*(circumstances in which Board ceases to be involved with an eligible scheme));
 - the trustees or managers of the scheme receiving a transfer notice from the Board; or
 - the conditions in *section 154(2)* (requirement to wind up schemes with sufficient assets to meet protected liabilities) being satisfied and the scheme being required to wind up.
424. A qualifying insolvency event is defined in *section 127(3)*. *Subsection (3)* provides for circumstances where more than one insolvency event occurs.
425. *Subsection (4)* provides that an assessment period also commences where an application is made under *section 129(1)* or a notification is received under *section 129(5)(a)*. In that case the assessment period ends once any of the following events occur:
- the Board ceasing to be involved with the scheme (and issuing a withdrawal notice – see *section 149*(circumstances in which Board ceases to be involved with an eligible scheme),
 - the trustees or managers of the scheme receiving a transfer notice from the Board, or
 - the conditions in *section 154(2)* (no scheme rescue but sufficient assets to meet protected liabilities) being satisfied and the scheme being required to wind up.
426. *Subsection (5)* provides that, where an assessment period has already begun in relation to the scheme, any further application or notification received during that period will be disregarded. This avoids overlapping assessment periods.

Section 133: Admission of new members, payments of contributions etc

427. This section applies to schemes that have entered an assessment period. The effect of an assessment period on schemes is similar to a freezing of a scheme under *section 23* (freezing orders) of this Act.
428. *Subsection (2)* provides that no new members may be admitted to the scheme during an assessment period. *Subsection (3)* states that no further contributions can be paid into the scheme during an assessment period, except in circumstances and subject to conditions set out in regulations. For instance where contributions were due before the assessment period began or where a debt is owed to the scheme from the employer under section 75 of the Pensions Act 1995 (deficiencies in assets), these can still be paid to the scheme.

429. No benefits may accrue during the assessment period. This does not prevent any increase to a benefit which would otherwise accrue. Money purchase benefits can still continue to accrue. It is also possible for a trustee or manager of a scheme to discharge liabilities in respect of a pension sharing order granted over a member's shareable rights by conferring rights under the schemes on the former spouse entitled to the pension credit.
430. *Subsection (10)* provides that any action taken in contravention of this section is void. *Subsection (11)* provides for section 10 of the Pensions Act 1995 (civil penalties) to apply to trustees or managers who fail to take all reasonable steps to comply with this section.
431. Where the Board ceases to be involved with a scheme, *section 150*(consequences of Board ceasing to be involved with a scheme) makes provision about contributions which, but for *section 133*, would have been due during the assessment period.

Section 134: Directions

432. This section enables the Board to give directions to "a relevant person" during the assessment period.
433. *Subsection (2)* provides for the Board to give directions to a relevant person during the assessment period on matters relating to the investment of the scheme's assets; any expenditure; the instigation or conduct of legal proceedings; and any other prescribed matters. This enables the Board to ensure that protected liabilities do not exceed assets or, if they do exceed the assets, that excess is kept to a minimum. Assets for this purpose will not include assets relating to money purchase benefits. *Subsection (3)* defines the relevant person in relation to a scheme as the trustees, managers, sponsoring employer or such other persons as may be prescribed.
434. *Subsection (4)* enables the Board to revoke or vary any direction it makes under this section. *Subsection (5)* provides for section 10 of the Pensions Act 1995 (civil penalties) to apply to any trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with any direction issued to the trustees or managers by the Board. *Subsection (6)* provides for civil penalties to also apply to any other person who fails to comply with a direction given to him by the Board and does not have a reasonable excuse for such a failure.

Section 135: Restrictions on winding up, discharge of liabilities etc

435. This section restricts the winding up of a scheme during an assessment period. It effectively takes away all the power that the trustees or managers or the employer might have under scheme rules to wind up a scheme.
436. *Subsection (2)* prevents the winding up of the scheme during the assessment period. It does not prevent the Regulator directing the winding up of a scheme under section 11(3A) of the Pensions Act 1995 (as inserted by *section 22*(power to wind up occupational pension schemes) of this Act) in order to ensure the protected liabilities do not exceed assets or to keep any excess to a minimum.
437. *Subsections (4) and (5)* provide that no transfers are to be made from the scheme during the assessment period. In addition no steps can be taken to discharge the scheme's liabilities for pensions or other benefits or other liabilities prescribed in regulations. These prohibitions apply whether or not the scheme is being wound up. But these restrictions are subject to *section 138* which sets out how benefits are to be paid, to or in respect of members, during an assessment period.
438. *Subsection (7)* applies where a member has a right to a cash transfer sum or a contribution refund (Chapter 5, Part 4 of the Pension Schemes Act 1993) and this right arises on the commencement of the assessment date, during the assessment period the

right cannot be exercised and the powers and duties under Chapter 5, Part 4 of the Pension Schemes Act 1993 do not apply.

- 439. *Subsection (8)* provides that the restrictions in *subsection (4)* do not prevent trustees or managers from complying with a pension sharing order and discharging their liability to provide a pension credit to the member's former spouse.
- 440. *Subsection (9)* provides that any action taken in contravention of this section is void, other than in cases where the Board validates it (see [section 136](#)(power to validate contraventions of section 135)).
- 441. *Subsection (10)* provides for section 10 of the Pensions Act 1995 (civil penalties) to apply to any trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with the restriction.
- 442. *Subsection (11)* prevents the Regulator from making a freezing order (see [section 23](#)) in relation to a scheme during the assessment period.

Section 136: Power to validate contraventions of section 135

- 443. This section gives the Board power to validate contraventions of [section 135](#)(which places certain restrictions on schemes during the assessment period). *Subsection (1)* provides for the Board to validate a breach of [section 135](#) only if to do so would be consistent with the objective of ensuring that the scheme's protected liabilities do not exceed its assets or, if they do, that any excess is kept to a minimum. Assets for this purpose do not include assets relating to money purchase benefits.
- 444. *Subsection (2)* provides that when the Board makes a determination as to whether or not to validate a breach of [section 135](#), it must give notice of its decision. The notice must contain the reasons for the determination. It must be given to the Regulator, the trustees or managers of the scheme, any insolvency practitioner in relation to the employer (or if there is none, the employer), and any other person who the Board considers affected by the decision.
- 445. *Subsection (4)* provides that a validation of a breach may only take effect once a notice of the Board's decision has been given and the period for review of the notice has expired. If there is a review the validation takes effect once the review, any reconsideration, any reference to the PPF Ombudsman and any appeal against the determination has been disposed of.

Section 137: Board to act as creditor of the employer

- 446. This section provides that during an assessment period the Board is the creditor of any debt owed by the employer to the trustees or managers of a scheme and for the Board to have all the rights and powers of a creditor during this period. So, for example, the Board will represent the scheme at any meeting involving creditors of the employer.
- 447. *Subsection (3)* provides that the Board must pay any amounts received in respect of the debt owed by the employer to the trustees or managers of the scheme.

Section 138: Payment of scheme benefits

- 448. This section restricts the scheme benefits paid to members of a scheme during an assessment period.
- 449. *Subsection (2)* provides that the amount of the benefits payable to scheme members during the assessment period must be reduced, if necessary, so that they do not exceed the level of compensation that would be payable if the scheme had been taken over by the Board from the beginning of the assessment period. *Subsections (3)* and *(4)* provide that during the assessment period no benefits are payable in respect of Chapter 5, Part

4 of the Pension Schemes Act 1993 (early leavers; cash transfer sum and contribution refund). This restriction does not apply to money purchase benefits.

450. *Subsection (5)* provides that benefits can be paid during an assessment period in relation to pension credits (where there has been a pension sharing order).
451. Where a pension scheme is being wound up, the effect of sections 73 to 73B of the Pensions Act 1995 (as inserted by *section 270*(winding up) of this Act) is that the benefits payable may be reduced. *Subsection (6)* provides that where a scheme is being wound up during the assessment period the benefits payable are those that would have been payable by the scheme had it not been winding up. This is subject to any reduction required under *subsections (2) and (3)* so that the benefits are paid at the same level as that available under the pension compensation provisions.
452. If the Board does not assume responsibility for the scheme, adjustments may need to be made in the future to make up amounts not paid by virtue of this section or to recover amounts overpaid by virtue of *section 138(6)* (see *sections 150(1) to (3)* (consequences of the Board ceasing to be involved with a scheme) and *154(13)*(requirement to wind up schemes with sufficient assets to meet protected liabilities)).
453. *Subsection (8)* provides that for the purposes of ensuring that benefits are paid during an assessment period in accordance with *subsections (2) and (3)* the trustees or managers of the scheme may take such steps as they consider appropriate (including steps adjusting future payments under the scheme rules) to recover any overpayment or pay any shortfall. *Subsection (9)* provides for civil penalties under section 10 of the Pensions Act 1995 (civil penalties) to apply to the trustees or managers of a scheme who fail to take all reasonable steps to secure compliance with *subsections (2) and (3)*.
454. *Subsection (10)* provides that regulations may provide that in certain circumstances benefits payable during an assessment period are not to be reduced to the level of pension compensation payable from the Pension Protection Fund. Regulations may also allow, in certain circumstances, for a member who has attained normal pension age and continues in employment to postpone taking benefits from the scheme. This can be postponed for the whole or part of the assessment period and can be on such terms and conditions as may be prescribed. This prevents a person becoming a person in receipt of a pension where, had there not been an assessment period, he would have postponed payment of his pension.
455. *Subsection (11)* defines “normal pension age” as the age specified in the scheme rules as the earliest age at which the pension or other benefit becomes payable without actuarial adjustment (excluding early payment on the grounds of ill health). Provision is made for cases where different ages are specified in relation to different parts of a benefit.
456. *Subsection (12)* provides that regulations may set out that in prescribed circumstances a benefit will be treated (for the purpose of *subsection (2)*) as having become payable before the assessment period commenced. This may, for example, be used where a member dies before the assessment period commences and as a person becomes entitled to a benefit not immediately on the death but later during the assessment period.

Section 139: Loans to pay scheme benefits

457. This section allows the Board to lend money to the trustees or managers of a scheme during the assessment period where it considers it appropriate for the purpose of enabling payment of benefits to scheme members in accordance with *section 138*.
458. The trustees or managers will have to make an application. The Board will lend what it considers to be appropriate and on such terms as it thinks fit. Loans cannot be made to enable payment of money purchase benefits payable from the scheme.
459. *Subsection (3)* provides for any amount lent to the trustees or managers of a scheme and interest to become due for repayment at the time that the Board ceases to be involved

with the scheme, or when the Regulator makes an order under section 11(3A) of the Pensions Act 1995 (power to wind up occupational pension schemes) to wind up the scheme or at the time when the requirement to wind up schemes with sufficient assets to meet the protected liabilities applies (*section 154*(requirement to wind up schemes with sufficient assets to meet protected liabilities)) whichever first occurs.

460. *Subsection (4)* provides that the Board may not make any loans once a scheme has been ordered to wind up under section 11(3A) of the Pensions Act 1995.

Ill health pensions

Section 140: Reviewable ill health pensions

461. This section provides that during an assessment period the Board may review entitlement to ill health pensions paid under the scheme. A person under normal pension age who is entitled to an ill health pension will generally be entitled to a higher level of compensation than a person whose pension is not in payment at the beginning of the assessment period. This section enables the Board to ensure that any ill health pension has been correctly awarded.
462. *Subsection (2)* provides that the Board may review an ill health pension where:
- the member would be entitled to pension compensation under *paragraph 3 of Schedule 7* in respect of that pension;
 - the member is under normal pension age at the assessment date; and
 - the pension is attributable to the member's pensionable service under the scheme or another scheme i.e. it is not a survivor's or dependent's pension.
463. *Subsection (3)* provides that the Board can only review an ill health pension under *subsection (2)* if the original decision made by the trustees or managers to award the ill health pension was made in the three years before the assessment date, or where the member had applied for ill health retirement before the assessment date, and the decision is made after that date.
464. *Subsection (4)* provides that where, at the assessment date, the trustees or managers have failed to decide applications for ill health retirement then the trustees or managers must decide these applications within a prescribed time. If the trustees or managers fail to do this then they may be subject to a civil penalty under section 10 of the Pensions Act 1995 (civil penalties).
465. *Subsection (5)* deals with rates where an application for an ill health pension is made on or after the assessment date or is made before that date but not decided in the period mentioned in *subsection (3)(b)*. If, in the absence of this section, the award would be backdated to before the assessment date, this subsection provides that for the purposes of determining any pension compensation the award is treated as taking effect after the decision is made. As a result the person will be treated as an active or deferred member rather than a person in receipt of a pension for the purposes of *Schedule 7* (pension compensation).
466. *Subsection (6)* provides for regulations to prescribe the procedure to be followed in relation to the review of an ill health award under this section. This procedure may, for example, require the Board to notify the scheme member in writing and give reasons for its decision
467. The definitions in *section 142* are relevant to this section.

Section 141: Effect of a review

468. Where the Board decides that the conditions in *section 141(3)* are met, it may then determine that the compensation in respect of the pension is to be determined under

the regulations rather than in accordance with *Schedule 7* to the Act. It may only make such a determination within a reasonable period after the assessment period began (or the date the decision was made to pay the benefit) and before it approves a scheme valuation.

469. The conditions in *section 141(3)* are that:
- the compensation which would be payable at the assessment date would exceed the rate of the compensation which would be payable if it was calculated under the regulations under *section 141(2)*;
 - the Board is satisfied that:
 - the award was made in ignorance of, or based on a mistake as to, a material fact relevant to the decision;
 - at the time of the decision to make the award, the member knew, or could have been expected to know, that fact and that it was relevant to the decision;
 - had the trustees or managers known, or not been mistaken as to that fact, they could not reasonably have decided to make the award;
 - the Board is satisfied that the person would not have satisfied the conditions for ill health retirement after the date of the trustees' or managers' decision and before the assessment date. For example, if a person's health had deteriorated significantly since the original award this provision enables the Board to consider new evidence to determine if the award could properly have been made at a later time.
470. Where the Board determines that compensation in respect of the ill health pension is to be determined in accordance with regulations under this section, compensation is payable only from the time when the scheme valuation under *section 143* becomes binding (see *section 145*).
471. The definitions in *section 142* are relevant to this section.

Valuation of assets and liabilities

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

472. This section requires the Board to obtain an actuarial valuation of the assets and liabilities of the scheme in order to determine whether the assets of the scheme are less than the protected liabilities. It must make this determination so that it can decide whether it is required to assume responsibility for the scheme.
473. *Subsection (2)* states that the Board must, as soon as is reasonably practicable, obtain an actuarial valuation of the scheme as at the relevant time. This is the time before the qualifying insolvency event mentioned in *section 127* (duty to assume responsibility for schemes following an insolvency event), or, as the case may be, before the application or notification under *section 129* (applications and notifications for the purposes of *section 128*) was made or received.
474. *Subsection (3)* provides that if the requirements set out in regulations are met, regulations provide that the following are to be assets or protected liabilities for the purposes of this valuation:
- a debt due to trustees or managers by virtue of a contribution notice under *section 38, 47 or 55*;
 - an obligation arising under a financial support direction (see *section 45*);
 - an obligation imposed by a restoration order (see *section 52*).

475. *Subsection (4)* provides that regulations may prescribe how the assets and the protected liabilities of eligible schemes and their amount or value are to be determined, calculated and verified. Regulations may provide for the valuation to take account of events occurring during the period beginning with the relevant time and ending with the time the valuation is approved under *section 144*, when valuing certain assets and liabilities. Those assets/liabilities are
- a section 75 debt;
 - a debt due by virtue of a contribution notice issued under *section 38, 47* or *55*;
 - an obligation arising under financial support for the scheme;
 - an obligation imposed by a restoration order made under *section 46* in respect of a transaction involving assets of the scheme. This is in order that the Board need not assume responsibility for a scheme which could be wound up to the benefit of members.
476. *Subsection (6)* states that subject to any provision made in regulations under *subsection (4)*, a valuation must accord with any guidance issued by the Board.
477. *Subsection (7)* states that when calculating the amount of any liabilities, 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. Such a rule places an artificial restriction on the value of a scheme's liabilities.
478. *Subsection (8)* provides that when the Board ceases to be involved with a scheme it no longer has a duty to obtain an actuarial valuation under *subsection (2)*. It is, for example, possible that the employer and associated pension scheme could be rescued before the valuation is completed, and in such circumstances it would not be necessary to complete the valuation.
479. *Subsection (9)* provides that the Board need not undertake an actuarial valuation of a scheme when it considers that an event (such as a repayment of a debt or other event as listed in this subsection) may occur. Such an event could affect the value of the assets or the amount of the protected liabilities of the scheme for the purposes of the valuation.
480. In addition, under *subsection (10)* provision has been made to take account of the Board having power to review ill health awards. This means that the Board cannot be required to obtain the valuation whilst it may review ill health pensions under section 140. This is because such a review may affect the valuation.
481. *Subsection (11)* defines "actuarial valuation" as a valuation of assets and protected liabilities of the scheme that is prepared and signed by a person with the appropriate qualifications or experience or a person approved by the Secretary of State. The necessary qualifications on experience will be detailed in regulations. The form of the valuation and the information to be contained within the valuation will be set out in regulations.

Section 144: Approval of valuation

482. The purpose of this section is to require the Board to determine whether to approve a scheme valuation and where it approves a valuation, to provide a copy of it to specified persons.
483. *Subsection (1)* provides that this section applies where the Board obtains a valuation in respect of a scheme under *section 143* (Board's obligation to obtain valuation of assets and protected liabilities).
484. *Subsection (2)* states that if the Board is satisfied that the valuation has been prepared in accordance with *section 143* it must approve the valuation, and give a copy of it to the Regulator, the scheme trustees or managers and the insolvency practitioner of the

employer or the employer. *Subsection (3)* states that if the Board is not satisfied that the valuation is in accordance with *section 143* then it must obtain a further valuation under that section.

Section 145: Binding valuations

485. This section provides for when a valuation becomes “binding” for the purposes of Chapter 3 of Part 2. By virtue of *section 160*(transfer notice), the Board cannot assume responsibility for a scheme until the valuation is binding.
486. *Subsection (1)* provides that the valuation only becomes binding once it is approved under *section 144* and the period to review the approval of the valuation has expired, and any review, reconsideration or reference to the PPF Ombudsman of the approval of the valuation and any appeal against his decision has been completed.
487. *Subsection (2)* states that once a valuation has become binding it is conclusive for the purposes of establishing whether scheme assets are less than the protected liabilities for the purpose of *section 127* or under *section 128*. *Subsection (2)* ensures that even where a binding valuation is obtained account can be taken of subsequent fraud compensation payments (see *section 172*) (relationship with fraud compensation regime).
488. *Subsection (3)* provides that the Board must notify the trustees or managers, the insolvency practitioner (or, if none, the employer) and the Regulator once the valuation becomes binding. *Subsection (4)* states that a notice under *subsection (3)* must be in the prescribed form, and contain the prescribed information, as set out in regulations.

Refusal to assume responsibility

Section 146: Schemes which become eligible schemes

489. This section enables regulations to be made requiring the Board to refuse to assume responsibility for a scheme if it was not an eligible scheme throughout such period as may be prescribed. Assuming that regulations under *section 126* (eligible schemes) require an “eligible scheme” to have at least three members, an example could include a scheme with only two members which increases the number of scheme members solely with the aim of becoming an eligible scheme to obtain assistance from the Pension Protection Fund.
490. Where the Board refuses to assume responsibility for a scheme under this section it must issue a withdrawal notice and give a copy of the notice to the Regulator; the trustees and managers of the scheme; and any insolvency practitioner in relation to the employer or if there is no insolvency practitioner, the employer. A withdrawal notice means a notice in the prescribed form which states the time from which the Board ceases to be involved with the scheme and contains such other information as may be prescribed in regulations. A withdrawal notice is binding once the period for review has expired and any review, reconsideration or reference to the PPF Ombudsman or appeal against his determination of the notice has been completed and the notice has not been revoked, varied or substituted.

Section 147: New schemes created to replace existing schemes

491. The Board must refuse to assume responsibility for a scheme where it is satisfied that the conclusions in *subsection (1)* are satisfied. This section prevents abuse in cases where schemes which are not required to pay the levy transfer their members to a new scheme which is an eligible scheme, when insolvency of the employer seems likely, in order to benefit from the compensation scheme.
492. Where the Board refuses to assume responsibility for a scheme it must issue a withdrawal notice and give a copy of the notice to the Regulator, the trustees or managers of the scheme and any insolvency practitioner in relation to the employer

or if there is no insolvency practitioner, the employer. A withdrawal notice means a notice in the prescribed form which states the time from which the Board ceases to be involved with the scheme and contains such other information as may be prescribed in regulations. A withdrawal notice becomes binding once the period for review of the notice has expired and any review, reconsideration or reference to the PPF Ombudsman and any appeal against his determination has been concluded and the notice has not been revoked, varied or substituted.

Section 148: Withdrawal following issue of section 122(4) notice

493. A section 122(4) notice is a notice issued by an insolvency practitioner in respect of a scheme stating that he cannot determine whether the scheme is one in respect of which a scheme rescue is not possible or a scheme rescue has occurred.
494. The section stipulates that a withdrawal notice under *subsection (3)* must be issued where:
- there is a binding section 122(4) notice;
 - a withdrawal event has not occurred in respect of a withdrawal notice that has been issued between the last insolvency event and the section 122(4) notice becoming binding;
 - the occurrence of such a withdrawal notice in respect of such a notice is no longer possible (see *section 149*);
 - an insolvency event has not occurred since the issue of the section 122(4) notice and an insolvency event is unlikely to occur within six months from when the section applies;
 - where a withdrawal notice becomes binding, the Board's involvement with the scheme ceases (see *section 149*).
495. *Subsection (4)* states that where no withdrawal notice is issued under *subsection (3)* and no further insolvency event occurs during that six month period the Board must issue a withdrawal notice.
496. *Subsection (5)* states that the Board must send a copy of any withdrawal notice to the Regulator, the trustees or managers of the scheme and the employer.
497. *Subsection (6)* specifies that a withdrawal notice issued under this section does not become binding until the period for review has expired and any review, reconsideration or reference to the PPF Ombudsman and any appeal against his determination has been completed and that notice has not revoked, varied or substituted.
498. *Subsection (7)* provides that notice that the withdrawal notice has become binding must be given to the Regulator, the trustees or managers and the employer. The notice must specify the time from which the Board will cease to be involved. *Subsection (8)* allows regulations to specify the form and content of notices under this section.

Cessation of involvement with a scheme

Section 149: Circumstances in which Board ceases to be involved with an eligible scheme

499. This section stipulates that the Board ceases to be involved with a scheme on the occurrence of the first withdrawal event after the beginning of the assessment period, thus bringing the assessment period to an end. Where a withdrawal notice is issued, the issue does not count as a withdrawal event until the notice has become binding, i.e. until appeal rights against its issue have been exhausted and any appeals have been resolved.
500. *Subsection (2)* lists withdrawal events in relation to an eligible scheme as follows:

*These notes refer to the Pensions Act 2004 (c.35)
which received Royal Assent on 18 November 2004*

- a notice under *section 122(2)(b)*, that a scheme rescue has occurred, becoming binding (this includes a notice issued by the Board by virtue of *section 124*);
 - a notice under *section 130*, that a scheme rescue has occurred, becoming binding;
 - a notice is refused under *section 146 or 147* to assume responsibility becoming binding; and
 - a notice of withdrawal given under *section 148* becoming binding.
501. *Subsections (3) to (5)* deal with cases where an event occurs during the period between a withdrawal notice being issued and it becoming binding, which, had the notice already been binding when the event occurred, would have been a qualifying insolvency event (or the equivalent event under *section 128*). This ensures that the event triggers a new assessment period once the withdrawal notice becomes binding.
502. *Subsection (6)* explains that for the purpose of Chapter 3 a withdrawal event in respect of a withdrawal notice is a possibility until each of the following are no longer reviewable:
- any withdrawal notice issued;
 - any failure to issue a withdrawal notice;
 - any other notice issued by the Board under Chapter 2 or 3 which is relevant to the issue of a withdrawal notice or to a withdrawal notice becoming binding;
 - any failure to issue such a notice.

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

503. This section sets out the consequences to the scheme where the Board ceases to be involved with it. It ensures that no member loses out as a result of the restrictions on contributions, accruals and transfers that apply during the assessment period.
504. *Subsection (1)* sets out that where the assessment period comes to an end the scheme must top up benefits which fell due to the level that would have been payable under scheme rules in respect of the entire assessment period in the absence of *section 138*. *Subsection (2)* states that where the winding up of the scheme began before the end of the assessment period the amount payable under *subsection (1)* in respect of benefits which fell due will take account of any reduction required by section 73 to 73B of the Pensions Act 1995 (as substituted by *section 270* (winding up) of this Act) which govern the benefits payable during the winding up period.
505. *Subsection (3)* applies where an assessment period comes to an end and the scheme is required to wind up. Where because of *section 138(6)* the benefits paid during that period exceeded the amount which would otherwise have been payable during winding-up, the trustees or managers must take steps to recover the excess amount paid.
506. *Subsection (5)* allows regulations to deal with cases where an assessment period ends and a person was in employment during the period but did not accrue benefits due to *section 133(5)* (no benefits accrue during an assessment period). Regulations will prescribe that in certain circumstances benefits will accrue under the scheme rules.
507. *Subsection (6)* sets out that regulations mentioned in *subsection (5)* may provide that:
- a) benefits may not accrue unless contributions are paid towards the scheme during a prescribed time frame;
 - b) employee contributions may be paid by the member in respect of the assessment period;
 - c) contributions mentioned in *subsections (6)(a) and (6)(b)* must be accepted in respect of the assessment period;

- d) section 31 of the Welfare Reform and Pensions Act 1999 (reduction of benefit where a person's shareable rights are subject to a pension debit) is to apply with modifications in cases where benefits accrue by virtue of this section.

508. *Subsection (7)* defines the meaning of "contributions" in relation to an eligible scheme.

Reconsideration

Section 151: Application for reconsideration

509. Where the Board initially determines that there is a scheme failure but that the scheme is not sufficiently underfunded to satisfy the conditions in *section 127(3)(a) or 128(2)(a)*, the scheme may apply for reconsideration under this section if it thinks that since the start of the assessment period it has become further underfunded. The application must be made within the "authorised period" mentioned in *subsection (6)*.
510. *Subsection (4)* provides for any application for reconsideration to be in the prescribed form and contain the prescribed information. In addition the application must be accompanied by a protected benefits quotation in the prescribed form and audited scheme accounts for a period, determined by regulations under this section. A protected benefit quotation is defined in *subsection (8)* but basically it is a quote from an insurance company for annuities which would provide for each scheme member benefits equivalent to the lower of:
- the compensation payable if the Board assumes responsibility for their scheme, and
 - their scheme benefits.
511. *Subsection (5)* provides that the application must be made within the authorised period.
512. *Subsection (9)* states that scheme accounts must include a statement of the assets of the scheme (excluding those in respect of money purchase benefits) as at the reconsideration time (see *subsection (8)*), and must be prepared in accordance with other prescribed requirements.
513. *Subsection (10)* provides that regulations and guidance under *section 143* (Board's obligation to obtain valuation of assets and protected liabilities) will apply to the scheme accounts for the purposes of this section, as they apply for the purposes of a valuation under that section.
514. *Subsection (11)* enables regulations to require 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. *Subsection (12)* provides for regulations and any guidance for the purposes of defining how the cost of securing benefits corresponding to the compensation payable from the Pension Protection Fund will be determined, calculated and verified for the purpose of the protected benefits quotation. *Subsection (13)* also provides that no account is to be taken of winding up, when determining a person's entitlement to scheme benefits for the purposes of the quotation.

Section 152: Duty to assume responsibility following reconsideration

515. This section sets out the circumstances in which the Board will assume responsibility for a scheme on reconsideration.
516. *Subsection (2)* provides for the Board to assume responsibility for a scheme if it is satisfied that the value of the assets of the scheme as at the reconsideration date is less than the aggregate of: the amount quoted in the protected benefits quotation accompanying the application (i.e. the amount required to buy out the protected liabilities); the amount of the liabilities of the scheme not related to scheme members; and the estimated costs of winding up the scheme.

517. *Subsection (3)* provides that where the Board makes a determination under this section it must issue a ‘determination notice’ and give a copy of that notice to the trustees or managers of the scheme and the Regulator. *Subsection (5)* states that the Board is not required to assume responsibility for the scheme under *subsection (2)* until the determination notice issued under *subsection (3)* becomes binding.
518. *Subsection (7)* states that where a determination notice issued under *subsection (3)* becomes binding, the Board must give a notice to that effect and a copy of the binding notice to the trustees or managers of the scheme and the Regulator. *Subsection (8)* sets out the power to make regulations prescribing the form of the notice under *subsection (7)* and the information to be contained within it.
519. *Subsection (9)* allows the Board to obtain its own valuation of the assets of the scheme as at the reconsideration date if it wishes –rather than relying on the audited scheme accounts. *Subsection (10)* provides that for the purpose of calculating the estimated costs of winding-up, regulations and guidance under *section 143(4) and (6)* will apply as they apply for the purposes of section 143. *Subsection (12)* provides that this section is subject to *sections 146 and 147* under which the Board can refuse to assume responsibility for a scheme in certain circumstances.

Closed schemes

Section 153: Closed schemes

520. This section applies to cases where a scheme rescue is not possible and, although the scheme has sufficient assets to meet the protected liabilities, the high level of the scheme’s liabilities mean that it cannot secure a buy-out quote for the scheme’s pension liabilities from one or more insurance companies.
521. *Subsection (1)* states that this section applies to an eligible scheme where *section 151(2) or (3)* applies (that is where a scheme rescue is not possible but the scheme has sufficient assets to meet the protected liabilities).
522. *Subsection (2)* states that, if a scheme’s trustees or managers cannot obtain a full buy-out quotation for the scheme liabilities, they must within the authorised period (within the meaning of *section 151(6)*), apply to the Board for authority to continue as a closed scheme. *Subsection (3)* states that in order for scheme trustees or managers to decide whether they should apply to the Board under *subsection (2)* to continue as a closed scheme they must first take all reasonable steps to obtain a full buy-out quotation in respect of the scheme.
523. *Subsection (4)* states that the application mentioned in *subsection (2)* must be in the form required by regulations and must contain the information required by regulations. It must also be accompanied by evidence in the form required by regulations showing that the scheme trustees or managers have taken all reasonable steps to obtain a quotation. *Subsection (5)* provides that, where the Board receives an application under *subsection (2)* and is satisfied that the scheme trustees or managers have taken all reasonable steps to obtain a full buy out quotation but have been unable to do so, they must authorise the scheme to continue as a “closed scheme”.
524. *Subsection (6)* states that where the Board makes a determination on an application it must issue a determination notice to the trustees or managers of a scheme and the Regulator.
525. *Subsection (8)* states that, if the scheme trustees or managers do not comply with *subsection (2) or (3)*, section 10 of the Pensions Act 1995 (civil penalties) applies.

Winding up

Section 154: Requirement to wind up schemes with sufficient assets to meet protected liabilities

526. This section sets out the requirements for schemes to wind up when a scheme rescue is not possible but the scheme has sufficient assets to meet the protected liabilities. Schemes authorised to continue as closed schemes are required to wind up under this section, but because they cannot obtain buy-out quotations they may be forced to wind up by paying their liabilities as they fall due rather than buying out their members' rights under the scheme by purchasing annuities.
527. Where an assessment period ends, the trustees or managers must wind up the scheme, or continue to wind up the scheme (if this had already commenced before the assessment period) if:
- a scheme rescue is not possible but the scheme has sufficient assets to meet the protected liabilities (see *section 151(2) or (3)*);
 - the trustees or managers did not make an application for reconsideration (see *section 151*) or apply to continue as a close scheme (see *section 153(2)*) within the authorised period or if such an application was made it has been finally determined, and
 - that if an application was made Board is not required to assume responsibility for the scheme under *section 152*.
528. *Subsection (4)* states that when an assessment period in relation to a closed scheme (as set out in *section 159(3)*) comes to an end because the conditions set out in *subsection (5)* have been met the scheme trustees or managers must continue the winding up of the scheme which was begun before the assessment period. The conditions are that: an application is made by, or notice is given to, the trustees or managers of a scheme as set out in *section 157*; the valuation obtained by the Board under *section 158(3)* has become binding; and the Board is not required to assume responsibility for the scheme under *section 158(1)*.
529. *Subsection (7)* provides that the Board may give directions to the trustees or managers of a scheme relating to the manner in which the scheme is wound up under this section. Under *subsection (8)* the Regulator may, by order, direct any person specified to take steps needed as a result of the winding up being backdated to the start of assessment period by virtue of *subsection (6)* or the continuation of a winding up which began before the assessment period and to take those steps within a prescribed period.
530. *Subsection (9)* states that section 10 of the Pensions Act 1995 (civil penalties) will apply to any trustee or manager who has failed to take all reasonable steps to secure compliance with *subsections (7) and (8)*. *Subsection (10)* states that *subsection (9)* also applies to any other person who, without reasonable excuse, fails to comply with a direction to him contained in an order under *subsection (8)*.
531. *Subsection (11)* states that the winding up of a scheme under this section has the same effect in law as if it had been done under powers conferred by or under the scheme. *Subsection (12)* states that this section must be complied with, regardless of any enactment's or rule of law or rule of a scheme that would normally prevent a scheme from winding up, or require a procedure to be implemented or consent obtained.
532. *Subsection (13)* provides that where an assessment period comes to an end with the scheme being required to wind up/continue winding up under this section (see *section 132(2)(b)(iii)* and *159(3)(b)(ii)*), *section 150(1) to (4)* will apply. Those provisions require adjustments to be made to the benefits paid during the assessment period, so that they reflect the benefits payable under the scheme (subject to the requirements of sections 73 to 73B of the Pensions Act 1995 (winding up)).

533. *Subsection (14)* provides that where a public service pension scheme is wound up regulations may modify any enactment containing the scheme rules or under which it is made.

Provisions applying to closed schemes

Section 155: Treatment of closed schemes

534. This section makes provision in respect of the treatment of schemes that the Board has authorised to continue as closed schemes under *section 154(3)*.
535. Although the scheme is no longer subject to an assessment period, *subsection (2)* states that the provisions set out in *subsection (3)* of this section apply to closed schemes at any time when the trustees or managers of a scheme are required to wind up or continue winding up.
536. A closed scheme is required to wind up/continue winding up unless and until an assessment period begins under *section 159*. The provisions which apply to a closed scheme include *section 40(5)* (Board to act as a creditor for a debt due by virtue of a contribution notice under *section 38*), and *section 133* (restrictions on admission of new members, payment of contributions etc).
537. *Subsection (4)* states that regulations may require the trustees or managers of a closed scheme in relation to which the provisions mentioned in *subsection (3)* apply to comply with such requirements as may be prescribed when providing for the discharge of any liability to, or in respect of, a member of the scheme for pensions or other benefits. This could, for example, be used to prevent a scheme discharging those liabilities which would not be compensated were the Board to assume responsibility for the scheme (e.g. pensions which exceed the cap imposed by *Schedule 7*).

Section 156: Valuations of closed schemes

538. This section makes provision for regular valuations of closed schemes.
539. *Subsection (1)* enables regulations to require the trustees or managers of a closed scheme to obtain actuarial valuations of the scheme at certain intervals. This is in order that they can decide whether they should make an application to the Board requesting it to reconsider taking responsibility for the scheme.
540. Regulations and guidance will deal with how assets and liabilities are to be determined, calculated and verified in accordance with guidance issued by the Board. *Subsection (4)* provides for any provision of a scheme that limits the amount of its liabilities by reference to its assets to be disregarded when calculating the amount of the liabilities of a scheme for the purposes of this provision. *Subsection (5)* ensures that the trustees or managers are not required to obtain an actuarial valuation of the scheme while they are awaiting a final determination of their application to continue a closed scheme.

Reconsideration of closed schemes

Section 157: Applications and notifications where closed schemes have insufficient assets

541. This section sets out the requirements that apply when trustees or managers of a closed scheme become aware (probably as a result of a valuation under *section 156*) that the scheme no longer has sufficient assets to meet its protected liabilities (see *section 131*).
542. *Subsection (1)* states that when the trustees or managers of a closed scheme become aware that the scheme's assets are less than the protected liabilities, they must make an application to the Board for it to assume responsibility for the scheme. This must be done before the end of a period to be set out in regulations. (Once again references to

assets here do not include assets relating to money purchase schemes.) The Board must give a copy of any application it receives to the Regulator.

543. *Subsection (3)* provides that the Regulator must issue a notice to the Board if at any time it becomes aware that a scheme's assets are less than its protected liabilities. *Subsection (4)* provides for the Board to issue a notice to the scheme trustees or managers when it receives notification from the Regulator.
544. *Subsections (5) and (6)* are aimed at preventing both an application under *subsection (1)* and a notice under *subsection (3)* being given in respect of the same set of facts.
545. *Subsection (7)* provides for regulations to state the format and information to be provided in notices and applications under this section. *Subsection (8)* states that civil penalties (section 10 of the Pensions Act 1995 (civil penalties)) apply if a trustee or manager of a scheme fails to take all reasonable steps to ensure compliance with *subsection (1)*.

Section 158: Duty to assume responsibility for closed schemes

546. This section sets out the Board's duty to assume responsibility for a closed scheme when the appropriate application or notification under *section 157* is made and where at the "relevant time" (as defined in *subsection (8)*) the assets were less than the protected liabilities.
547. *Subsection (1)* states that where the trustees or managers of a scheme make an application under *section 157*, or receive a notice from the Board under *section 157(4)*, the Board must assume responsibility for the scheme if the value of the assets was less than the value of the protected liabilities at the relevant time. *Subsection (2)* states that in relation to *subsection (1)* any reference to assets excludes any assets in relation to money purchase benefits. *Subsection (3)* provides that the Board must obtain an actuarial valuation (within the meaning of *section 143*) of the scheme, as soon as it possibly can, in order to determine whether the conditions in *subsection (1)* are satisfied.
548. *Subsections (4) to (6)* deal with requirements with which the valuation must comply and apply many of the provisions relating to an actuarial valuation under *section 143*.
549. *Subsection (7)* ensures that once an application is made or notification is given under *section 157* no further application/notification need be considered if it is made before the existing one is determined.

Section 159: Closed schemes: further assessment periods

550. This section ensures that a closed scheme enters a further assessment period if an application is made or a notification is given under *section 157*. As a result, all the provision restricting the operation of a scheme during an assessment period (see *sections 133 to 138*) will apply.
551. *Subsection (3)* provides that a further assessment period begins in relation to closed schemes when the application is made or the notice is received (under *section 157*) by the trustees or managers of the scheme, and ends when the trustees or managers of the scheme receive a transfer notice from the Board as set out in *section 160* or the conditions set out in *section 154(5)* (scheme sufficiently funded to meet protected liabilities) are met, whichever occurs first.
552. If the assessment period comes to an end because the conditions in *section 154(5)* are satisfied, the scheme continues as a closed scheme and the winding up of the scheme continues (subject to the fact that it may be unable to buy out its liabilities immediately). If the scheme subsequently becomes underfunded, a further application may be made or notification given under *section 157* and a further assessment period will begin under *section 159*.

Assumption of responsibility for a scheme

Section 160: Transfer notice

553. This section provides for the Board to issue a transfer notice to the trustees or managers in circumstances where they are required to assume responsibility for a scheme by virtue of [section 127](#), [128](#), [152](#) or [158](#).
554. Once the transfer notice is received by the trustees or managers, [section 161](#) applies to transfer all property, rights and liabilities of the scheme to the Board. The trustees or managers of the scheme are discharged from their pension obligations under the scheme from that time, and the Board is required to pay compensation to scheme members on an ongoing basis in accordance with the provisions of Part 2.
555. *Subsection (2)* provides for the Board to issue a transfer notice to the trustees or managers of a scheme once they are satisfied that they are required to assume responsibility for a scheme. *Subsections (3) and (4)* provide for the Board to issue a transfer notice in a case to which [section 127](#) (duty to assume responsibility for schemes following an insolvency event) or [section 128](#) (duty to assume responsibility for a scheme) applies only after the valuation obtained under [section 143](#) becomes binding. Similarly, in a case to which [section 158](#) (duty to assume responsibility for a closed scheme) applies, no transfer notice can be given until the valuation obtained by the Board under [section 158\(3\)](#) becomes binding
556. *Subsection (5)* states that a transfer notice may not be given in relation to a scheme during any period when the issue of, or failure to issue, a withdrawal notice under or by virtue of [section 146](#) or [147](#) (refusal to assume responsibility) is reviewable.
557. *Subsection (6)* provides for the Board to give a copy of the transfer notice to the Regulator and the insolvency practitioner in relation to the employer, or if there is none, to the employer.
558. *Subsection (7)* provides for this section to be subject to the provisions relating to fraud compensation cases, which provide that no transfer notice can be issued within the first twelve months of the assessment period or in circumstances where an application for fraud compensation is pending. This is to give time for a fraud compensation application to be made as the payment of such compensation may affect the scheme's ability to meet the cost for the protected liabilities, and so affect whether the Board must take responsibility for the scheme.

Section 161: Effect of Board assuming responsibility for a scheme

559. This section sets out the effect of the Board issuing a transfer notice to the trustees or managers of a scheme. All the property, rights and liabilities of the scheme transfer to the Board when the transfer notice is received by the trustees or managers of the scheme. The trustees or managers of the scheme are discharged from their pension obligations to the scheme at this stage. The Board is required from that point to pay compensation to scheme members on an ongoing basis under the statutory rules set out in Chapter 3 of Part 2. The Board is also responsible for ensuring that any adjustment is made which is required to ensure the correct amount was paid from the beginning of the assessment period (e.g. under [section 138](#) a person may have been receiving scheme benefits which were lower than the corresponding compensation entitlement and, if so, he will have to be paid the difference).
560. *Subsection (2)* sets out the effects of the Board assuming responsibility for an eligible scheme. The property, rights and liabilities of the scheme are transferred to the Board at the time the trustees or managers receive the transfer notice. This transfer is automatic and does not require the completion of any legal formalities. From that time, the trustees or managers of the scheme are discharged from their pension obligations (as defined) and the Board takes over responsibility for ensuring that compensation is and has been

paid in accordance with the pension compensation provisions (as defined). The scheme is treated as having been wound up immediately after the transfer notice is received by the trustees or managers of the scheme and ceases to exist at this time.

561. *Subsection (3)* states that the liabilities transferred will not include money purchase benefits and any other liabilities as set out in regulations. *Subsection (4)* states that the trustees and managers are discharged of obligations in respect of guaranteed minimum pensions (Part V, Chapter 2 of the Pension Schemes Act 1993) and obligations to administer the scheme in accordance with the scheme rules or any other enactment.
562. *Subsection (7)* provides the power to make regulations to modify a term of a relevant “contract of insurance”. These are contracts entered by pension schemes to secure their liabilities in respect of a particular person. These contracts may require the scheme to pay the amount paid under the contract to the scheme member. But once the Board assumes responsibility for the scheme, this amount may exceed the member’s compensation entitlement under the Act. Under *subsection (7)* the contract may be modified so that the Board is not required to pay to the member an amount which exceeds his compensation entitlement.

Schedule 6: Transfer of Property, rights and liabilities to the Board

563. *Schedule 6* makes additional provision to that made under *section 161* in respect of the transfer of the property, rights and liabilities of an occupational pension scheme to the Board pursuant to a transfer notice issued under *section 160*.
564. *Paragraph 2(1)* states that property, rights and liabilities are to include property, rights and liabilities that would not otherwise be capable of being transferred, property situated anywhere in the UK or elsewhere, and rights and liabilities under the law of any part of the UK or any country or territory outside the UK. Contracts of employment between the trustees or managers and an individual will not transfer, but are terminated on the day preceding receipt of the transfer notice by the trustees or managers of the scheme.
565. *Paragraph 3* provides for any legal proceedings by or against any of the trustees or managers of the scheme, or applications to any authority which are pending immediately before the transfer to be continued by or against the Board. The liabilities transferred by *section 161* do not include any liabilities in respect of an existing or future cause of action against the trustees or managers where they would have been personally liable to meet the claim and would not have been indemnified from the assets of the scheme. These will remain liabilities of the trustees or managers.
566. *Paragraph 4* states that the transfer to the Board does not require consent from anyone. The transfer is binding in respect of all persons. *Paragraph 5* provides that the transfer shall not give anyone power to terminate or amend any interest or right of the trustees or managers of the scheme.
567. *Paragraph 6* provides that if there are any references in agreements etc to the trustees or managers they shall continue to have effect after the transfer as if they referred to the Board.
568. *Paragraph 7* provides that the Board will have to take all steps required so that foreign property, rights or liabilities are vested in it. Until this is effected under the relevant foreign law the trustees or managers will have to hold the relevant property or rights on behalf of the Board. They may also have to discharge a liability on behalf of the Board.

Section 162: The pension compensation provisions

569. This section provides that *Schedule 7* makes provisions for the compensation to be paid where the Board assumes responsibility for a scheme. This includes provision for:
- periodic compensation to be paid to or in respect of members;

- lump sum compensation to be paid to members;
- a cap to be imposed on the periodic compensation and lump sum compensation;
- annual increases to be made to periodic compensation.

570. *Subsection (2)* makes clear that references in Part 2 to the pension compensation provisions are to the provisions of this section, *section 140 to 142, 161(2)(c), 164 and 168 and Schedule 7.*

Schedule 7: Pension compensation provisions

571. This Schedule explains how the compensation payable from the Pension Protection Fund is to be determined. The amount of compensation paid is calculated as a percentage of the benefits a person was entitled to or in receipt of from the scheme. For example 100% compensation will be given where a person was in receipt of a pension immediately before the assessment date. The amount payable is limited by the compensation cap where a person was under normal pension age at the assessment date. Pension compensation may also be paid to survivors of persons in receipt of compensation

Pensions in payment at assessment date

572. *Paragraph 3* provides that where a person was in receipt of a pension prior to the assessment date, he will receive 100% of the protected pension rate he was entitled to from the scheme plus annual increases under paragraph 28. This will be subject the Secretary of State's power to vary percentage rates (*paragraph 30*).

573. Where a person was in receipt of a pension from the scheme prior to the assessment date and had not attained normal pension age before that date, he will receive 90% compensation. This will not apply where he had received benefits as a result of ill-health subject to the power to review a person's ill-health pension – see *sections 140 to 142*. This will be subject to the compensation cap (*paragraph 26*) and the Secretary of State's power to vary percentages (*paragraph 30*).

574. *Paragraph 4* deals with where the pensioner who is in receipt of pension compensation dies. The widow or widower will receive, after his death 50% of his compensation. Regulations will set out when the widow or widower will not be entitled to compensation. This will allow provision to be made for cases where the scheme rules did not pay a pension to a widow or widower.

Pension benefits postponed at assessment date

575. *Paragraph 5* provides that 100% pension compensation will be paid where before the assessment date a person had been entitled to a pension, was over normal pension age and had postponed taking that pension. The compensation is calculated by reference to the protected pension rate he would have received plus any increases under *paragraph 28*. This is subject to the Secretary of State's power to vary the percentage (*paragraph 30*). The member may commute (convert into a lump sum) part of the pension compensation when it comes into payment (see *paragraph 24*). The pension compensation is paid from the assessment date, subject to any provision made to postpone entitlement under *section 164* during the assessment period.

576. *Paragraph 6* provides that 50% of the pension compensation in payment will be paid to the member's widow or widower when he dies. Regulations will set out when the widow or widower will not be entitled to compensation. This will allow provision to be made for cases where the scheme rules did not pay a pension to a widow or widower.

577. *Paragraph 7* provides that lump sum compensation can be paid from the Pension Protection Fund. This will be paid where the member had postponed entitlement to a

lump sum from the scheme and he had attained normal pension age. 100% of the lump sum payable from the scheme will be paid at the assessment date. This is subject to the Secretary of State's power to vary percentages (*paragraph 30*) and does not include a lump sum received as a result of commutation.

Active members over normal pension age at assessment date

578. *Paragraph 8* provides that pension compensation of 100% is payable to active members of the scheme who were over normal pension age before the assessment date. The compensation is calculated by reference to the protected notional pension accrued plus increases calculated under *paragraph 28*. This is subject to the Secretary of State's power to vary the percentage (*paragraph 30*). The pension compensation is paid from the assessment date and part of it may be commuted for a lump sum (see *paragraph 24*).
579. *Paragraph 9* provides that 50% of the pension compensation in payment will be paid to the member's widow after he dies. Regulations will set out when the widow or widower will not be entitled to compensation. This will allow provision to be made for cases where the scheme rules did not pay a pension to a widow or widower.
580. *Paragraph 10* provides for when lump sum compensation can be paid from the Pension Protection Fund. This will be paid where the active member had a right to a lump sum and was over normal pension age. 100% of the accrued amount in respect of the lump sum plus any increases under the scheme's rules (referred to as the admissible rules) will be paid at the assessment date. This does not apply to a lump sum received through commutation.

Active member who have not attained normal pension age

581. *Paragraph 11* provides that 90% pension compensation is paid to active members who had not attained normal pension age before the assessment date. The amount payable will be calculated by reference to the accrued protected notional pension plus increases under *paragraph 28* plus the revaluation amount. This is subject to the compensation cap (*paragraph 26*) and the power of the Secretary of state to vary percentages (*paragraph 30*). The pension compensation will commence at his normal pension age and part can be commuted (see *paragraph 24*).
582. *Paragraph 13* provides that 50% of the pension compensation in payment, or payable, will be paid to the member's widow or widower after his death. Regulations will set out when the widow or widower will not be entitled to compensation. This will allow provision to be made for cases where the scheme rules did not pay a pension to a widow or widower.
583. *Paragraph 14* provides for when lump sum compensation can be paid. Where the member has been entitled to a lump sum he will receive 90% of the accrued amount plus the revaluation amount. This will be paid when he attains normal pension age. This does not apply to a lump sum received through commutation. This is subject to the compensation cap (*paragraph 26*) and the Secretary of State's power to vary percentages (*paragraph 30*).

Deferred members who have not attained normal pension age at assessment date

584. *Paragraph 15* provides that 90% pension compensation will be paid to deferred members who have not attained normal pension age. The pension compensation paid is calculated by reference to the accrued protected pension plus the revaluation amount. This is subject to the compensation cap (*paragraph 26*) and the Secretary of State's power to vary the percentage (*paragraph 30*). The pension comes into payment from the deferred member's normal pension age and part may be commuted as a lump sum (see *paragraph 24*).

585. *Paragraph 18* provides that 50% of the pension compensation in payment or payable will be paid to the deferred member's widow or widower after he dies. Regulations will set out when the widow or widower will not be entitled to compensation. This will allow provision to be made for cases where the scheme rules did not pay a pension to a widow or widower.
586. *Paragraph 19* sets out when lump sum compensation is payable from normal pension age. 90% of the lump sum to which the deferred member was entitled under the scheme rules (referred to as admissible rules) will be paid. This does not apply to a lump sum received through commutation. This is subject to the compensation cap (*paragraph 26*) and the Secretary of State's power to vary percentages (*paragraph 30*).

Compensation in respect of scheme right to transfer payment or contribution refund

587. *Paragraph 20* sets out when a person is entitled to a lump sum of 90% of a protected transfer payment or protected contribution repayment. This is paid where a person's pensionable service terminates on the commencement of the assessment date and as a result he has a right to a transfer payment under the scheme ('the protected transfer payment') or a cash payment which refunds his contributions to the scheme ('the protected contribution repayment'). This is paid immediately after the Board issues the transfer notice under *section 160*.
588. Regulations may modify *paragraphs 8, 10, 11 or 14* as they apply where a person is entitled to compensation under this paragraph.

Pension credit members who have not attained normal benefit age at assessment date

589. *Paragraph 21* applies *paragraphs 15, 18 and 19* to pension credit members, with certain modifications, as if those paragraphs applied to them. The term normal benefit age is used for pension credit members rather than the term normal pension age.

Survivors who do not meet conditions for scheme benefits at assessment date

590. *Paragraph 22* provides that pension compensation may be paid to a survivor who became entitled to a pension after the assessment date as a result of the death of a member before the assessment date. The pension must be one which is paid to the survivor as a result of satisfying conditions in the scheme rules. It must also be paid in respect of the deceased member's pensionable service. The amount paid will be 100% of the pension which would have been paid by the scheme if entitlement had arisen before the assessment date plus any increases under *paragraph 28*. This is subject to the Secretary of State's power to vary percentages (*paragraph 30*).

Compensation in form of dependants' benefits

591. *Paragraph 23* provides that regulations may provide for compensation to be payable to partners and dependants of prescribed descriptions.

Commutation of periodic compensation

592. *Paragraph 24* provides that a person can commute part of his pension compensation as a lump sum but cannot commute more than 25% (this percentage may be changed by the Secretary of State). The amount paid as a lump sum will be 25% of the pension compensation payable after reductions are made to take account of the compensation cap. The lump sum payable will be the actuarial equivalent of the commuted portion of the pension compensation calculated from tables designated for this purpose by the Board. Regulation may set out the manner in which the option to commute may be exercised.

Early payment of compensation

593. *Paragraph 25* provides that regulations may prescribe when a person may receive pension compensation and lump sum compensation before his normal pension age. This applies to active members and deferred members under normal pension age. The Board will determine the actuarial reduction to be applied to compensation paid early under this paragraph.

Compensation cap

594. *Paragraph 26* makes provision for the compensation cap. This is the amount which will be specified by the Secretary of State by order. The compensation cap is expected to be £27,777 in the first year for persons who are aged 65. *Paragraph 27* requires him to increase the amount specified where a review under section 148(2) of the Social Security Administration Act 1992 concludes that there has been an increase in the general level of earnings.
595. The compensation cap will apply to persons in receipt of a pension from a scheme before the assessment date who were under normal pension age when the pension commenced and were not eligible for the pension on the grounds of ill health (*paragraph 3*). It will also apply when active members and deferred members under normal pension age become entitled to pension compensation and/or lump sum compensation (*paragraphs 11, 14, 15 and 19*). The compensation cap will apply at the date when a person became entitled to pension compensation. It may be actuarially adjusted if the person had not attained 65 or was 66 or over at the date when he first became entitled.
596. Where the member was entitled to a pension or other benefit under the scheme rules and this exceeds the compensation cap, he cannot receive more than 90% of the cap. If the total were less than the cap then he will receive 90% of that amount. Where a pension was already in payment (where under normal pension age) and part of it had been commuted, the amount used for the purpose of calculating pension compensation will be the full amount of the pension before commutation and this total will be reduced to the level of the compensation cap, if it exceeded it. If a lump sum had already been paid then it will be added to any pension in payment for the purpose of calculating pension compensation. If this total exceeds the cap then no more than 90% of the cap can be paid as pension compensation.
597. When calculating the total benefits to which there is entitlement under the scheme, account will also be taken of benefits received from connected occupational pension schemes. Regulations will also provide that *paragraph 26* will apply with modifications where a person becomes entitled to pension compensation and had previously been entitled to compensation in respect of benefits under the scheme or a connected scheme or became entitled to one or more lump sums under the scheme or a connected scheme. A scheme is a connected scheme if it has the same employer.
598. Regulations may also prescribe sums to be disregarded for the purpose of *paragraph 26*.

Annual increase in periodic compensation

599. *Paragraph 28* provides that pension compensation will be increased each year by the lesser of the increase in retail price index and 2.5% ('the appropriate percentage'). This will apply to the portion of the pension compensation which relates to the member's service in the scheme after 6 April 1997.

Board's powers to alter rates of revaluation and indexation

600. *Paragraph 29* provides that the Board may determine the maximum revaluation rate for the purposes of *paragraphs 12(4) and 17(4)*.

601. The Board may also determine the ‘appropriate percentage’ for the annual increase in pension compensation under *paragraph 28*. This can only apply to future increases and can apply to all cases or those cases where entitlement arose after the determination.
602. The Board must consult persons it considers appropriate and publish details of the proposed determination as it considers appropriate. It must consider any representations made.

Secretary of State’s powers to vary percentage paid as compensation

603. *Paragraph 30* provides that the Secretary of State may on the Board’s recommendation vary any of the percentages listed in *paragraphs 3(4)(a) and (b), 5(3), 7(2), 8(3), 10(2), 11(3), 14(3), 15(3), 19(3), 20(3) and 22(3)*.
604. The Board must consult such persons it thinks appropriate and publish details of the proposed recommendation in relation to the percentages, in such manner as it thinks appropriate. It must consider any representations made.

Special provision in relation to certain pensions in payment before the assessment date

605. *Paragraph 31* applies to cases where immediately before the assessment date a person is in receipt of a pension, but because of the definition of “admissible rules” in *paragraph 35(2)* he is not entitled to compensation under paragraph 3. Paragraph 31 provides that regulations may allow for the pensioner to be treated for the purposes of the pension compensation provisions as entitled to a pension from the scheme before the assessment date and for the compensation payable to be determined as prescribed (any provisions of this Schedule may also be applied with modifications as prescribed). Regulations may also deal with any entitlement to compensation in respect of the pension which arises other than under *paragraph 3*.

Short periods of service which terminate on commencement of assessment date

606. *Paragraph 32 applies* where a member’s pensionable service is terminated on the commencement of the assessment period and, as a result, the member has a right to receive a cash transfer sum or contribution refund under Chapter 5 of Part 4 of the Pension Schemes Act 1993. The member will receive compensation in the same way as other active members of the scheme as if they had rights to long service benefit and did not have any other rights to benefits under the scheme.

Power to modify Schedule in its application to certain schemes

607. *Paragraph 33* provides that regulations may modify the Schedule as prescribed where the scheme is a prescribed scheme or a scheme of a prescribed description. This power may be used to facilitate payment of benefits to members of cash balance schemes.

Normal pension age

608. *Paragraph 34* defines normal pension age as the age specified in the scheme’s rules (referred to as admissible rules) as the earliest age at which the scheme pension or lump sum becomes payable without actuarial adjustment (excluding any rule making special provision as to early payment on grounds of ill-health or otherwise). Special provision is made where there are different ages for different parts of a pension or lump sum. If it is not possible to identify the normal pension age from the scheme’s admissible rules the Board can decide how the normal pension age is to be determined having regard to those rules.

Scheme rules, admissible rules etc

609. *Paragraph 35* defines the meanings of admissible rules, recent rule changes and recent discretionary increases.
610. Admissible rules means the scheme rules, but disregarding, in certain circumstances, all recent rule changes (including any rules which come into operation as a result of winding-up or an associated event). A recent rule change is disregarded if before the assessment date the combined effect of the change, and any recent discretionary increases, was to increase the protected liabilities of the scheme.
611. Recent rules changes means a change which took effect three years before the assessment date or were made during the three year period (and took effect before that period). In addition any scheme rules which come into operation by reference to an insolvency event in relation to the employer or any prescribed event in relation to the employer, are also included as “recent rule changes”. *Sub-paragraph (6)* lists rule changes which are exempted. These include, for example, changes required by any enactment or changes of a prescribed description.
612. Recent discretionary increases means an increase in the rate of a pension in payment or a postponed pension which took effect in the three years before the assessment date or was introduced during that period with effect from an earlier time *Sub-paragraph (8)* provides that certain increases may be disregarded.

Accrual rate, pensionable service and pensionable earnings

613. *Paragraph 36* defines the meaning of accrual rate, pensionable service and pensionsable earnings.

Other definitions

614. *Paragraph 37* defines deferred member, normal benefit age, pension credit member, pension credit rights, retail prices index and the scheme.
615. References in the Schedule to a pension or lump sum or a right to such, do not include money purchase benefits.
616. Regulations may be made in relation to the meaning in this Schedule of references to ill health.

Section 163: Adjustments to be made where the Board assumes responsibility for a scheme

617. This section sets out what adjustments the Board has to make in relation to compensation amounts payable once it assumes responsibility for a scheme.
618. Where the Board has assumed responsibility for a scheme it must pay compensation in accordance with the pension compensation provisions. Where during the period beginning with the assessment date and ending with the receipt by the trustees or managers of the transfer notice, any benefits were paid (excluding money purchase benefits), these benefits will go towards discharging the liability to pay pension compensation.
619. If during this period a person became entitled to a benefit as a result of the death of a scheme member before the assessment period started, then regulations may be made under *subsection (3)*. These may provide that in prescribed circumstances all or part of the benefit may be treated as having become payable before the assessment date. Where they are treated as payable before the assessment date they will not be treated as discharging the Board’s liability to pay pension compensation.
620. *Subsection (4)* provides that the Board must take steps to recover any amounts paid during the period in excess of entitlement to pension compensation together with

interest. Where less than that entitlement had been paid the Board must pay the shortfall (plus interest). *Subsection (4)* does not apply to money purchase benefits or any other amounts prescribed in regulations. The Board will not be required to recover any amount which it considers trivial or to recover any amount from a person in such circumstances as may be prescribed in regulations

Section 164: Postponement of compensation entitlement for the assessment period

621. *Subsection (1)* enables regulations to postpone a person's entitlement to compensation for the whole or any part of the assessment period during which he continues in employment after attaining normal pension age. *Subsection (2)* allows regulations under this section to prescribe the terms and conditions of postponement (e.g. increments may be paid where entitlement is postponed).

Section 165: Guaranteed minimum pensions

622. This section deals with guaranteed minimum pensions (within the meaning of the Pensions Schemes Act 1993) when the Board takes responsibility for an eligible scheme. *Subsection (1)* states that the Board must notify the Inland Revenue when it has assumed responsibility for an eligible scheme and where the liability of the trustees or managers to provide guaranteed minimum pensions is discharged. *Subsection (3)* provides for section 47 of the Pension Schemes Act 1993 to be amended so that the necessary deduction from the state earnings related pension scheme (SERPS) can be made by the Inland Revenue (as the member will be receiving compensation in respect of his GMP).

Section 166: Duty to pay scheme benefits unpaid at assessment date

623. This section states that the Board, once it has assumed responsibility for a scheme, must pay benefits which a person had become entitled to before the assessment period but which remained unpaid when the Board assumed responsibility. This will not apply where the person postponed payment of the benefit or to a transfer payment or refund of contributions.
624. *Subsection (5)* allows regulations to treat a person's entitlement to a benefit as arising before the assessment date. This power applies where the member dies before the assessment period commences and the entitlement to the survivor's benefit arises on or after the assessment date but before the Board assumes responsibility for the scheme. This means that should the Board assume responsibility for the scheme and payment of the survivor's benefit is unpaid, then the Board will be required to make payment of this benefit.
625. *Subsection (6)* applies to prescribed rights which a person became entitled to before commencement of the assessment period. Regulations may be made requiring the Board to take prescribed steps in prescribed circumstances. One of the intended uses of this power is to deal with rights to contribution refunds which arose before the assessment period but had not been discharged before that period began.
626. *Subsection (7)* allows Chapter 3 of Part 2 of the Act and the scheme rules to be modified for the purpose of regulations under *subsection (6)*.

Section 167: Modification of Chapter where liabilities discharged during assessment period

627. This section provides that Chapter 3 of Part 2 can be modified by regulations. These regulations will apply where liability to provide a pension or benefit is discharged during an assessment period, or in prescribed circumstances where a prescribed liability is discharged before the commencement of the assessment period. This power is needed to ensure that no compensation is payable in respect of a liability which has been discharged

Section 168: Administration of compensation

628. The Secretary of State may make regulations with regard to the operation and administration of Chapter 3 of Part 2 (pension protection). These may relate in particular to:
- the method and timing of payments of pension compensation;
 - calculating amounts payable;
 - the payment of compensation to another person on behalf of a beneficiary;
 - payments when a beneficiary dies;
 - the recovery of overpayments;
 - the suspension of payments.

Discharge of Board's liabilities

Section 169: Discharge of liabilities in respect of compensation

629. This section enables the Board, once it has assumed responsibility for a scheme, to discharge any of its liabilities to pay compensation to members by: taking out one or more insurance policies; entering into one or more annuity contracts; transferring the benefit of such policies or contracts; payment of cash sum, as prescribed. In the majority of cases it is expected that the liability to pay compensation will be discharged not through this section but by making the compensation payments as they fall due under Chapter 3 of Part 2.

Section 170: Discharge of liabilities in respect of money purchase benefits

630. *Subsection (1)* provides for this section to apply where the Board assumes responsibility for an eligible scheme and one or more members have accrued rights under the scheme to money purchase benefits. *Subsection (2)* provides for regulations to require the Board to ensure that liabilities in respect of money purchase benefits transferred to the Board under [section 161](#) (effect of Board assuming responsibility for a scheme) are discharged in a prescribed manner. *Subsection (3)* provides for regulations under *subsection (2)* to include provision prescribing the manner in which protected rights (within the meaning of section 10 of the Pensions Schemes Act 1993 (civil penalties)) are disbursed.

Equal treatment

Section 171: Equal treatment

631. This section provides the mechanism to ensure that there is no discrimination between men and women arising from the use of the scheme rules when calculating entitlement to pension compensation or when the Board makes other payments (e.g. under [section 170](#)).
632. This section also provides that any of the Board's payment functions which have a discriminatory effect, directly or indirectly, must be modified so that the discriminatory effect is removed.
633. *Subsection (3)* provides this section does not operate where any difference in treatment is genuinely due to a material factor which is not a difference in sex. *Subsection (4)* also enables regulations to provide that the section does not operate in prescribed circumstances.

Relationship with fraud compensation regime

Section 172: Relationship with fraud compensation regime

634. *Subsection (1)* clarifies that no notice transferring responsibility for the scheme to the Board can be given within the first 12 months of the assessment period. This is to give time for a fraud compensation application to be made as the payment of such compensation may affect the scheme's ability to meet the cost for the protected liabilities, and so affect whether the Board must take responsibility for the scheme.
635. *Subsection (2)* states that, where there has been an application for a fraud compensation payment under *section 182*, (cases where fraud compensation can be made) no transfer notice can be given until the Board has decided the application, and the period within which the Board's decision can be reviewed has expired and any review, reconsideration or reference to the PPF Ombudsman against the decision and any appeal against his decision has come to an end.
636. If, during the assessment period the Board decides to make a fraud compensation payment and compensation becomes payable after the relevant time (as defined), then it will be regarded as an asset of the scheme at the relevant time, for the purpose of valuations referred to in *sections 127(2)(a), 128(2)(a), 152(2) or 158(1)*. This does not apply where the compensation payable relates to a reduction in value of assets relating to money purchase benefits.

The fund

Section 173: Pension Protection Fund

637. The Pension Protection Fund is a fund maintained by the Board, and is designed to ensure that income derived from the Pension Protection levies (including the initial levy), and assets transferred from schemes to the Board under *section 161* are kept separate from other assets and monies such as those held in the Fraud Compensation Fund or those relating to the administration of the Board.
638. The Pension Protection Fund comprises of:
- property and rights transferred from schemes to the Board under *section 161(2)(a)*;
 - receipts from the initial levy (under *section 167*) or the pension protection levies (under *section 175*);
 - money borrowed under *section 115* for the purposes of Chapter 3 of Part 2 (pension protection);
 - investment income or capital gain arising from the assets in the Pension Protection Fund (see *subsection (2)*);
 - any repayment of a loan which has been made to trustees or managers during the assessment period so that they can pay scheme benefits which the scheme was unable to pay during the assessment period, and any interest repaid on the loan (see *section 139*);
 - amounts recovered by the Board after a scheme has entered the Pension Protection Fund because the trustees had overpaid an individual during the assessment period (*section 163(4)(a)*) or because the Board overpaid an individual following entry (see *section 168(2)(e)*);
 - any amount which is paid in order to meet a debt owed under *section 40(7)* because a contribution notice has been issued by the Regulator under *section 38*. For example, under *section 38*, the Regulator may issue contribution notices where there is evidence that employers have attempted to prevent the recovery of or, avoid or otherwise than in good faith, reduce their liability for the "employer debt" that has

or might become due under section 75 of the Pensions Act 1995 (deficiencies of assets);

- any property transferred or amounts paid to the Board as required by a restoration order issued by the Regulator under [section 52](#). A restoration order may be issued by the Regulator in order to restore the position of a pension scheme and to protect the Pension Protection Fund against the effect of transactions at an undervalue involving scheme assets;
- any amount paid to the Board because the Regulator has issued a contribution notice where there has been a failure to comply with a restoration order under [section 55](#);
- any amounts transferred from the Fraud Compensation Fund (as set out in [section 187](#));
- additional categories of money required to be paid into the Pension Protection Fund by secondary legislation under [subsection \(1\)\(k\)](#). However, the secondary legislation cannot allow money to be paid into Pension Protection Fund directly or indirectly from the Crown.

639. [Subsection \(2\)](#) states that the Board must credit to the Pension Protection Fund any income or capital gain which arises from the assets held in the fund.

640. [Subsections \(3\)](#) and [\(4\)](#) provide that only the following payments and transfers may be made from the Pension Protection Fund:

- sums required to pay any liabilities of schemes for which the Board assumes responsibility (as set out in [section 161\(2\)\(a\)](#));
- payments of pension compensation to individuals under Chapter 3 of Part 2;
- money required for the repayment of, and the payment of interest on, funds borrowed by the Board as described under [subsection \(1\)\(c\)](#). (There is further detail on borrowing under [section 115](#));
- money required to make loans to trustees or managers unable to meet liabilities for pensions and benefits requiring immediate payments as set out under [section 139](#);
- money required to make payments to individuals who were underpaid during the assessment period;
- money required to make payment of scheme benefits to individuals who were due to receive these payments before the assessment date (the beginning of the assessment period), but who remain unpaid at the point the Board assumes responsibility for the scheme (as set out in [section 166](#));
- sums required to discharge liabilities under [sections 169 or 170](#) – for example, the purchase of annuities to cover money purchase benefits under a hybrid scheme, or the payment of scheme benefits outstanding at the point of entry to the Pension Protection Fund;
- any sums required to meet liabilities imposed on the Board by a restoration order where transactions at an undervalue have occurred ([section 52](#));
- any property (other than sums of money) required to meet liabilities imposed on the Board by a restoration order where it has assumed responsibility for a scheme;
- sums required to meet the cost of transferring foreign property, rights and liabilities from the scheme to the Pension Protection Fund (as set out in [section 161\(5\)](#), and [paragraph 7 of Schedule 6](#));
- sums required for purposes prescribed by regulations.

The Levy

Section 174: Initial Levy

641. Regulations will provide for the imposition of an initial levy on eligible schemes for a prescribed initial period. They must state the factors by reference to which the initial levy will be assessed, the rate of the levy and the time or times during the initial period when the levy, or any instalment of the levy, becomes payable.

Section 175: Pension protection levies

642. *Subsection (1)* requires the Board to impose a risk-based levy and a scheme-based levy in respect of eligible schemes for each financial year falling after the initial period as defined in *section 174*.

643. *Subsection (2)(a)* and *(3)* sets out the factors by reference to which the risk-based levy is to be assessed and *subsection (2)(b)* and *(4)* sets out the factors by reference to which the scheme-based levy is to be assessed.

644. *Subsection (5)* provides that before the beginning of each financial year the Board must determine:

- the factors to be used to assess the pension protection levies,
- the times by reference to which the levies are to be assessed,
- the rate of the levies, and
- the times when the levies become payable

645. *Subsection (6)* allows different risk factors, scheme factors or rates in respect of different schemes. *Subsection (7)* allows the rate to be nil in respect of a description of scheme.

646. The duty to impose these levies is subject to *section 177* (amount to be raised by pension protection levies) and *section 180* (transitional provision).

Section 176: Supplementary provisions about pension protection levies

647. This section sets out the requirement for the Board to consult such persons as it considers appropriate in the manner specified in secondary legislation before determining the pension protection levy factors where:

- it is the first financial year for which pension protection levies are imposed,
- there is a change in a proposed levy rate or factor from the previous year, or
- no consultation has been required under this section in relation to the pension protection levies imposed for the previous two financial years.

648. *Subsection (2)* requires the Board to publish details of any determination of the matters mentioned in *subsection (5)*.

Section 177: Amounts to be raised by the pension protection levies

649. This section sets out restrictions on the amounts to be raised by the pension protection levies.

650. *Subsection (1)* states that the Board must, when determining the pension protection levies, estimate the amount which will be raised by the levies it proposes to impose. *Subsection (2)* states that the Board must not impose levies for a financial year in a form which it estimates will raise an amount exceeding the levy ceiling (as outlined in *section 178*) for the financial year. *Subsection (3)* provides that 80% of the pension

protection levies raised in any one financial year must be raised by the risk-based levy. *Subsection (4)* provides that regulations may modify the levy ceiling for the first financial year after the transitional period provided for by *section 180*. *Subsection (5)* provides that, in the second financial year after the transitional period and for any subsequent years, there shall be a restriction on the maximum amount of pension protection levies. The amount raised cannot exceed the amount raised in the previous year by more than 25%. This percentage can be modified by an order made by the Secretary of State, but he must consult appropriate persons before making such an order.

Section 178: The levy ceiling

651. This section requires the Secretary of State to specify a levy ceiling before the beginning of each financial year. The levy ceiling for the first financial year for which levies under *section 175* are imposed must have the approval of the Treasury. The first levy ceiling set by the Secretary of State is expected to be the amount he estimates would normally be required to be collected by the pension protection levies in a normal year.
652. *Subsection (3)* requires the levy ceiling to be increased each year by the percentage increase in the level of earnings in Great Britain for the review period (as defined in *section 178(4)*) For this purpose the Secretary of State is required by *subsection (5)* to review the general level of earnings for each review period and changes to earnings. He may estimate the general level of earnings in such manner as he thinks appropriate.
653. *Subsection (8)* allows the Secretary of State to specify an increase to the levy ceiling which exceeds the increase in the level of earnings required by *subsection (3)*. He can only do so if the Board makes a recommendation to that effect and the Treasury approves. The Board must consult appropriate persons before making this recommendation.

Section 179: Valuations to determine scheme underfunding

654. This section sets out the way in which valuations will determine scheme underfunding for the purposes of calculating the risk-based pension protection levy. *Subsection (1)* allows for regulations to require trustees or managers of each scheme to provide the Board with an actuarial valuation of the scheme or any other information the Board may require in respect of the assets and protected liabilities of the scheme at such intervals or times as may be determined by regulations.
655. *Subsection (3)* allows for regulations to prescribe how the assets and protected liabilities of schemes and their amount or value are to be determined, calculated and verified. *Subsection (4)* states that subject to any provision made under *subsection (3)* those matters should be determined, calculated and verified with guidance issued by the Board. *Subsection (5)* provides that where a scheme has a rule saying that its liabilities are limited to the amount of its assets, this rule is to be disregarded *Subsection (6)* states that any reference to “assets” does not include assets relating to money purchase benefits.

Section 180: Pension protection levies during the transitional period

656. *Subsection (1)* of this section allows for regulations to modify the provisions relating to the pension protection levies (as set out in *section 175 and 177(2), 177(3)*) for the “transitional period”. The transitional period will immediately follow the initial period in *section 174* and will allow the Board the time it needs to implement a full risk-based levy.
657. Regulations may modify *section 177(2)* so that it applies in the transitional period as if its reference to the levy ceiling were a reference to a lower amount specified in the regulations. *Subsection (2)* states such modifications may only be made with the approval of the Treasury.

Section 181: Calculation, collection and recovery of levies

658. This section applies to the initial levy and the pension protection levies. It provides that these levies are payable to the Board by the trustees or managers of the scheme or any other prescribed person. *Subsection (3)* provides that the Board must determine the schemes which must pay any levy, calculate the amount of the levy to be paid, and notify any person of the amount of their liability and when it is payable. *Subsection (4)* allows the Board to delegate these duties to the Regulator. *Subsection (5)* provides that if schemes are eligible for only part of a year a proportion of the yearly levy is payable which reflects the proportion of the year during which the scheme is eligible. Exceptions to *subsection (5)* will be detailed in regulations. *Subsection (6)* and *(7)* provide for the levies to be a debt due to the Board which is recoverable by the Board or, if the Board determines, by the Regulator. *Subsection (8)* allows regulations to make provision for the collection and recovery of such debts and the circumstances in which the debt may be waived.

Chapter 4 – Fraud Compensation

Entitlement to fraud compensation

Section 182: Cases where fraud compensation payments can be made

659. This section deals with the payment of fraud compensation to occupational pension schemes. It is necessary to make an application for fraud compensation and the requirements to be met by the application will be set out in regulations. Regulations can specify particular schemes and descriptions of schemes which are not entitled to make fraud compensation applications.
660. Compensation will be paid if the value of the assets has been reduced since the ‘relevant date’ and the Board considers that there are reasonable grounds for believing the reduction was attributable to an act or omission constituting an offence prescribed by regulations for the purposes of this section. The relevant date in the case of schemes established under trust is the 6 April 1997 and in other cases a date to be specified by the Secretary of State by order.
661. Compensation will be payable if *subsections (2), (3) or (4)* apply.
662. *Subsection (2)* applies where there is a qualifying insolvency event, a binding scheme failure notice (issued under *section 122(2)(a)*) where a scheme rescue is not possible) and a cessation event has not occurred and is not a possibility in relation to the period set out in paragraph (c). (A cessation event is defined in *subsection (9)*).
663. *Subsection (3)* applies where there has been an application or notification under *section 129* in respect of an eligible scheme that has not had an insolvency event but where the employer is unlikely to continue as a going concern, and the Board has issued a scheme failure notice, which has become binding.
664. *Subsection (4)* applies where a scheme is not an eligible scheme for the purposes of Chapter 3 of Part 2 (e.g. where it is a money purchase scheme). An application for fraud compensation can be made to the Board on the basis that the employer is unlikely to continue as a going concern and other requirements are satisfied (these will be set out in regulations). This section will give entitlement to fraud compensation if in response to such an application the Board issues a scheme failure notice under *section 183(2)* confirming that a scheme rescue is not possible. This notice must become binding.
665. *Subsection (6)* sets out requirements in relation to the “authorised period” – this is the period during which an application for fraud compensation can be made. An application must be made within twelve months of:
- in a case within *subsection (2)* where the scheme is an eligible scheme (under *section 126*) the qualifying insolvency event; or

*These notes refer to the Pensions Act 2004 (c.35)
which received Royal Assent on 18 November 2004*

- in a case within *subsection (2)* where the scheme is not an eligible scheme, the issue of a scheme failure notice under *section 122(2)(a)*; or
 - in a case within *subsection (3)* the application or notification to the Board under *section 129*; or
 - in a case within *subsection (4)*, the time it becomes clear that the employer in relation to a scheme, will not continue as a going concern;
 - the time when the scheme's auditor, actuary, trustees or managers first became aware of the fraud event, if this is later.
666. The Board may extend this period if it considers this appropriate. An application cannot be made once the Board has assumed responsibility for the scheme under Chapter 3 of Part 2..

Section 183: Board's duties in respect of certain applications under section 182

667. This section applies where an application is made by a scheme which is not an eligible scheme for the purposes of Chapter 3 of Part 2 and the employer is not likely to continue as a going concern (and other requirements to be set out in regulations are met).
668. The Board will as soon as reasonably practicable issue a notice that a scheme rescue is not possible or has occurred. *Subsection (3)* provides that it must as soon as reasonably practicable give a copy to the Regulator, the trustees or managers of the scheme, the person who made the application and the insolvency practitioner (and if there is no practitioner, the employer).
669. *Subsection (4)* provides that the notice becomes binding once the period for review has expired and any review, reconsideration and reference to the PPF Ombudsman and reference to any appeal against his decision had been disposed of and the notice has not been revoked, varied or substituted.
670. Where a notice becomes binding, a notice to that effect must be given along with a copy of the binding notice to those mentioned in *subsection (3)*. The form and contents of this notice will be set out in regulations.
671. *Subsection (7)* provides that *section 130* (circumstances in which scheme rescue can or cannot be confirmed by the Board) applies for the purposes of this section.

Section 184: Recovery of value

672. Trustees or managers of schemes which apply for fraud compensation are required to attempt to recover the value of the loss due to fraud where the recovery can be made without undue cost or delay.
673. *Subsection (2)* provides that fraud compensation cannot be made until the Board has set a "settlement date". This is the date after which further recoveries would be unlikely without undue cost or delay. The Board must consult the trustees or managers before setting the date.
674. *Subsections (3)* and *(4)* provide that 'recovery of value' refers to payments received by the scheme in respect of the act or omission which resulted in the reduction of the scheme's assets. This will not include payments from the Board. It is for the Board to decide whether a payment will be classified as a recovery of value.

Section 185: Fraud compensation payments

675. This section sets out the procedures to be followed by the Board when making a fraud compensation payment.

676. *Subsection (2)* permits the Board to set the terms and conditions of a payment, while *subsection (3)* states that total payment must not exceed the value of the loss less any recovered funds. The amount of the payment must be determined in accordance with regulations and must take account of any interim payments made (*subsection (4)*).
677. *Subsection (5)* requires the Board to give written notice of the payment to be made to the trustees or managers, the applicant (if different), the Regulator, and the insolvency practitioner or employer (if there is no insolvency practitioner).

Section 186: Interim payments

678. This section allows the Board to make interim payments to a scheme where it appears that the conditions in *section 182(1)* are satisfied and the trustees or managers would not be able to meet liabilities of a prescribed description. No interim payments may be made once a settlement date has been specified.
679. *Subsection (2)* stipulates that interim payments must not exceed the amounts which will be determined as set out in regulations. Under *subsection (3)*, interim payments can be recovered by the Board if it decides the criteria in *section 182(1)* have not been met or the amount paid was excessive.
680. *Subsection (4)* permits the Board to set the terms and conditions of interim payments, including any requirement for repayment.

Section 187: Board's powers to make fraud compensation transfer payments

681. Where the Board assumes responsibility for a scheme, the Board may make fraud compensation transfer payments to the Pension Protection Fund. This will occur where there had been a reduction in the scheme's assets after the relevant date (as defined by *section 182 (10)*) but before the transfer notice was received by the trustees or managers under *section 160* (transfer notices), ending the assessment period and confirming that the Board of the Pension Protection Fund will assume responsibility for the scheme, *section 182(1)(b)* applies and no application had been made for fraud compensation prior to the Board assuming responsibility for the scheme.
682. Under *subsections (3) and (4)*, the Board is required to attempt to recover the value of the loss ('recovery of value'), where the recovery can be made without undue cost or delay. The trustees' or managers' rights of recovery will have been transferred to the Board when it assumed responsibility for the scheme. The transfer payment cannot be made until all reasonable attempts have been made to recover the loss. A transfer cannot be made until the Board considers it is unlikely to recover anything further without undue cost and delay.
683. *Subsection (5)* provides that "recovery of value" means any increase in the value of the Pension Protection Fund as a result of payment received by the Board that is attributable to the offence that caused the reduction in value.
684. *Subsection (6)* provides that it is for the Board to decide whether a payment it receives is a recovery of value.
685. *Subsection (7)* provides that the amount of fraud compensation transfer payment must not exceed the difference between the reduction in value and any subsequent recoveries.
686. *Subsection (8)* provides that regulations will set out how the Board is to determine the amount of any fraud compensation transfer payment.
687. *Subsection (9)* clarifies that "the relevant date" has the same meaning as in *section 182(10)*. This means that fraud compensation will only be paid in the case of an occupational pension scheme which is established under trust, if the value was reduced after 6 April 1997 and in the case of a scheme which is not established under trust, if the value was reduced after the date specified by an order under *section 182(10)*.

The fund

Section 188: Fraud Compensation Fund

688. As well as the Pension Protection Fund maintained under [section 173](#), the Board has to maintain a Fraud Compensation Fund. This section identifies the amounts to be payable into the Fraud Compensation Fund, and lists the categories of expenditure that may be charged to that Fund. *Subsection (1)* sets out that the Fraud Compensation Fund will consist of:
- designated assets transferred from the Pensions Compensation Board when it is abolished under Part 9 of this Act;
 - the fraud compensation levy;
 - money borrowed from a deposit taker to enable the Board to meet liabilities under this Chapter ([section 115](#));
 - interim compensation payments recovered under [section 186](#) by the Board;
 - any income or capital gain arising from assets of the fund.
689. *Subsection (3)* lists permitted payments out of the Fund:
- sums needed to meet any outstanding liabilities of the Pensions Compensation Board which are designated as liabilities of the Pension Compensation Fund;
 - fraud compensation payments made to the trustees or managers of schemes under [section 185](#);
 - interim compensation payments made to the trustees or managers of schemes under [section 186](#);
 - fraud compensation transfer payments made to the Pension Protection Fund under [section 187](#);
 - capital repayments on loans under [section 115](#) (borrowing) and interest payments on the capital borrowed.
690. Only those amounts specified in *subsection (3)* may be paid out of the Fraud Compensation Fund (*subsection (4)*).

The levy

Section 189: Fraud compensation levy

691. *Subsection (1)* of this section provides that the Board may impose a fraud compensation levy on occupational pension schemes which are eligible for fraud compensation.
692. *Subsection (3)* provides that the levy is payable to the Board by or on behalf of the trustees or managers or other prescribed person. *Subsection (4)* states that a compensation levy must be paid at a time and rate determined by the Board, but must not exceed the prescribed rate. When calculating the levy *subsection (5)* permits the Board to take into account estimated current and future expenditure as well as actual expenditure already incurred. *Subsection (6)* requires the Board to notify prescribed persons of the levy payable.
693. *Subsection (7)* sets out that the Board must determine the schemes to which the levy will apply. It must calculate the amount of the levy in respect of those schemes and notify any person liable to pay it of the amount and dates on which it is payable.
694. *Subsection (8)* enables the Board to delegate its functions under *subsection (7)* to the Regulator.

695. *Subsections (9) and (10)* provide that the amount of levy payable under this section is a debt due to the Board and is recoverable by the Board or by the Regulator on its behalf.
696. Further provision may be made through regulations for the Board to collect and recover the levy and the circumstances in which a levy may be waived.

Chapter 5 – Gathering Information

Section 190: Information to be provided to the Board etc

697. This section sets out that certain people will be required to provide prescribed information automatically to the Board, or to a person carrying out the Board's functions, who is authorised for this purpose, and the circumstances where this will apply will be set out in regulations. In particular, the regulations may set out information which must be provided to enable a determination to be made of a person's entitlement to pension compensation from the Pension Protection Fund.
698. The regulations must specify how individuals are to be notified of the identity of any person who is authorised to receive information on behalf of the Board.

Section 191: Notices requiring provision of information

699. The Board can require persons involved with a scheme to provide a specified document or information which is relevant to the exercise of the Board's functions. The notice will specify the manner in which the information or document must be provided and the time limit for doing so. The notice can also be given on behalf of the Board by a person authorised by it.

Section 192: Entry of premises

700. This section allows the Board to appoint a person who may enter scheme premises in order to gather information that is relevant to the functions of the Board. This provision is not intended to be used in the same way as the Regulator's inspection of premises powers. Instead, it is envisaged that it will be routine for an appointed person to visit scheme premises during an assessment period – normally with prior appointment. While on the premises, the appointed persons may:
- make such examination or inquiry as may be necessary;
 - require persons to produce or secure the production of any required document or any other document for inspection;
 - make copies of any such document;
 - take possession of any document or take other steps to prevent interference with it;
 - require information stored in electronic form to be made accessible;
 - interview persons whom he has reasonable cause to believe to be able to give relevant information.
701. *Subsection (2)* states that “scheme premises” to which the powers in *subsection (1)* relate are those being used for the business of, or for the storage of information relevant to, the employer, or the employer's insolvency practitioner, or used to keep documents relevant to the administration of the scheme. Private dwelling which are not used for the purposes of trade or business are not included.
702. *Subsection (3)* requires an appointed person to produce his certificate of appointment if asked for it when seeking to enter premises, while *subsection (4)* allows the appointed person to be accompanied by such persons as he considers appropriate.

703. *Subsections (5) and (6)* set out that documents which are seized under this section may be kept by the Board for the retention period of 12 months. Where appropriate, the Board may extend that period by a further period of up to 12 months on an ongoing basis.
704. *Subsection (7)* defines “appointed person” as a person authorised by the Board to enter premises in order to gather information in relation to the scheme. In practice, this will often be an actuary or other professional who will be appointed to gather information in order to carry out a valuation during the assessment period.

Section 193: Penalties relating to sections 191 and 192

705. This section is designed to ensure that there are effective criminal sanctions available for use against those who intentionally fail to comply with their obligations under *section 191* (notices) and *section 192* (entry of premises). There are two types of offences as set out below, though it is envisaged that these penalties will only be used in exceptional circumstances. They are designed to act as an important deterrent, and to encourage individuals to provide the information which the Board will need to carry out its role.
706. When a person (without reasonable excuse) fails to comply with a request to provide information or produce a document when required by *section 191*, he will be guilty of an offence which can lead to a fine of up to level 5 on the standard scale. A person will also be liable to such a fine if he intentionally delays or obstructs a person exercising a power under *section 192* or does not secure production of a document or answer a question or provide information.
707. For the more serious offence of deliberately altering, destroying or concealing a document that a person may be asked to produce (again without reasonable excuse), a person will be guilty of an offence, which can lead to a fine or imprisonment or both.
708. This section should be read in conjunction with *section 195* (offence of providing false or misleading information to the Board).

Section 194: Warrants

709. *Subsection (1)* provides that the Board may apply to a justice of the peace for a warrant to enter premises, using force if necessary. A warrant can be issued if the justice of the peace is satisfied by information given on oath by or on behalf of the Board that there are reasonable grounds for believing:
- that there are documents on the premises which have been requested under *section 191 or 192* which have not been provided, or if the documents were requested, they would either not be produced, or would be removed from the premises, hidden, tampered with, or destroyed;
 - that an individual will misuse or misappropriate assets of the scheme, and there is information on the premises which relates to whether the act will be done and could be requested using *sections 191 or 192*.
710. *Subsection (2)* outlines what a warrant can authorise a person, who is appointed by the Board, to do. This person (an inspector) may enter premises (using force if necessary), take possession of any document mentioned in *subsection (1)* or take necessary steps to preserve the document or take copies. The inspector may also require any persons named in the warrant to give an explanation in relation to the document. The inspector may also require that the document be produced in a form in which it may be taken away and is legible.
711. *Subsection (3)* provides that an inspector may be accompanied by any person he considers necessary (such as an expert to carry out a valuation of the property, or an

accountant to identify relevant accounts). *Subsection (4)* sets out that a warrant under this section shall be valid for one month from the date of issue.

712. *Subsection (5)* sets out that documents which are seized by an inspector with a warrant may be retained by the Board (or individuals authorised by the Board) for twelve months from the date of possession. However, *subsection (6)* allows the Board to extend the retention period for a further period of up to twelve months, and they may repeat this extension on an ongoing basis.

Provision of false or misleading information

Section 195: Offence of providing false or misleading information to the Board

713. A person who knowingly or recklessly provides false or misleading information is guilty of an offence if the information was provided to meet a requirement to provide information set out in regulations under *section 190*, in response to a notice under *section 191* in response to a request by an authorised person during entry under *section 192* or if the person providing information was aware that the Board would use the information for the purposes of discharging its functions. That person may be liable to a fine or imprisonment or both. This section should be read in conjunction with *section 193*.

Use of information

Section 196: Use of information

714. This provision ensures that where the Board holds information that is relevant to a particular function, it may also use that information for any other of its functions.

Disclosure of information

Section 197: Restricted information

715. Restricted information must not be disclosed by the Board or its agents except with the consent of the person to whom it relates and of the person who provided the information (if different), or except as allowed by *sections 198 to 203* and *section 235*. “Restricted information” is all information gathered by the Board, or individuals acting on behalf of the Board in carrying out its role. However, it does not include information which has already been made public or if the form of the information would prevent information relating to a person to be ascertained from it.
716. Unauthorised disclosure of restricted information will represent an offence, the penalty for which may be a fine on summary conviction, or a fine and/or imprisonment for up to two years on conviction on indictment.

Section 198: Disclosure for facilitating exercise of functions by the Board

717. Restricted information may be disclosed for the purpose of enabling the Board to exercise its functions. *Subsections (2)* and *(3)* specify that the Board may disclose information to a person qualified to provide advice where such a disclosure is necessary in order to take professional advice which will enable it to carry out any of its functions.

Section 199: Disclosure for facilitating exercise of functions by the Regulator

718. Restricted information may be disclosed to the Regulator for the purpose of enabling it to exercise its functions. The Regulator has a similar power in order to allow it to disclose restricted information to the Board, where the information may assist the Board to exercise its functions.

Section 200: Disclosure for facilitating exercise of functions by other supervisory authorities

719. *Schedule 8* sets out a list of bodies to whom the Board may disclose restricted information where the Board considers the information is relevant to the discharge of the functions of that body specified in the Schedule. The Secretary of State may amend the Schedule after consultation with the Board by adding or removing bodies or functions from the list.

Schedule 8: Restricted information held by Board: certain permitted disclosures to facilitate exercise of functions

720. This Schedule sets out the list of bodies to whom the Board may disclose restricted information where the Board considers the information is relevant to the discharge of the functions of that body specified in the Schedule. The Secretary of State may amend the Schedule after consultation with the Board by adding or removing persons or altering functions in the list.

Section 201: Other permitted disclosures

721. Restricted information may be disclosed to the Secretary of State, the Commissioners of the Inland Revenue and the Department for Social Development in Northern Ireland if the disclosure appears to the Board to be in the interests of members of occupational pension schemes or in the public interest. Disclosure of restricted information is further allowed if the information relates to certain proceedings (see *subsection (2)*), to certain prosecution bodies (see *subsection (4)*), or to a Regulator-appointed trustee. Disclosure may also be made with the Board's consent (see *subsections (8) and (9)*) which will take account of any representations made.

Section 202: Tax Information

722. This section relates to disclosure of information by the Inland Revenue. It provides that the Inland Revenue will not be bound by the restrictions on disclosure imposed by section 182 of the Finance Act 1989, so long as the information is relevant to the exercise of the Board's functions. When the Inland Revenue discloses information to the Board, it should treat it as "restricted information". But by virtue of *subsection (4)*, it may not be further disclosed unless the Commissioners of the Inland Revenue or Customs and Excise have given permission, or criminal proceedings are being brought under this Act, the Pensions Act 1995 or the Pension Schemes Act 1993.

Provision of information to scheme members etc

Section 203: Provision of information to members of schemes etc

723. The Board may be required to provide certain information to certain people as set out in regulations. These regulations may require information to be given to scheme trustees or managers, the employer in relation to the scheme, and certain other individuals involved with the scheme. In particular, once the Board has assumed responsibility for a scheme it will be responsible for notifying individuals of their entitlement to compensation and other similar information.
724. The regulations may also require trustees or managers to disclose information to members of the scheme relating to the Board's involvement with their scheme - for example, details of the valuation sent by the Board to the trustees or managers will be disclosed to members so that they may (if they wish) appeal the calculation of their individual entitlement.
725. *Subsection (2)* allows the Board to voluntarily disclose restricted information to individuals or their representative, where the disclosure relates to the entitlement of that person to compensation. Similarly, *subsection (3)* gives the Board the power to

voluntarily disclose restricted information to individuals, where the information relates to the Board's involvement with a scheme, the Board is satisfied that the disclosure is reasonable and the disclosure is made to all "affected persons". (See [section 197](#) which deals with the disclosure of restricted information.)

726. The term "affected person" is defined under [subsection \(4\)](#) as a member of the scheme or a person nominated to receive information on their behalf, while [subsection \(5\)](#) further clarifies that a nomination may be made in writing by an individual for another person to receive information on their behalf. The nomination becomes effective when the notice is received by the Board, and ceases to be effective when the Board receives a further notice from the member withdrawing the nomination.
727. [Subsection \(6\)](#) also sets out that disclosure of restricted information is permitted in the case of an occupational pension scheme where the disclosure is made to a trustee or manager, any professional adviser, the employer or insolvency practitioner and it is relevant to the exercise of their function. The Board must consider it reasonable to make the disclosure to enable them to carry out their role in relation to the scheme.

Interpretation

Section 204: Sections 190 to 203: interpretation

728. This section provides interpretation of terms for the purpose of [sections 190 to 203](#). The term 'document' is defined. References to 'the Board's functions', 'trustee', 'manager', 'professional adviser' and 'employer' are also explained.

Reports

Section 205: Publishing reports etc

729. This section enables the Board to publish reports in any form (including for example on the internet), and sets out that the reports will be exempt from defamation, unless the reports are made with malice. The provision is designed to allow the Board to publish a variety of reports if it considers it appropriate. For example, this could include reports containing details of consultation exercises, or statistics concerning the Board's functions, or recommendations of good practice for schemes which are taken over by the Board. It will also allow the Board to publish details of its decisions, and its decision-making processes, where it is appropriate to do so

Chapter 6 – Reviews, Appeals and Maladministration

Review etc by the Board

Section 206: Meaning of "reviewable matters"

730. [Subsection \(1\)](#) provides that references in Chapter 6 of the Act to 'reviewable matters' means a matter mentioned in [Schedule 9](#). For example, the issue by the PPF Board of a determination notice under [section 123](#) is listed in [Schedule 9](#).
731. [Subsection \(2\)](#) allows regulations to provide that reference in [Schedule 9](#) to a "failure" is to be read as the Board's failure to do an act, or to make a determination within a prescribed period. Regulations may also provide that reference in [Schedule 9](#) to a "failure" is to be read as not including a failure which first occurs after a prescribed time.
732. Regulations under [subsection \(3\)](#) may suspend the effect of any determination, direction or other act or notice of the Board which relates to a "reviewable matter", until all reviews, reconsiderations, references to the PPF Ombudsman and appeals against his determination have been disposed of and all time limits for requesting reviews have expired.

733. *Subsection (4)* provides for regulations to add reviewable matters to, or delete them from, *Schedule 9*. *Subsection (5)* provides that regulations under *subsection (4)* can make consequential modifications to this Part.

Schedule 9: Reviewable matters

734. This Schedule lists the “reviewable matters” for the purpose of *section 206*.
735. Where an insolvency event has occurred in relation to the employer, *section 122* (insolvency practitioner’s duty to issue notices confirming status of scheme) requires an insolvency practitioner to issue one of the following notices in relation to the occupational pension scheme:
- a “scheme failure notice”, if able to confirm that a scheme rescue is *not* possible;
 - a “withdrawal notice”, if able to confirm that a scheme rescue *has* occurred; or
 - a notice to the effect that he has not been able to confirm whether a scheme rescue is not possible/has occurred.
736. If the Board is satisfied that the insolvency practitioner’s notice was correct, it issues a “determination notice” in accordance with *section 123* (approval of notices issued under *section 122*). The Board’s determination notice, is a reviewable matter under *paragraph 1*. The Board’s failure to issue a determination notice is a reviewable matter under *paragraph 2*.
737. If the Board determines not to approve the notice issued by the insolvency practitioner under *section 122* (insolvency practitioner’s duty to issue notices confirming status of scheme); or the insolvency practitioner has failed to issue a notice under that section, the Board is required, under *section 124* (Board’s duty where there is a failure to comply with *section 122*) to issue the notice that the insolvency practitioner should have issued. The notice issued by the Board (or the Board’s failure to issue the required notice) is reviewable under *paragraph 3*.
738. *Section 130* (Board’s duty where application or notification received under *section 129*) requires a scheme’s trustees/managers to apply for the Board to assume responsibility for the scheme if they believe that the employer is unlikely to continue as a going concern and requirements to be prescribed (under *section 129(1)*) are met. If the Regulator becomes aware that the circumstances which would require such an application exist, it must notify the Board accordingly (*section 129(4)*). In either of these circumstances, under *section 130* (Board’s duty where application or notification received under *section 129*) the Board is required to issue either a “scheme failure notice” confirming that a scheme rescue is not possible, or a “withdrawal notice” if a scheme rescue has occurred. *Paragraph 4* allows a review to be requested in respect of the Board’s determination to issue either a “scheme failure notice” or a “withdrawal notice”. A review may also be requested if the Board fails to issue such a notice.
739. *Paragraph 5* provides that any direction given, during an assessment period, by the Board under *section 134(2)*, (the investment of the scheme’s assets, for example) including any variation or revocation of a direction, can be reviewed.
740. In general terms, *section 135* (restrictions on winding up, discharge of liabilities etc) precludes a scheme that is eligible to enter the Pension Protection Fund from starting to wind up during an assessment period or from otherwise discharging any liabilities of the scheme. However, the Board may validate (or not validate) any actions by a scheme’s trustees or managers to wind up the scheme where such restrictions apply. *Paragraph 6* allows the Board’s determination to be reviewed.
741. *Section 139* (loans to pay scheme benefits) provides for the Board to make short term loans to eligible schemes, to enable the trustees or managers to pay the Pension Protection Fund level of benefits when the scheme is unable to do so during an

assessment period. The Board's determination under [section 139\(2\)](#) regarding the making of a loan, the amount of any such loan and the failure to make such a loan is reviewable under [paragraph 7](#).

742. [Paragraph 8](#) provides for the Board's failure to obtain a valuation under [section 143\(2\)](#)(Board's obligation to obtain valuation of assets and protected liabilities) to be reviewed.
743. The Board's approval of the valuation under [section 144](#)(approval of valuation), or failure to approve the valuation, may be reviewed under [paragraph 9](#).
744. The Board of the Pension Protection Fund may refuse to assume responsibility for an occupational pension scheme if:
- An eligible scheme has not satisfied the eligibility conditions throughout a prescribed period under [section 146](#)(schemes which become eligible schemes); or
 - A new scheme has been created to replace an existing scheme under [section 147](#)(new schemes created to replace existing scheme).
745. The Board's determination to issue a withdrawal notice, or failure to do so, in either of these situations, is reviewable.
746. In certain circumstances where a former insolvency practitioner has not been able to confirm whether a scheme rescue has occurred/is not possible, he issues a notice to the Board to this effect ([section 122\(4\)](#) refers). Following receipt of that notice, the Board is required to issue a determination notice if satisfied that the insolvency practitioner's notice was correct ([section 123](#)).
747. When the insolvency practitioner's notice becomes binding, if the Board is able to decide that no insolvency event has occurred (or is likely to occur within six months from the date that the insolvency practitioner issued the [section 122\(4\)](#) notice), it issues a withdrawal notice. Conversely, if the Board is unable to decide that no insolvency event will occur, it waits until the end of the six month period, and if no insolvency event has occurred, it must issue a withdrawal notice. The issue of the withdrawal notice by the Board under [section 148](#) (or the failure to issue it) is reviewable under [paragraph 11](#).
748. Where it has been confirmed that a scheme rescue is not possible during an assessment period and the Pension Protection Fund valuation has become binding, [section 154](#)(requirement to wind up schemes with sufficient assets to meet protected liabilities) requires the scheme to be wound up by the trustees or managers if the scheme's assets are sufficient to meet its Pension Protection Fund level of liabilities. In such cases, the scheme's trustees or managers can apply to the Board under [section 151](#)(application for reconsideration).
749. [Section 152](#)(duty to assume responsibility following reconsideration) requires the Board of the Pension Protection Fund to issue a determination notice to assume responsibility for the scheme at reconsideration, if satisfied that certain criteria are met regarding the value of the scheme's assets at the reconsideration date. The Board's determination notice under [section 152\(3\)](#), or failure to issue such a notice, is reviewable under [paragraph 12](#).
750. Where a scheme rescue is not possible for a large scheme and the scheme has sufficient assets to meet its Pension Protection Fund level of liabilities, the trustees or managers must apply to the Board for authority to continue as a closed scheme if they are unable to obtain a full buy-out quotation. The Board is then required to issue a determination to the scheme. The determination notice issued by the Board under [section 153\(6\)](#) (closed schemes) is reviewable under [paragraph 13](#), as is the Board's failure to issue such a notice.
751. Where it has been confirmed that a scheme rescue is not possible during an assessment period and the Pension Protection Fund valuation has become binding, the scheme is to

be wound up by the trustees or managers if the scheme's assets are sufficient to meet its Pension Protection Fund level of liabilities in accordance with [section 154](#)(requirement to wind up schemes with sufficient assets to meet protected liabilities). In such cases, the Board may direct the scheme trustees or managers as to the manner of winding up the scheme. The Board may also vary or revoke a direction that it has given. Under [paragraph 14](#) any direction given by the Board is reviewable, as is a variation or revocation of a Board's direction.

752. [Paragraph 15](#) provides for a review to be requested where the Board has failed to issue a transfer notice under [section 160](#)(transfer notice).
753. [Paragraph 16](#) deals with the Board's determination of a person's entitlement to Pension Protection Fund compensation. So a person can challenge, for example, the number of years' accrued rights on which his compensation is based. A review may also be requested where the Board fails to determine a person's entitlement to Pension Protection Fund compensation.
754. Where the Board of the Pension Protection Fund assumes responsibility for a scheme, and the benefits paid (excluding money purchase benefits) during the assessment period were less than the entitlement rate, [section 163](#)(adjustments to be made where the board assumes responsibility for a scheme) requires the shortfall to be paid, with interest. [Paragraph 17](#) allows for a review to be requested where the Board has failed to pay the shortfall.
755. The Board's determination, or failure to reach a determination, under [section 181\(3\)\(a\)](#)(calculation, collection and recovery of levies) that a scheme is eligible to pay the initial or pension protection levy is reviewable under [paragraph 18](#).
756. The Board's calculation under [section 181\(3\)\(b\)](#)(calculation, collection and recovery of levies) in relation to the amount of initial or pension protection levies payable is reviewable under [paragraph 19](#). (So where the calculation was based on 500 members, for example, but the scheme had only 50 members, this matter is reviewable. But the formula for calculating the levies is not reviewable).
757. The Board can make fraud compensation payments to occupational pension schemes in circumstances to be prescribed under [section 182\(1\)](#) (cases where fraud compensation payments can be made). [Paragraph 20](#) allows for the Board's determination of whether to make a fraud compensation payment, the amount of any payment and the Board's failure to make such a payment, to be reviewed.
758. This paragraph deals with certain types of schemes that are not eligible for Pension Protection Fund compensation, but can apply for fraud compensation (typically most defined contribution schemes). In such cases, if the Board decides that a scheme rescue has occurred or is not possible, [section 183\(2\)](#) (Board's duties in respect of certain applications under section 182) requires the Board to issue a notice to that effect. [Paragraph 21](#) allows the Board's notice (or a failure to issue the notice) to be reviewed.
759. The Board may not make a fraud compensation payment unless it has determined a settlement date (i.e. a date after which no further recoveries of value are likely to be made) under [section 184\(2\)](#)(recovery of value). The Board's determination regarding the settlement date, and its failure to determine such a date, are reviewable under [paragraph 22](#).
760. In fraud compensation cases, if the scheme trustees or managers receive a payment, [section 184\(4\)](#)(recovery of value) requires the Board to determine whether the payment is to be treated as relating to the alleged fraud. The Board's determination can be reviewed under [paragraph 23](#), as can the Board's failure to make a determination.
761. [Section 186](#)(interim payments) allows the Board to make interim fraud compensation payments in certain circumstances. [Paragraph 24](#) allows the making of an interim

payment, the amount of any such payment and the failure to make a payment to be reviewed.

762. Fraud compensation payments (including interim payments), made by the Board may be subject to certain terms and conditions (*sections 185(2)*(fraud compensation payments) and *186(4)*(interim payments) refer). The Board's terms and conditions may be reviewed under *paragraph 25*.
763. In general terms, where interim fraud compensation payments have been made, *section 186*(interim payments) provides for the Board to recover any amount that it determines was excessive. The Board's determination of the amount that was excessive is reviewable under *paragraph 26*.
764. The Board can determine that a payment is to be transferred from the fraud compensation fund to the pension protection fund. *Section 187(4)*(Board's powers to make fraud compensation transfer payments), provides that such payments cannot be made before the date determined by the Board (i.e. the date that no further recoveries in relation to the fraud are likely to be obtained without disproportionate costs and within a reasonable time). The Board's determination regarding the date can be reviewed under *paragraph 27*.
765. *Section 187(6)* requires the Board to determine whether anything received by it relates to repayment in an alleged fraud case. The Board's determination can be reviewed under *paragraph 28*.
766. A determination by the Board (or failure to reach a determination) under *section 189(7)(a)*(fraud compensation levy) that a scheme is eligible to pay a fraud compensation levy is reviewable under *paragraph 29*.
767. *Paragraph 30* allows for the Board's calculation to be reviewed in relation to the amount of fraud levy payable (as calculated under *section 189(7)(b)*(fraud compensation levy)).

Section 207: Review and reconsideration by the Board of reviewable matters

768. This section is a mandatory power, under which regulations must provide for the two stage internal process under which reviewable matters (as set out in *Schedule 9*) may be reviewed.
769. Regulations must provide that where an interested person makes a written application, on any matter which is reviewable under *Schedule 9*, the Board must give a 'review decision'. Where a further written application is made for a review of that "review decision" the matter must be considered by the Reconsideration Committee of the Board, which will issue a "reconsideration decision".
770. *Subsection (3)* provides that regulations may also permit reviews and reconsiderations to be made without a written application being made. (This gives the Board the power to review a decision of its own volition.)
771. *Subsection (4)* sets out the powers the Board will have under regulations when reviewing or reconsidering a decision. For example it will be able to vary or revoke an earlier decision.
772. *Subsection (5)* provides that regulations must make provision regarding making applications and reaching and giving decisions.

Section 208: Investigation by the Board of complaints of maladministration

773. This section provides that regulations must make provision for dealing with complaints of maladministration against the Board of the Pension Protection Fund.

774. *Subsection (2)* provides that maladministration complaints may be made by a person who is, or might become entitled to compensation from the Pension Protection Fund. Complaints may also be made by a person who has made, or who may make, an application for fraud compensation under *section 182* (cases where fraud compensation may be made).
775. *Subsection (5)* provides that the Board of the Pension Protection Fund may pay compensation where a person has sustained injustice in consequence of the maladministration by the Board, or any person exercising functions on its behalf.

The Pension Protection Fund Ombudsman

Section 209: The Ombudsman for the Board of the Pension Protection Fund

776. This section provides for the creation of the Ombudsman for the Board of the Pension Protection Fund (“PPF Ombudsman”). *Subsection (2)* requires the Secretary of State to appoint the PPF Ombudsman on such terms and conditions as he determines. *Subsection (4)* provides that the Secretary of State may (by subordinate legislation) make provision for payment of the PPF Ombudsman (e.g. pensions, expenses, salary and reimbursement of expenses). The subordinate legislation will also make provision in relation to staff, delegation of functions to staff, charging fees and powers to obtain information and documents required to perform the PPF Ombudsman’s functions. The costs incurred under the subordinate legislation made under *subsection (4)* are to be paid to the PPF Ombudsman by the Secretary of State out of the money provided by Parliament, in accordance with *subsection (6)*. *Subsection (7)* provides for the imposition of a levy in respect of eligible schemes (*section 126*) (eligible schemes) for the purpose of reimbursing the Secretary of State’s expenditure under *subsection (6)*. Where the levy is imposed under *subsection (7)* some provisions in *section 117* (administrative levy) apply.

Section 210: Deputy PPF Ombudsman

777. This section provides for the Secretary of State to appoint one or more persons to act as deputy to the PPF Ombudsman. *Subsection (2)* requires the Secretary of State to determine the terms and conditions on which any deputy PPF Ombudsman is appointed. *Subsection (4)* sets out the circumstances in which a Deputy PPF Ombudsman may carry out the functions of the PPF Ombudsman. The circumstances are:
- where there is a vacancy in that office;
 - at any time when the PPF Ombudsman is for any reason unable to discharge his functions; and
 - at any other time, with the consent of the Secretary of State (such as when the PPF Ombudsman’s workload means the assistance of a Deputy is appropriate).

Section 211: Status etc of the PPF Ombudsman and deputies

778. *Subsections (1)* and *(2)* disqualify the PPF Ombudsman and any deputy from being either a member of the House of Commons or a Member of the Northern Ireland Assembly. *Subsection (3)* applies section 1 of the Superannuation Act 1972 to the PPF Ombudsman, his staff and any deputies. This allows them to have access to a civil service pension. *Subsection (4)* requires the PPF Ombudsman to pay to the Minister for the Civil Service sums attributable to those pensions. *Subsection (5)* provides an avenue for complaints of alleged maladministration against the staff of the PPF Ombudsman. Such complaints will be dealt with by the Parliamentary Ombudsman.

Section 212: Annual reports to Secretary of State

779. This section requires the PPF Ombudsman to prepare an annual report on the discharge of his functions. The report is to be sent to the Secretary of State as soon as practicable after the end of the relevant financial year. The Secretary of State must then arrange for the report to be published.

References to the PPF Ombudsman

Section 213: Reference of reviewable matter to the PPF Ombudsman

780. This section provides that regulations must make provision for prescribed persons to be able to refer reconsideration decisions under *section 207* (review and reconsideration by the Board of reviewable matters) to the PPF Ombudsman. *Subsection (3)* provides that the regulations must require the PPF Ombudsman to conduct an oral hearing or dispose of the matter by written representations. The PPF Ombudsman shall be allowed to consider any evidence not previously available to the Board or the Reconsideration Committee of the Board.
781. *Subsection (4)* provides that regulations may make provision in relation to investigations and determinations of the PPF Ombudsman. For example, the regulations may deal with rights to make representations to the PPF Ombudsman, costs and expenses, and staying certain proceedings in prescribed circumstances. *Subsection (5)* provides that regulations may also make other provision. For example, they may confer power on the PPF Ombudsman to direct the Board to pay such compensation as he may direct, and to confer on the Board such other powers as may be required when the PPF Ombudsman remits a matter to it.

Section 214: Investigation by PPF Ombudsman of complaints of maladministration

782. This section provides that regulations may make provision for the investigation and determination by the PPF Ombudsman of complaints of maladministration made against the Board. *Subsection (2)* provides that regulations must make provision for who may make references, the manner of making them, the procedure for investigations and determinations, the powers of the PPF Ombudsman when making determinations, conferring necessary powers on the Board, about notification of references, determinations and directions, rights to make representations, the consideration of evidence by the PPF Ombudsman, cost and expenses etc.

Section 215: Referral of questions of law

783. Where a “reviewable matter” or complaint of maladministration has been referred to the PPF Ombudsman for a determination, he may refer any question of law that arises to the High Court (or Court of Session in Scotland).

Section 216: Publishing reports etc

784. *Subsection (1)* provides for the PPF Ombudsman to publish a report of any investigation undertaken and its result. *Subsection (2)* provides that, for defamation purposes, any matter published by the PPF Ombudsman under Chapter 6 shall be absolutely privileged.

Section 217: Determinations of the PPF Ombudsman

785. This section provides that a determination or direction of the PPF Ombudsman is binding subject to a right of appeal, on a point of law, to the High Court or, in Scotland, to the Court of Session. *Subsection (2)* provides that a determination or direction is enforceable as if it were a judgement or order of court. Similar provision is made for enforcement in Scotland.

Section 218: Obstruction etc of the PPF Ombudsman

786. If the PPF Ombudsman is obstructed in the performance of his functions or if any person is guilty of an act or omission in relation to certain PPF Ombudsman investigations, this section provides that he may certify the offence to a court. The court may then inquire into the matter and deal with the person as if the offence in question had been made in relation to the court. *Subsection (4)* makes similar provision in Scotland.

Chapter 7 – Miscellaneous

Backdating the winding up of eligible schemes

Section 219: Backdating the winding up of schemes

787. This section enables the winding up of a scheme to be backdated to before the date of the qualifying insolvency event (see [section 127](#) (duty to assume responsibility for schemes following an insolvency event)) or the date of a notification or application under [section 129](#) (applications and notifications for the purposes of section 128).
788. This may be done provided that the winding up begins before the following:
- when a scheme failure notice or a withdrawal notice under [section 122\(2\)](#) becomes binding; or
 - when a notice from an insolvency practitioner that he cannot confirm whether a scheme rescue is not possible or has occurred, has become binding in a case where [section 148](#) does not apply (e.g. because the Board has previously withdrawn under [section 147](#)); or
 - when a withdrawal notice under [section 148](#) becomes binding.
789. *Subsection (4)* provides that the Regulator may direct persons to take steps necessary as a result of the backdating of the winding up and any failure to comply with a direction will render that person subject to a civil penalty (section 10 of the Pensions Act 1995 (civil penalties)).

Section 220: Pension sharing

790. *Subsection (1)* provides that regulations may modify Part 2 where there has been a pension sharing order against a member of an eligible scheme. Regulations will deal with where a member's shareable rights (his accrued rights) have been reduced so as to give a former spouse a pension credit which will be provided by the scheme.
791. Regulations will also deal with where a pension sharing order has been made before the Board assumes responsibility for a scheme, but takes effect after that date. The Board will have to provide pension compensation in respect of the person entitled to the pension credit (who becomes a member of the scheme). The Board will be responsible for implementing the pension sharing order and regulations will be made using the power in *subsection (2)* to deal with this. These regulations will amend Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999.