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# Pensions Act 2004

## 2004 CHAPTER 35

### PART 2

#### THE BOARD OF THE PENSION PROTECTION FUND

### CHAPTER 3

#### PENSION PROTECTION

##### **Modifications etc. (not altering text)**

- C1** Pt. 2 modified in part (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 in so far as not already in force (except ch. 4)) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, **2-60**, 71, 72
- C2** Pt. 2 modified (8.3.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [The Pension Protection Fund \(Partially Guaranteed Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/277\)](#), regs. 1(1), **2-11**
- C3** Pt. 2 applied in part (with modifications) (20.7.2005 for specified purposes, 1.9.2005 for specified purposes, 5.12.2005 for specified purposes) by [The Financial Assistance Scheme Regulations 2005 \(S.I. 2005/1986\)](#), regs. 1(1), 4, **Sch. 1**

#### *Eligible schemes*

### **126 Eligible schemes**

- (1) Subject to the following provisions of this section, in this Part references to an “eligible scheme” are to an occupational pension scheme which—
  - (a) is not a money purchase scheme, and
  - (b) is not a prescribed scheme or a scheme of a prescribed description.
- (2) A scheme is not an eligible scheme if it is being wound up immediately before the day appointed by the Secretary of State by order for the purposes of this subsection.

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- (3) Regulations may provide that where—
- (a) an assessment period begins in relation to an eligible scheme (see section 132), and
  - (b) after the beginning of that period, the scheme ceases to be an eligible scheme, the scheme is, in such circumstances as may be prescribed, to be treated as remaining an eligible scheme for the purposes of such of the provisions mentioned in subsection (4) as may be prescribed.
- (4) Those provisions are—
- (a) any provision of this Part, and
  - (b) any other provision of this Act in which “eligible scheme” has the meaning given by this section.
- (5) Regulations may also provide that a scheme which would be an eligible scheme in the absence of this subsection is not an eligible scheme in such circumstances as may be prescribed.

**Modifications etc. (not altering text)**

- C4** S. 126 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, **61**, 63 and amendment to earlier affecting provision (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), **10(4)**
- C5** S. 126(2) power exercised: 6.4.2005 appointed by [S.I. 2005/599](#), art. 2

**Commencement Information**

- I1** S. 126(1)(a) in force at 1.4.2005 by [S.I. 2005/275](#), art. 2(6), **Sch. Pt. 6**
- I2** S. 126(1)(b)(5) in force at 10.2.2005 for specified purposes and at 1.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(2), **Sch. Pt. 2**
- I3** S. 126(2) in force at 10.2.2005 for specified purposes and 8.3.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(1), **Sch. Pt. 1**
- I4** S. 126(3) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**
- I5** S. 126(4) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

*Circumstances in which Board assumes responsibility for eligible schemes*

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

- (1) This section applies where a qualifying insolvency event has occurred in relation to the employer in relation to an eligible scheme.
- (2) The Board must assume responsibility for the scheme in accordance with this Chapter if—
  - (a) the value of the assets of the scheme at the relevant time was less than the amount of the protected liabilities at that time (see sections 131 and 143),
  - (b) after the relevant time a scheme failure notice is issued under section 122(2) (a) in relation to the scheme and that notice becomes binding, and

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- (c) a withdrawal event has not occurred in relation to the scheme in respect of a withdrawal notice which has been issued during the period—
  - (i) beginning with the occurrence of the qualifying insolvency event, and
  - (ii) ending immediately before the issuing of the scheme failure notice under section 122(2)(a),and the occurrence of such a withdrawal event in respect of a withdrawal notice issued during that period is not a possibility (see section 149).
- (3) For the purposes of this section, in relation to an eligible scheme an insolvency event (“the current event”) in relation to the employer is a qualifying insolvency event if—
  - (a) it occurs on or after the day appointed under section 126(2), and
  - (b) it—
    - (i) is the first insolvency event to occur in relation to the employer on or after that day, or
    - (ii) does not occur within an assessment period (see section 132) in relation to the scheme which began before the occurrence of the current event.
- (4) For the purposes of this section—
  - (a) the reference in subsection (2)(a) to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules, and
  - (b) “the relevant time” means the time immediately before the qualifying insolvency event occurs.
- (5) This section is subject to sections 146 and 147 (cases where Board must refuse to assume responsibility for a scheme).

**Modifications etc. (not altering text)**

- C6** S. 127 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, **64(1)** and amendment to earlier affecting provision (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), **10(4)**

**Commencement Information**

- I6** S. 127 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

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

- (1) This section applies where, in relation to an eligible scheme, the trustees or managers of the scheme—
  - (a) make an application under subsection (1) of section 129 (a “section 129 application”), or
  - (b) receive a notice from the Board under subsection (5)(a) of that section (a “section 129 notification”).
- (2) The Board must assume responsibility for the scheme in accordance with this Chapter if—
  - (a) the value of the assets of the scheme at the relevant time was less than the amount of the protected liabilities at that time (see sections 131 and 143),

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- (b) after the relevant time the Board issues a scheme failure notice under section 130(2) in relation to the scheme and that notice becomes binding, and
- (c) a withdrawal event has not occurred in relation to the scheme in respect of a withdrawal notice which has been issued during the period—
  - (i) beginning with the making of the section 129 application or, as the case may be, the receipt of the section 129 notification, and
  - (ii) ending immediately before the issuing of the scheme failure notice under section 130(2),
 and the occurrence of such a withdrawal event in respect of a withdrawal notice issued during that period is not a possibility (see section 149).
- (3) In subsection (2)—
  - (a) the reference in paragraph (a) to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules, and
  - (b) “the relevant time” means the time immediately before the section 129 application was made or, as the case may be, the section 129 notification was received.
- (4) An application under section 129(1) or notification under section 129(5)(a) is to be disregarded for the purposes of subsection (1) if it is made or given during an assessment period (see section 132) in relation to the scheme which began before the application was made or notification was given.
- (5) This section is subject to sections 146 and 147 (cases where Board must refuse to assume responsibility for a scheme).

**Modifications etc. (not altering text)**

- C7** S. 128 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 64(2) and amendment to earlier affecting provision (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), **10(4)**

**Commencement Information**

- I7** S. 128 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**129 Applications and notifications for the purposes of section 128**

- (1) Where the trustees or managers of an eligible scheme become aware that—
  - (a) the employer in relation to the scheme is unlikely to continue as a going concern, and
  - (b) the prescribed requirements are met in relation to the employer,
 they must make an application to the Board for it to assume responsibility for the scheme under section 128.
- (2) Where the Board receives an application under subsection (1), it must give a copy of the application to—
  - (a) the Regulator, and
  - (b) the employer.

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- (3) An application under subsection (1) must—
  - (a) be in the prescribed form and contain the prescribed information, and
  - (b) be made within the prescribed period.
- (4) Where the Regulator becomes aware that—
  - (a) the employer in relation to an eligible scheme is unlikely to continue as a going concern, and
  - (b) the requirements mentioned in subsection (1)(b) are met in relation to the employer,it must give the Board a notice to that effect.
- (5) Where the Board receives a notice under subsection (4), it must—
  - (a) give the trustees or managers of the scheme a notice to that effect, and
  - (b) give the employer a copy of that notice.
- (6) The duty imposed by subsection (1) does not apply where the trustees or managers of an eligible scheme become aware as mentioned in that subsection by reason of a notice given to them under subsection (5).
- (7) The duty imposed by subsection (4) does not apply where the Regulator becomes aware as mentioned in that subsection by reason of a copy of an application made by the trustees or managers of the eligible scheme in question given to the Regulator under subsection (2).
- (8) Regulations may require notices under this section to be in the prescribed form and contain the prescribed information.

**Modifications etc. (not altering text)**

- C8** S. 129 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, **65(1)** and amendment to earlier affecting provision (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), **10(4)**

**Commencement Information**

- I8** S. 129(1)(a)(2)(4)-(7) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**
- I9** S. 129(1)(b)(3)(8) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

**130 Board’s duty where application or notification received under section 129**

- (1) This section applies where the Board—
  - (a) receives an application under subsection (1) of section 129 and is satisfied that paragraphs (a) and (b) of that subsection are satisfied in relation to the application, or
  - (b) is notified by the Regulator under section 129(4).
- (2) If the Board is able to confirm that a scheme rescue is not possible, it must as soon as reasonably practicable issue a notice to that effect (a “scheme failure notice”).

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- (3) If the Board is able to confirm that a scheme rescue has occurred, it must as soon as reasonably practicable issue a notice to that effect (a “withdrawal notice”).
- (4) The Board must, as soon as reasonably practicable, give a copy of any notice issued under subsection (2) or (3) to—
  - (a) the Regulator,
  - (b) the trustees or managers of the scheme, and
  - (c) the employer.
- (5) For the purposes of this section—
  - (a) the Board is able to confirm that a scheme rescue has occurred in relation to an occupational pension scheme if, and only if, it is able to confirm such matters as are prescribed for the purposes of this paragraph, and
  - (b) the Board is able to confirm that a scheme rescue is not possible in relation to such a scheme if, and only if, it is able to confirm such matters as are prescribed for the purposes of this paragraph.
- (6) For the purposes of this Part a notice issued under subsection (2) or (3) is not binding until—
  - (a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
  - (b) if the issue of the notice is so reviewed—
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
    - (iii) any appeal against his determination or directions,
 has been finally disposed of and the notice has not been revoked, varied or substituted.
- (7) Where a notice issued under subsection (2) or (3) becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—
  - (a) the Regulator,
  - (b) the trustees or managers of the scheme, and
  - (c) the employer.
- (8) Notices under this section must be in the prescribed form and contain such information as may be prescribed.
- (9) A notice given under subsection (7) in relation to a withdrawal notice under subsection (3) which has become binding must state the time from which the Board ceases to be involved with the scheme (see section 149).

**Modifications etc. (not altering text)**

- C9** S. 130 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 65(2) and amendment to earlier affecting provision (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), **10(4)**

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#### **Commencement Information**

- I10** S. 130(1)-(4)(6)(7) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)
- I11** S. 130(5)(8) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)

### **131 Protected liabilities**

- (1) For the purposes of this Chapter the protected liabilities, in relation to an eligible scheme, at a particular time (“the relevant time”) are—
- (a) the cost of securing benefits for and in respect of members of the scheme which correspond to the compensation which would be payable, in relation to the scheme, in accordance with the pension compensation provisions (see section 162) if the Board assumed responsibility for the scheme in accordance with this Chapter,
  - (b) liabilities of the scheme which are not liabilities to, or in respect of, its members, and
  - (c) the estimated cost of winding up the scheme.
- (2) For the purposes of determining the cost of securing benefits within subsection (1)(a), references in sections 140 to 142 and Schedule 7 (pension compensation provisions) to the assessment date are to be read as references to the date on which the time immediately after the relevant time falls.

#### **Commencement Information**

- I12** S. 131 in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)

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

### **132 Assessment periods**

- (1) In this Part references to an assessment period are to be construed in accordance with this section.
- (2) Where, in relation to an eligible scheme, a qualifying insolvency event occurs in relation to the employer, an assessment period—
- (a) begins with the occurrence of that event, and
  - (b) ends when—
    - (i) the Board ceases to be involved with the scheme (see section 149),
    - (ii) the trustees or managers of the scheme receive a transfer notice under section 160, or
    - (iii) the conditions in section 154(2) (no scheme rescue but sufficient assets to meet protected liabilities etc) are satisfied in relation to the scheme,whichever first occurs.
- (3) In subsection (2) “qualifying insolvency event” has the meaning given by section 127(3).

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- (4) Where, in relation to an eligible scheme, an application is made under section 129(1) or a notification is received under section 129(5)(a), an assessment period—
- (a) begins when the application is made or the notification is received, and
  - (b) ends when—
    - (i) the Board ceases to be involved with the scheme (see section 149),
    - (ii) the trustees or managers of the scheme receive a transfer notice under section 160, or
    - (iii) the conditions in section 154(2) (no scheme rescue but sufficient assets to meet protected liabilities etc) are satisfied in relation to the scheme,
 whichever first occurs.
- (5) For the purposes of subsection (4) an application under section 129(1) or notification under section 129(5)(a) is to be disregarded if it is made or given during an assessment period in relation to the scheme which began before the application was made or notification was given.
- (6) This section is subject to section 159 (which provides for further assessment periods to begin in certain circumstances where schemes are required to wind up or continue winding up under section 154).

**Modifications etc. (not altering text)**

- C10** S. 132 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, **66** and amendment to earlier affecting provision (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), **10(4)**

**Commencement Information**

- I13** S. 132(1)-(5) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**133 Admission of new members, payment of contributions etc**

- (1) This section applies where there is an assessment period in relation to an eligible scheme.
- (2) No new members of any class may be admitted to the scheme during the assessment period.
- (3) Except in prescribed circumstances and subject to prescribed conditions, no further contributions (other than those due to be paid before the beginning of the assessment period) may be paid towards the scheme during the assessment period.
- (4) Any obligation to pay contributions towards the scheme during the assessment period (including any obligation under section 49(8) of the Pensions Act 1995 (c. 26) to pay amounts deducted corresponding to such contributions) is to be read subject to subsection (3) and section 150 (obligation to pay contributions when assessment period ends).
- (5) No benefits may accrue under the scheme rules to, or in respect of, members of the scheme during the assessment period.



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- (6) Subsection (5) does not prevent any increase, in a benefit, which would otherwise accrue in accordance with the scheme or any enactment.

This subsection is subject to section 138 (which limits the scheme benefits payable during an assessment period).

- (7) Subsection (5) does not prevent the accrual of money purchase benefits to the extent that they are derived from income or capital gains arising from the investment of payments which are made by, or in respect of, a member of the scheme.
- (8) Where a person is entitled to a pension credit derived from another person’s shareable rights under the scheme, nothing in this section prevents the trustees or managers of the scheme discharging their liability in respect of the credit under Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 (c. 30) (sharing of rights under pension arrangements) by conferring appropriate rights under the scheme on that person.
- (9) In subsection (8)—  
“appropriate rights” has the same meaning as in paragraph 5 of Schedule 5 to that Act (pension credits: mode of discharge);  
“shareable rights” has the same meaning as in Chapter 1 of Part 4 of that Act (sharing of rights under pension arrangements).
- (10) Any action taken in contravention of this section is void.
- (11) Disregarding subsection (10), section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with this section.

#### Commencement Information

**114** S. 133(1)(2)(4)-(11) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)

**115** S. 133(3) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)

## 134 Directions

- (1) This section applies where there is an assessment period in relation to an eligible scheme.
- (2) With a view to ensuring that the scheme’s protected liabilities do not exceed its assets or, if they do exceed its assets, that the excess is kept to a minimum, the Board may give a relevant person in relation to the scheme directions regarding the exercise during that period of his powers in respect of—
- the investment of the scheme’s assets,
  - the incurring of expenditure,
  - the instigation or conduct of legal proceedings, and
  - such other matters as may be prescribed.
- (3) In subsection (2)—
- “relevant person” in relation to a scheme means—
    - the trustees or managers of the scheme,

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- (ii) the employer in relation to the scheme, or
  - (iii) such other persons as may be prescribed, and
  - (b) the reference to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules.
- (4) The Board may revoke or vary any direction under this section.
- (5) Where a direction under this section given to the trustees or managers of a scheme is not complied with, section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any such trustee or manager who has failed to take all reasonable steps to secure compliance with the direction.
- (6) That section also applies to any other person who, without reasonable excuse, fails to comply with a direction given to him under this section.

#### **Modifications etc. (not altering text)**

- C11** S. 134 applied (with modifications) (6.4.2005) by [The Pension Protection Fund \(Hybrid Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/449\)](#), regs. 1(1), **3(1)**

#### **Commencement Information**

- I16** S. 134(1)(2)(a)-(c)(4)-(6) in force in so far as not already in force except subsection (2)(d) at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**
- I17** S. 134(3) in force in so far as it relates to paragraph (iii) of the definition of "relevant person" in paragraph (a) for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes in relation to that definition in that paragraph at 6.4.2005 for specified purposes by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**
- I18** S. 134(3) in force in so far as not already in force except subsection (2)(d) at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

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

- (1) This section applies where there is an assessment period in relation to an eligible scheme.
- (2) Subject to subsection (3), the winding up of the scheme must not begin during the assessment period.
- (3) Subsection (2) does not apply to the winding up of the scheme in pursuance of an order by the Regulator under section 11(3A) of the Pensions Act 1995 (Regulator's powers to wind up occupational pension schemes to protect Pension Protection Fund) directing the scheme to be wound up (and section 219 makes provision for the backdating of the winding up).
- (4) During the assessment period, except in prescribed circumstances and subject to prescribed conditions—
- (a) no transfers of, or transfer payments in respect of, any member's rights under the scheme rules are to be made from the scheme, and
  - (b) no other steps may be taken to discharge any liability of the scheme to or in respect of a member of the scheme in respect of—
    - (i) pensions or other benefits, or
    - (ii) such other liabilities as may be prescribed.

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- (5) Subsection (4)—
- (a) is subject to section 138, and
  - (b) applies whether or not the scheme was being wound up immediately before the assessment period or began winding up by virtue of subsection (3).
- (6) Subsection (7) applies where, on the commencement of the assessment period—
- (a) a member's pensionable service terminates, and
  - (b) he becomes a person to whom Chapter 5 of Part 4 of the Pension Schemes Act 1993 (c. 48) (early leavers: cash transfer sums and contribution refunds) applies.
- Section 150(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within paragraph (a) or (b).
- (7) Where this subsection applies, during the assessment period—
- (a) no right or power conferred by that Chapter may be exercised, and
  - (b) no duty imposed by that Chapter may be discharged.
- (8) Where a person is entitled to a pension credit derived from another person's shareable rights (within the meaning of Chapter 1 of Part 4 under of the Welfare Reform and Pensions Act 1999 (c. 30) (sharing of rights under pension arrangements)) under the scheme, nothing in subsection (4) prevents the trustees or managers of the scheme discharging their liability in respect of the credit in accordance with that Chapter.
- (9) Any action taken in contravention of this section is void, except to the extent that the Board validates the action (see section 136).
- (10) Disregarding subsection (9), where there is a contravention of this section, section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance with this section.
- (11) The Regulator may not make a freezing order (see section 23) in relation to the scheme during the assessment period.

**Modifications etc. (not altering text)**

**C12** S. 135 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 67(1)

**Commencement Information**

**I19** S. 135(1)-(3)(5)-(11) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**I20** S. 135(4) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

**136 Power to validate contraventions of section 135**

- (1) The Board may validate an action for the purposes of section 135(9) only if it is satisfied that to do so is consistent with the objective of ensuring that the scheme's protected liabilities do not exceed its assets or, if they do exceed its assets, that the excess is kept to a minimum.

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- (2) Where the Board determines to validate, or not to validate, any action of the trustees or managers for those purposes, it must issue a notice to that effect and give a copy of that notice to—
- (a) the Regulator,
  - (b) the trustees or managers of the scheme,
  - (c) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer, and
  - (d) any other person who appears to the Board to be directly affected by the determination.
- (3) A notice under subsection (2) must contain a statement of the Board’s reasons for the determination.
- (4) The validation of an action does not take effect—
- (a) until—
    - (i) the Board has issued a notice under subsection (2) relating to the determination, and
    - (ii) the period within which the issue of that notice may be reviewed by virtue of Chapter 6 has expired, and
  - (b) if the issue of the notice is so reviewed, until—
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
    - (iii) any appeal against his determination or directions, has been finally disposed of.
- (5) In subsection (1) the reference to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

**Modifications etc. (not altering text)**

**C13** S. 136 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 67(2) and amendment to earlier affecting provision (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), **10(4)**

**Commencement Information**

**I21** S. 136 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

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

- (1) Subsection (2) applies where there is an assessment period in relation to an eligible scheme.
- (2) During the assessment period, the rights and powers of the trustees or managers of the scheme in relation to any debt (including any contingent debt) due to them by the employer, whether by virtue of section 75 of the Pensions Act 1995 (c. 26) (deficiencies in the scheme assets) or otherwise, are exercisable by the Board to the exclusion of the trustees or managers.

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

**Modifications etc. (not altering text)**

**C14** S. 137(2) modified by SI 2005/441 reg. 67(2) (as substituted (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), **10(4)**)

**Commencement Information**

**I22** S. 137 in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**138 Payment of scheme benefits**

- (1) Subsections (2) and (3) apply where there is an assessment period in relation to an eligible scheme.
- (2) The benefits payable to or in respect of any member under the scheme rules during the assessment period must be reduced to the extent necessary to ensure that they do not exceed the compensation which would be payable to or in respect of the member in accordance with this Chapter if—
- (a) the Board assumed responsibility for the scheme in accordance with this Chapter, and
  - (b) the assessment date referred to in Schedule 7 were the date on which the assessment period began.
- (3) But where, on the commencement of the assessment period—
- (a) a member's pensionable service terminates, and
  - (b) he becomes a person to whom Chapter 5 of Part 4 of the Pension Schemes Act 1993 (c. 48) (early leavers: cash transfer sums and contribution refunds) applies,
- no benefits are payable to or in respect of him under the scheme during the assessment period.
- (4) Section 150(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within paragraph (a) or (b) of subsection (3).
- (5) Nothing in subsection (3) prevents the payment of benefits attributable (directly or indirectly) to a pension credit, during the assessment period, in accordance with subsection (2).
- (6) Where at any time during the assessment period the scheme is being wound up, subject to any reduction required under subsection (2) and to subsection (3), the benefits payable to or in respect of any member under the scheme rules during that period are the benefits that would have been so payable in the absence of the winding up of the scheme.
- (7) Subsections (2), (3) and (6) are subject to sections 150(1) to (3) and 154(13) (which provide for the adjustment of amounts paid during an assessment period when that period ends other than as a result of the Board assuming responsibility for the scheme).

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- (8) For the purposes of 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.
- (9) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with subsections (2) and (3).
- (10) Regulations may provide that, where there is an assessment period in relation to an eligible scheme—
- (a) in such circumstances as may be prescribed subsection (2) does not operate to require the reduction of benefits payable to or in respect of any member;
  - (b) the commencement of a member’s pension or payment of a member’s lump sum or other benefits is, in such circumstances and on such terms and conditions as may be prescribed, to be postponed for the whole or any part of the assessment period for which he continues in employment after attaining normal pension age.
- (11) For the purposes of subsection (10)—
- (a) “normal pension age”, in relation to an eligible scheme and any pension or other benefit under it, means the age specified in the scheme rules as the earliest age at which the pension or other benefit becomes payable without actuarial adjustment (disregarding any scheme rule making special provision as to early payment on the grounds of ill health), and
  - (b) where different ages are so specified in relation to different parts of a pension or other benefit—
    - (i) subsection (10) has effect as if those parts were separate pensions or, as the case may be, benefits, and
    - (ii) in relation to a part of a pension or other benefit, the reference in that subsection to normal pension age is to be read as a reference to the age specified in the scheme rules as the earliest age at which that part becomes so payable.
- (12) Regulations may provide that, in prescribed circumstances, where—
- (a) a member of the scheme died before the commencement of the assessment period, and
  - (b) during the assessment period, a person becomes entitled under the scheme rules to a benefit of a prescribed description in respect of the member, the benefit, or any part of it, is, for the purposes of subsection (2), to be treated as having become payable before the commencement of the assessment period.
- (13) Nothing in subsection (2) or (3) applies to money purchase benefits.

#### **Commencement Information**

- I23** S. 138(1)-(9)(11)(13) in force in so far as not already in force except subsection (10)(a) at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)
- I24** S. 138(10)(b)(12) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)

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

- (1) Subsection (2) applies where section 138(2) applies in relation to an eligible scheme.
- (2) Where the Board is satisfied that the trustees or managers of the scheme are not able to pay benefits under the scheme rules (reduced in accordance with section 138(2)) as they fall due, it may, on an application by the trustees or managers, lend to them such amounts as the Board considers appropriate for the purpose of enabling them to pay those benefits.
- (3) Where an amount lent to the trustees or managers of a scheme under subsection (2) is outstanding at—
  - (a) the time the Board ceases to be involved with the scheme, or
  - (b) if earlier—
    - (i) the time during the assessment period when an order is made under section 11(3A) of the Pensions Act 1995 (c. 26) directing the winding up of the scheme, or
    - (ii) where no such order is made during that period, the time when the assessment period ends because the conditions in section 154(2) or (5) are satisfied,that amount, together with the appropriate interest on it, falls to be repaid by the trustees or managers of the scheme to the Board at that time.
- (4) No loan may be made under subsection (2) after the time mentioned in subsection (3) (b)(i).
- (5) In subsection (2) the reference to “benefits” does not include money purchase benefits.
- (6) In subsection (3) “the appropriate interest” on an amount lent under subsection (2) means interest at the prescribed rate from the time the amount was so lent until repayment.
- (7) Subject to this section, the Board may make a loan under subsection (2) on such terms as it thinks fit.

#### **Commencement Information**

**I25** S. 139(1)-(5)(7) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

**I26** S. 139(6) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)

### *Ill health pensions*

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

- (1) This section applies where there is an assessment period in relation to an eligible scheme.
- (2) The Board may review a reviewable ill health pension in respect of a member if—
  - (a) disregarding section 141, the member would be entitled to compensation under paragraph 3 of Schedule 7 in respect of the pension if the Board assumed responsibility for the scheme,

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- (b) the member did not attain normal pension age in respect of the pension before the assessment date, and
  - (c) the pension is attributable to the member’s pensionable service.
- (3) An ill health pension in respect of a member is reviewable for the purposes of subsection (2) if the member is entitled to the pension by reason of an award under the scheme rules (“the award”) which was made—
- (a) in the period of three years ending immediately before the assessment date, or
  - (b) before the end of the prescribed period beginning with the assessment date, in response to an application made before that date.
- (4) Where—
- (a) before the assessment date, an application was made under the scheme for the award of a pension before normal pension age by virtue of any provision of the scheme rules making special provision as to early payment of pension on grounds of ill health, and
  - (b) the trustees or managers of the scheme failed to decide the application before the end of the period mentioned in subsection (3)(b),
- section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure that the application was decided before the end of that period.
- (5) Where—
- (a) the award was made in response to an application which—
    - (i) was made on or after the assessment date, or
    - (ii) was made before that date but not decided by the trustees or managers of the scheme before the end of the period mentioned in subsection (3)(b), and
  - (b) in the absence of this subsection, the award would take effect before the assessment date,
- the award is, for the purposes of determining the compensation payable under this Chapter in a case where the Board assumes responsibility for the scheme, to be treated as taking effect after the date on which the decision to make the award was made.
- (6) Regulations must prescribe the procedure to be followed in relation to the review of a pension under this section and any subsequent decision under section 141.

#### **Commencement Information**

**I27** S. 140(1)(2)(3)(a)(4)(5) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

**I28** S. 140(3)(b)(6) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#)

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

- (1) This section applies where, during an assessment period in relation to an eligible scheme, the Board reviews an ill health pension by virtue of section 140.
- (2) Where the conditions of subsection (3) are satisfied, the Board may determine that the compensation payable in respect of the pension, in a case where the Board assumes



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responsibility for the scheme, is to be determined in the prescribed manner on and after the relevant date.

- (3) The conditions are—
- (a) that the annual rate of compensation which would be payable under this Part in respect of the pension at the assessment date, if the Board assumed responsibility for the scheme, exceeds the notional reviewed rate of compensation in respect of the pension,
  - (b) that the Board is satisfied—
    - (i) that the decision to make the award was made in ignorance of, or was based upon a mistake as to, a material fact relevant to the decision,
    - (ii) that, at the time that decision was made, the member knew or could reasonably have been expected to know of that fact and that it was relevant to the decision, and
    - (iii) that, had the trustees or managers known about, or not been mistaken as to, that fact, they could not reasonably have decided to make the award, and
  - (c) that the Board is not satisfied that the criteria in the admissible rules governing entitlement to early payment of pension on grounds of ill health were satisfied in respect of the member at any time after that decision but before the assessment date.
- (4) For the purposes of subsection (2) “the relevant date” means the date during the assessment period on which a scheme valuation in relation to the scheme becomes binding.
- (5) The power to make a decision in respect of the pension under subsection (2) may only be exercised at a time which falls—
- (a) during the assessment period but before the time the Board first approves a scheme valuation under section 144 in relation to the scheme, and
  - (b) within a reasonable period beginning with the assessment date or, where the decision to make the award was made at a later date, that date.
- (6) Regulations made for the purposes of subsection (2) may, in particular, include provision applying any provision of Schedule 7 with such modifications as may be prescribed.

#### **Commencement Information**

**I29** S. 141(1)(3)-(5) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

**I30** S. 141(2)(6) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)

## **142 Sections 140 and 141: interpretation**

- (1) For the purposes of sections 140 and 141—
- “admissible rules” is to be construed in accordance with Schedule 7;
  - “assessment date” means the date on which the assessment period begins;
  - “ill health pension”, in relation to a scheme, means a pension which, immediately before the assessment date, is a pension to which a person is

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entitled under the admissible rules in circumstances where that entitlement arose before normal pension age by virtue of any provision of the admissible rules making special provision as to early payment of pension on grounds of ill health;

“normal pension age”, in relation to a scheme and any pension under it, means the age specified in the admissible rules as the earliest age at which the pension becomes payable without actuarial adjustment (disregarding any admissible rule making special provision as to early payment on the grounds of ill health) and sub-paragraphs (2) and (3) of paragraph 34 of Schedule 7 apply in relation to this section as they apply in relation to that Schedule;

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

- (a) the annual rate of compensation which would be payable in respect of the pension at the assessment date, if the Board assumed responsibility for the scheme and the compensation so payable at that date was determined in accordance with regulations under section 141(2), or
- (b) if no such compensation would have been so payable at that date, nil;

“pensionable service” is to be construed in accordance with Schedule 7;

“scheme valuation”, in relation to a scheme, means a valuation under section 143 of the assets and protected liabilities of the scheme as at the time immediately before the assessment period begins.

- (2) For the purposes of section 140(4)—
  - (a) the definition of “normal pension age” in subsection (1), and
  - (b) sub-paragraphs (2) and (3) of paragraph 34 of Schedule 7 as they apply by virtue of that definition,
 have effect as if the references in those provisions to the admissible rules were references to the scheme rules.
- (3) Paragraph 37(4) of Schedule 7 (references to “ill health” to be construed in accordance with regulations) applies in relation to sections 140 and 141 and this section as if, in that provision, the reference to that Schedule included a reference to those sections and this section.
- (4) In those sections references to the Board assuming responsibility for the scheme are to the Board assuming responsibility for the scheme in accordance with this Chapter at the time the assessment period in question comes to an end.

#### **Commencement Information**

**I31** S. 142 in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

### *Valuation of assets and liabilities*

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

- (1) This section applies in a case within subsection (1) of section 127 or 128.
- (2) For the purposes of determining whether the condition in subsection (2)(a) of the section in question is satisfied, the Board must, as soon as reasonably practicable, obtain an actuarial valuation of the scheme as at the relevant time.

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- (3) For those purposes, regulations may provide that any of the following are to be regarded as assets or protected liabilities of the scheme at the relevant time if prescribed requirements are met—
- (a) a debt due to the trustees or managers of the scheme by virtue of a contribution notice issued under section 38, 47 or 55 during the pre-approval period;
  - (b) an obligation arising under financial support for the scheme (within the meaning of section 45) put in place during the pre-approval period in accordance with a financial support direction issued under section 43;
  - (c) an obligation imposed by a restoration order made under section 52 during the pre-approval period in respect of a transaction involving assets of the scheme.
- (4) For the purposes of this section, regulations may prescribe how—
- (a) the assets and the protected liabilities of eligible schemes, and
  - (b) their amount or value,
- are to be determined, calculated and verified.
- (5) Regulations under subsection (4) may provide, in particular, that when calculating the amount or value of assets or protected liabilities of an eligible scheme at the relevant time which consist of any of the following—
- (a) a debt (including any contingent debt) due to the trustees or managers of the scheme from the employer under section 75 of the Pensions Act 1995 (c. 26) (deficiencies in the scheme assets),
  - (b) a debt due to the trustees or managers of the scheme by virtue of a contribution notice issued under section 38, 47 or 55,
  - (c) an obligation arising under financial support for the scheme (within the meaning of section 45) put in place in accordance with a financial support direction issued under section 43, or
  - (d) an obligation imposed by a restoration order made under section 52 in respect of a transaction involving assets of the scheme,
- account must be taken in the prescribed manner of prescribed events which occur during the pre-approval period.

[<sup>F1</sup>(5A) Subsection (5B) applies if—

- (a) during the pre-approval period any liability to provide pensions or other benefits to or in respect of any member or members under the scheme is discharged by virtue of regulations under section 135(4) or the Board validating any action mentioned in section 135(9), and
- (b) at the relevant time the protected liabilities of the scheme include any cost within section 131(1)(a) relating to compensation in respect of those pensions or other benefits.

(5B) If this subsection applies, for the purposes mentioned in subsection (2)—

- (a) in determining that cost the effect of the discharge on the compensation payable in respect of those pensions or other benefits under paragraph 23A of Schedule 7 must be taken into account,
- (b) in a case where assets of the scheme at the relevant time were transferred from the scheme during the pre-approval period in consideration for the discharge, those assets are not to be regarded as assets of the scheme at the relevant time, and
- (c) in a case where assets that were not assets of the scheme at that time (“later-acquired assets”) were so transferred, the value of the assets of the scheme at

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that time is to be reduced by the value of the later-acquired assets at the time of the discharge.]

- (6) Subject to any provision made under subsection (4), the matters mentioned in paragraphs (a) and (b) of that subsection are to be determined, calculated and verified in accordance with guidance issued by the Board.
- (7) In calculating the amount of any liabilities for the purposes of this section, a provision of the scheme rules which limits the amount of the scheme's liabilities by reference to the value of its assets is to be disregarded.
- (8) The duty imposed by subsection (2) ceases to apply if and when the Board ceases to be involved with the scheme.
- (9) Nothing in subsection (2) requires the actuarial valuation to be obtained during any period when the Board considers that an event may occur which, by virtue of regulations under subsection (3) or (4) [<sup>F2</sup>or by virtue of subsection (5B) ], may affect the value of the assets or the amount of the protected liabilities of the scheme for the purposes of the valuation.
- (10) In a case where there are one or more reviewable ill health pensions (within the meaning of section 140), nothing in subsection (2) requires the actuarial valuation to be obtained during the period mentioned in section 141(5)(b) (period during which Board may exercise its power to make a decision following a review) relating to any such pension.
- (11) For the purposes of this section—
- (a) “actuarial valuation”, in relation to the scheme, means a written valuation of the assets and protected liabilities of the scheme which—
    - (i) is in the prescribed form and contains the prescribed information, and
    - (ii) is prepared and signed by—
      - (a) a person with prescribed qualifications or experience, or
      - (b) a person approved by the Secretary of State,
  - (b) “the pre-approval period”, in relation to the scheme, means the period which—
    - (i) begins immediately after the relevant time, and
    - (ii) ends immediately before the time the Board first approves a valuation of the scheme under section 144 after the relevant time,
  - (c) “the relevant time”—
    - (i) in a case within subsection (1) of section 127, has the meaning given in subsection (4)(b) of that section, and
    - (ii) in a case within subsection (1) of section 128, has the meaning given in subsection (3)(b) of that section, and
  - (d) references to “assets” do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

#### Textual Amendments

- F1** S. 143(5A)(5B) inserted (6.4.2005) by [The Occupational Pension Schemes \(Modification of Pension Protection Provisions\) Regulations 2005 \(S.I. 2005/705\)](#), regs. 1(2), **2(2)**
- F2** Words in s. 143(9) inserted (6.4.2005) by [The Occupational Pension Schemes \(Modification of Pension Protection Provisions\) Regulations 2005 \(S.I. 2005/705\)](#), regs. 1(2), **2(3)**

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#### Commencement Information

- I32** S. 143(1)(2)(6)-(10) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)
- I33** S. 143(3)-(5) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)
- I34** S. 143(11) in force in so far as it relates to paragraphs (i) and (ii)(a) of the definition of "actuarial valuation" in paragraph (a) for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes in relation to those paragraphs of that definition at 6.4.2005 for specified purposes by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)
- I35** S. 143(11) in force in so far as not already in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)

### 144 Approval of valuation

- (1) This section applies where the Board obtains a valuation in respect of a scheme under section 143.
- (2) Where the Board is satisfied that the valuation has been prepared in accordance with that section, it must—
  - (a) approve the valuation, and
  - (b) give a copy of the valuation to—
    - (i) the Regulator,
    - (ii) the trustees or managers of the scheme, and
    - (iii) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (3) Where the Board is not so satisfied, it must obtain another valuation under that section.

#### Modifications etc. (not altering text)

- C15** S. 144 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), [61](#), [68\(1\)](#) and amendment to earlier affecting provision (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), [10\(4\)](#)

#### Commencement Information

- I36** S. 144 in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)

### 145 Binding valuations

- (1) For the purposes of this Chapter a valuation obtained under section 143 is not binding until—
  - (a) it is approved under section 144,
  - (b) the period within which the approval may be reviewed by virtue of Chapter 6 has expired, and
  - (c) if the approval is so reviewed—
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the approval, and
    - (iii) any appeal against his determination or directions,has been finally disposed of.

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

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

- (3) Where a valuation becomes binding under this section the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding valuation to—
- (a) the Regulator,
  - (b) the trustees or managers of the scheme, and
  - (c) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (4) A notice under subsection (3) must be in the prescribed form and contain the prescribed information.

**Modifications etc. (not altering text)**

- C16** S. 145 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 68(2) and amendment to earlier affecting provision (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), **10(4)**

**Commencement Information**

- I37** S. 145(1)-(3) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**
- I38** S. 145(4) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

*Refusal to assume responsibility*

**146 Schemes which become eligible schemes**

- (1) Regulations may provide that where the Board is satisfied that an eligible scheme was not such a scheme throughout such period as may be prescribed, the Board must refuse to assume responsibility for the scheme under this Chapter.
- (2) Where, by virtue of subsection (1), the Board is required to refuse to assume responsibility for a scheme, it—
- (a) must issue a notice to that effect (a “withdrawal notice”), and
  - (b) give a copy of that notice to—
    - (i) the Regulator,
    - (ii) the trustees or managers of the scheme, and
    - (iii) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (3) For the purposes of this Part a withdrawal notice issued by virtue of this section is not binding until—

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- (a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
  - (b) if the issue of the notice is so reviewed—
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
    - (iii) any appeal against his determination or directions,has been finally disposed of and the notice has not been revoked, varied or substituted.
- (4) Where a withdrawal notice issued by virtue of this section becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—
- (a) the Regulator,
  - (b) the trustees or managers of the scheme, and
  - (c) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (5) Notices under this section must be in the prescribed form and contain such information as may be prescribed.
- (6) A notice given under subsection (4) must state the time from which the Board ceases to be involved with the scheme (see section 149).

#### **Modifications etc. (not altering text)**

- C17** S. 146 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 69 and amendment to earlier affecting provision (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), **10(4)**

#### **Commencement Information**

- I39** S. 146(1)(5) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**
- I40** S. 146(2)-(4)(6) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

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

- (1) The Board must refuse to assume responsibility for a scheme (“the new scheme”) under this Chapter where it is satisfied that—
- (a) the new scheme was established during such period as may be prescribed,
  - (b) the employer in relation to the new scheme was, at the date of establishment of that scheme, also the employer in relation to a scheme established before the new scheme (the “old scheme”),
  - (c) a transfer or transfers of, or a transfer payment or transfer payments in respect of, any rights of members under the old scheme has or have been made to the new scheme, and
  - (d) the main purpose or one of the main purposes of establishing the new scheme and making the transfer or transfers, or transfer payment or transfer payments,

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was to enable those members to receive compensation under the pension compensation provisions in respect of their rights under the new scheme in circumstances where, in the absence of the transfer or transfers, regulations under section 146 would have operated to prevent such payments in respect of their rights under the old scheme.

- (2) Where, under subsection (1), the Board is required to refuse to assume responsibility for a scheme, it—
- (a) must issue a notice to that effect (a “withdrawal notice”), and
  - (b) give a copy of that notice to—
    - (i) the Regulator,
    - (ii) the trustees or managers of the scheme, and
    - (iii) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (3) For the purposes of this Part a withdrawal notice issued under this section is not binding until—
- (a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
  - (b) if the issue of the notice is so reviewed—
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
    - (iii) any appeal against his determination or directions,
 has been finally disposed of and the notice has not been revoked, varied or substituted.
- (4) Where a withdrawal notice issued under this section becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—
- (a) the Regulator,
  - (b) the trustees or managers of the scheme, and
  - (c) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (5) Notices under this section must be in the prescribed form and contain such information as may be prescribed.
- (6) A notice given under subsection (4) must state the time from which the Board ceases to be involved with the scheme (see section 149).

#### **Modifications etc. (not altering text)**

**C18** S. 147 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 69(2) and amendment to earlier affecting provision (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), **10(4)**

#### **Commencement Information**

**I41** S. 147(1)(a)(5) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**



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**142** S. 147(1)(b)-(d)(2)-(4)(6) in force at 6.4.2005 by S.I. 2005/275, art. 2(7), Sch. Pt. 7

## **148 Withdrawal following issue of section 122(4) notice**

- (1) This section applies where—
  - (a) a notice under section 122(4) (inability to confirm status of scheme) is issued in relation to an eligible scheme and becomes binding, and
  - (b) a withdrawal event has not occurred in relation to the scheme in respect of a withdrawal notice which has been issued during the period—
    - (i) beginning with the occurrence of the last insolvency event in relation to the employer, and
    - (ii) ending immediately before the notice under section 122(4) becomes binding,and the occurrence of such a withdrawal event in respect of a withdrawal notice issued during that period is not a possibility (see section 149).
- (2) The Board must determine whether any insolvency event—
  - (a) has occurred in relation to the employer since the issue of the notice under section 122(4), or
  - (b) is likely to so occur before the end of the period of six months beginning with the date on which this section applies.
- (3) If the Board determines under subsection (2) that no insolvency event has occurred or is likely to occur as mentioned in that subsection, it must issue a notice to that effect (a “withdrawal notice”).
- (4) Where—
  - (a) no withdrawal notice is issued under subsection (3) before the end of the period mentioned in subsection (2)(b), and
  - (b) no further insolvency event occurs in relation to the employer during that period,the Board must issue a notice to that effect (a “withdrawal notice”).
- (5) Where the Board is required to issue a withdrawal notice under this section, it must give a copy of the notice to—
  - (a) the Regulator,
  - (b) the trustees or managers of the scheme, and
  - (c) the employer.
- (6) For the purposes of this Part, a withdrawal notice issued under this section is not binding until—
  - (a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
  - (b) if the issue of the notice is so reviewed—
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
    - (iii) any appeal against his determination or directions,has been finally disposed of and the notice has not been revoked, varied or substituted.

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- (7) Where a withdrawal notice issued under this section becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—
- (a) the Regulator,
  - (b) the trustees or managers of the scheme, and
  - (c) the employer.
- (8) Notices under this section must be in the prescribed form and contain such information as may be prescribed.
- (9) A notice given under subsection (7) must state the time from which the Board ceases to be involved with the scheme (see section 149).

**Modifications etc. (not altering text)**

**C19** S. 148 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 69(3) and amendment to earlier affecting provision (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), **10(4)**

**Commencement Information**

**I43** S. 148(1)-(7)(9) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**I44** S. 148(8) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), **Sch. Pt. 3**

*Cessation of involvement with a scheme*

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

- (1) Where an assessment period begins in relation to an eligible scheme, the Board ceases to be involved with the scheme, for the purposes of this Part, on the occurrence of the first withdrawal event after the beginning of that period.
- (2) For this purpose the following are withdrawal events in relation to a scheme—
- (a) a withdrawal notice issued under section 122(2)(b) (scheme rescue has occurred) becoming binding;
  - (b) a withdrawal notice issued under section 130(3) (scheme rescue has occurred) becoming binding;
  - (c) a withdrawal notice issued under or by virtue of section 146 or 147 (refusal to assume responsibility) becoming binding;
  - (d) a withdrawal notice issued under section 148 (no insolvency event has occurred or is likely to occur) becoming binding;
- and references in this Chapter to a “withdrawal event” are to be construed accordingly.
- (3) Subsection (4) applies where a withdrawal notice mentioned in subsection (2) is issued in relation to a scheme and becomes binding and—
- (a) an insolvency event in relation to the employer occurs during the interim period and, if subsection (4) did not apply, the event would not be a qualifying insolvency event within the meaning given by subsection (3) of section 127

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- solely because the condition in sub-paragraph (ii) of paragraph (b) of that subsection would not be satisfied, or
- (b) an application under section 129(1) is made, or a notification under section 129(5)(a) is given, in relation to the scheme during the interim period and, if subsection (4) did not apply, the application or notification would be disregarded for the purposes of—
    - (i) subsection (1) of section 128 by virtue of subsection (4) of that section, and
    - (ii) subsection (4) of section 132 by virtue of subsection (5) of that section.
- (4) In such a case, the withdrawal notice is to be treated for the purposes of subsections (1) and (2), as if the time when it became binding was the time immediately before—
- (a) in a case falling within subsection (3)(a), the occurrence of the insolvency event, and
  - (b) in a case falling within subsection (3)(b), the making of the application under section 129(1) or, as the case may be, the giving of the notification under section 129(5)(a).
- (5) For the purposes of subsection (3), the “interim period” in relation to a scheme means the period beginning with the issuing of the withdrawal notice in relation to the scheme and ending with that notice becoming binding.
- (6) For the purposes of this Chapter—
- (a) the occurrence of a withdrawal event in relation to a scheme in respect of a withdrawal notice issued during a particular period (“the specified period”) is a possibility until each of the following are no longer reviewable—
    - (i) any withdrawal notice which has been issued in relation to the scheme during the specified period,
    - (ii) any failure to issue such a withdrawal notice during the specified period,
    - (iii) any notice which has been issued by the Board under Chapter 2 or this Chapter which is relevant to the issue of a withdrawal notice in relation to the scheme during the specified period or to such a withdrawal notice which has been issued during that period becoming binding,
    - (iv) any failure to issue such a notice as is mentioned in sub-paragraph (iii), and
  - (b) the issue of, or failure to issue, a notice is to be regarded as reviewable—
    - (i) during the period within which it may be reviewed by virtue of Chapter 6, and
    - (ii) if the matter is so reviewed, until—
      - (a) the review and any reconsideration,
      - (b) any reference to the PPF Ombudsman in respect of the matter, and
      - (c) any appeal against his determination or directions,
- has been finally disposed of.

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### Commencement Information

**I45** S. 149 in force at 6.4.2005 by S.I. 2005/275, art. 2(7), Sch. Pt. 7

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

- (1) Where—
- (a) an assessment period comes to an end by virtue of the Board ceasing to be involved with an eligible scheme, and
  - (b) during the assessment period any amount of any benefit payable to a member, or to a person in respect of a member, under the scheme rules was not paid by reason of section 138 (requirement to pay benefits in accordance with the pension compensation provisions),
- that amount falls due to the member, or as the case may be, person at the end of that period.
- (2) Where the winding up of the scheme began before the end of the assessment period (whether by virtue of section 219 (backdating the winding up of eligible schemes) or otherwise), the reference in subsection (1)(b) to the amount of any benefit payable to a member, or to a person in respect of a member, under the scheme rules is a reference to the amount so payable taking account of any reduction required by virtue of sections 73 to 73B of the Pensions Act 1995 (c. 26) (provisions relating to the winding up of certain schemes).
- (3) Where—
- (a) an assessment period comes to an end by virtue of the Board ceasing to be involved with an eligible scheme, and
  - (b) during the assessment period the amount of benefit paid to a member, or to a person in respect of a member, under the scheme rules exceeded the amount that would have been payable in the absence of section 138(6) (requirement to disregard winding up when paying benefits during assessment period),
- the trustees or managers of the scheme must, at the end of that period, take such steps as they consider appropriate (including steps to adjust future payments under the scheme rules) to recover an amount equal to the excess from the person to whom it was paid.
- (4) Subsections (1) to (3) are without prejudice to section 73A(2)(b) of the Pensions Act 1995 (c. 26) (requirement to adjust benefits paid to reflect liabilities which can be met on winding up).
- (5) Regulations may provide that, in cases within paragraph (a) of subsection (1), benefits are to accrue under the scheme rules, in such circumstances as may be prescribed, to or in respect of members of the scheme in respect of any specified period of service being service in employment which, but for section 133(5), would have qualified the member in question for those benefits under the scheme rules.
- (6) Regulations under subsection (5) may in particular make provision—
- (a) for benefits not to accrue to, or in respect of, a member unless contributions are paid by or on behalf of the member towards the scheme within a prescribed period;
  - (b) for contributions towards the scheme which, but for section 133, would have been payable by or on behalf of the employer (otherwise than on behalf of an employee) during the assessment period, to fall due;

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- (c) requiring that such contributions as are mentioned in paragraph (a) or (b) are accepted for the assessment period or any part of that period;
  - (d) modifying section 31 of the Welfare Reform and Pensions Act 1999 (c. 30) (reduction of benefit where a person's shareable rights are subject to a pension debit), in its application in relation to cases where benefits accrue under the scheme by virtue of regulations under subsection (5).
- (7) In this section “contributions” means, in relation to an eligible scheme, contributions payable towards the scheme by or on behalf of the employer or the active members of the scheme in accordance with the schedule of contributions maintained under section 227 in respect of the scheme.

#### Commencement Information

- I46** S. 150(1)-(4)(7) in force in so far as not already in force except subsection (6)(d) at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)
- I47** S. 150(5)(6)(a)-(c) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)

### Reconsideration

#### 151 Application for reconsideration

- (1) Where subsection (2) or (3) applies in relation to an eligible scheme, the trustees or managers of the scheme may make an application to the Board under this section for it to assume responsibility for the scheme in accordance with this Chapter.
- (2) This subsection applies where—
  - (a) a scheme failure notice has been issued under section 122(2)(a) in relation to the scheme, that notice has become binding and the trustees or managers have received a copy of the binding notice under section 125(3),
  - (b) the valuation obtained by the Board under section 143 in respect of the scheme has become binding, and
  - (c) the Board would have been required to assume responsibility for the scheme under section 127 but for the fact that the condition in subsection (2)(a) of that section was not satisfied.
- (3) This subsection applies where—
  - (a) the Board has issued a scheme failure notice under subsection (2) of section 130 in relation to the scheme, that notice has become binding and the trustees or managers have received a copy of the binding notice under subsection (7) of that section,
  - (b) the valuation obtained by the Board under section 143 in respect of the scheme has become binding, and
  - (c) the Board would have been required to assume responsibility for the scheme under section 128 but for the fact that the condition in subsection (2)(a) of that section was not satisfied.
- (4) An application under this section must be in the prescribed form, contain the prescribed information and be accompanied by—

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- (a) a protected benefits quotation in the prescribed form, and
  - (b) audited scheme accounts for a period which—
    - (i) begins with such date as may be determined in accordance with regulations, and
    - (ii) ends with a date which falls within the prescribed period ending with the day on which the application is made.
- (5) An application under this section must be made within the authorised period.
- (6) In this section “the authorised period” means the prescribed period which begins—
- (a) where subsection (2) applies, with the later of—
    - (i) the day on which the trustees or managers received the copy of the binding notice mentioned in paragraph (a) of that subsection, and
    - (ii) the day on which they received a copy of the binding valuation mentioned in paragraph (b) of that section, and
  - (b) where subsection (3) applies, with the later of—
    - (i) the day on which the trustees or managers received the copy of the binding notice mentioned in paragraph (a) of that subsection, and
    - (ii) the day on which they received a copy of the binding valuation mentioned in paragraph (b) of that subsection.
- (7) Where the Board receives an application under subsection (1), it must give a copy of the application to the Regulator.
- (8) For the purposes of this section—
- “audited scheme accounts”, in relation to a scheme, means—
- (a) accounts obtained by the trustees or managers of the scheme (“the scheme accounts”) which are prepared in accordance with subsections (9) to (11) and audited by the auditor in relation to the scheme, and
  - (b) a report by the auditor, in the prescribed form, as to whether or not such requirements as may be prescribed are satisfied in relation to the scheme accounts;
- “auditor”, in relation to a scheme, has the meaning given by section 47 of the Pensions Act 1995 (c. 26);
- “protected benefits quotation”, in relation to a scheme, means a quotation for one or more annuities from one or more insurers, being companies willing to accept payment in respect of the members from the trustees or managers of the scheme, which would provide in respect of each member of the scheme from the reconsideration time—
- (a) benefits for or in respect of the member corresponding to the compensation which would be payable to or in respect of the member in accordance with the pension compensation provisions if the Board assumed responsibility for the scheme by virtue of this section, or
  - (b) benefits in accordance with the member’s entitlement or accrued rights (including pension credit rights within the meaning of section 124(1) of the Pensions Act 1995 (c. 26)) under the scheme rules (other than his entitlement or rights in respect of money purchase benefits),

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

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

- (9) The scheme accounts are prepared in accordance with this subsection if, subject to subsections (10) and (11), they—
- (a) include a statement of the assets of the scheme (excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules) as at the reconsideration time, and
  - (b) are prepared in accordance with such other requirements as may be prescribed.
- (10) Subject to subsection (11), regulations under subsection (4) of section 143 (other than regulations made by virtue of subsection (5) of that section), and guidance under subsection (6) of that section, apply to the scheme accounts as they apply for the purposes of a valuation under that section.
- (11) Regulations may provide that, where an asset of a prescribed description has been acquired during the assessment period, the value assigned to the asset as at the reconsideration time is to be determined, for the purposes of the scheme accounts, in the prescribed manner.
- (12) For the purposes of this section—
- (a) regulations may prescribe how the cost of securing the benefits mentioned in paragraph (a) of the definition of “protected benefits quotation” in subsection (8) is to be determined, calculated and verified, and
  - (b) subject to any provision made under paragraph (a), that cost is to be determined, calculated and verified in accordance with guidance issued by the Board.
- (13) Where the scheme is being wound up, for the purposes of determining the benefits which fall within paragraph (b) of the definition of “protected benefits quotation” in subsection (8) no account is to be taken of the winding up of the scheme.

#### Commencement Information

- I48** S. 151(1)-(3)(5)(7)(9)(a)(10)(11)(12)(b)(13) in force in so far as not already in force except paragraph (a) in the definition of “audited scheme accounts” [which is in s. 151(8)] and (12)(a) at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)
- I49** S. 151(4)(6)(9)(b) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)
- I50** S. 151(8) in force in so far as it relates to paragraph (b) of the definition of “audited scheme accounts” for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes in relation to that paragraph of that definition at 6.4.2005 for specified purposes by [S.I. 2005/275](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)
- I51** S. 151(8) in force in so far as not already in force except paragraph (a) in the definition of “audited scheme accounts” [which is in s. 151(8)] and (12)(a) at 6.4.2005 for specified purposes by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)
- I52** S. 151(8) in force at 1.4.2006 in so far as not already in force by [S.I. 2006/560](#), [art. 2\(2\)](#), [Sch. Pt. 2](#)

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

- (1) This section applies where an application is made in respect of a scheme in accordance with section 151.
- (2) The Board must assume responsibility for the scheme in accordance with this Chapter if it is satisfied that the value of the assets of the scheme at the reconsideration time is less than the aggregate of—
  - (a) the amount quoted in the protected benefits quotation accompanying the application,
  - (b) the amount at that time of the liabilities of the scheme which are not liabilities to, or in respect of, members of the scheme, and
  - (c) the estimated costs of winding up the scheme at that time.
- (3) Where the Board makes a determination for the purposes of subsection (2), it must issue a determination notice and give a copy of that notice to—
  - (a) the trustees or managers of the scheme, and
  - (b) the Regulator.
- (4) In subsection (3) “determination notice” means a notice which is in the prescribed form and contains such information about the determination as may be prescribed.
- (5) But where the Board is satisfied of the matters mentioned in subsection (2), it is not required to assume responsibility for the scheme under subsection (2) until the determination notice issued under subsection (3) becomes binding.
- (6) For the purposes of subsection (5) a determination notice is not binding until—
  - (a) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
  - (b) if the issue of the notice is so reviewed—
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
    - (iii) any appeal against his determination or directions,
 has been finally disposed of and the notice has not been revoked, varied or substituted.
- (7) Where a determination notice issued under subsection (3) becomes binding, the Board must as soon as reasonably practicable give a notice to that effect together with a copy of the binding notice to—
  - (a) the trustees or managers of the scheme, and
  - (b) the Regulator.
- (8) A notice under subsection (7) must be in the prescribed form and contain such information as may be prescribed.
- (9) The Board may—
  - (a) for the purposes of subsection (2), obtain its own valuation of the assets of the scheme as at the reconsideration time (within the meaning of section 151), and
  - (b) for the purposes of subsection (2)(b), obtain its own valuation of the liabilities of the scheme as at that time;



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and where it does so, subsections (9)(b), (10) and (11) of section 151 apply in relation to the valuation as they apply in relation to the scheme accounts (within the meaning of that section).

- (10) Regulations under subsection (4) of section 143, and guidance under subsection (6) of that section, apply for the purposes of this section in relation to the estimated costs within subsection (2)(c) as they apply for the purposes of section 143 in relation to protected liabilities within section 131(1)(c).
- (11) In this section references to the assets of the scheme do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules.
- (12) This section is subject to sections 146 and 147 (refusal to assume responsibility for a scheme).

#### Commencement Information

**I53** S. 152(1)-(3)(5)-(7)(9)-(12) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), [Sch. Pt. 7](#)

**I54** S. 152(4)(8) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275, art. 2\(3\)](#), [Sch. Pt. 3](#)

### *Closed schemes*

#### **153 Closed schemes**

- (1) This section applies where section 151(2) or (3) (scheme rescue not possible but scheme has sufficient assets to meet the protected liabilities) applies in relation to an eligible scheme.
- (2) If the trustees or managers of the scheme are unable to obtain a full buy-out quotation, they must, within the authorised period, apply to the Board for authority to continue as a closed scheme.
- (3) For the purposes of determining whether they must make an application under subsection (2), the trustees or managers of the scheme must take all reasonable steps to obtain a full buy-out quotation in respect of the scheme.
- (4) An application under subsection (2) must—
  - (a) be in the prescribed form and contain the prescribed information, and
  - (b) be accompanied by evidence in the prescribed form which shows that the trustees or managers of the scheme have complied with the obligation under subsection (3) but were unable to obtain a full buy-out quotation.
- (5) Where the Board receives an application under subsection (2), if it is satisfied that the trustees or managers have complied with the obligation under subsection (3) but were unable to obtain a full buy-out quotation, it must authorise the scheme to continue as a closed scheme.
- (6) Where the Board determines an application in respect of a scheme under this section, it must issue a determination notice and give a copy of that notice to—
  - (a) the trustees or managers of the scheme, and
  - (b) the Regulator.

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(7) In this section—

“authorised period” has the same meaning as in section 151;

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

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

“pension credit rights” has the meaning given by section 124(1) of the Pensions Act 1995 (c. 26);

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

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

#### Commencement Information

**I55** S. 153(4)(7) in force at 1.11.2006 for specified purposes and 6.4.2007 in so far as not already in force by S.I. 2006/2272, art. 2(5), **Sch. Pt. 1**

### *Winding up*

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

(1) Where, in relation to an eligible scheme, an assessment period within section 132(2) or (4) comes to an end because the conditions in subsection (2) of this section are satisfied, the trustees or managers of the scheme must—

- (a) wind up the scheme, or
- (b) where the winding up of the scheme began before the assessment period (whether by virtue of section 219 or otherwise), continue the winding up of the scheme.

(2) The conditions are—

- (a) that subsection (2) or (3) of section 151 (scheme rescue not possible but scheme has sufficient assets to meet the protected liabilities) applies in relation to the scheme,
- (b) that—
  - (i) the trustees or managers did not make an application under that section or section 153(2) within the authorised period (within the meaning of section 151(6)) (or any such application has been withdrawn), or
  - (ii) if such an application was made, it has been finally determined, and
- (c) that, if an application was made under section 151, the Board is not required to assume responsibility for the scheme by virtue of section 152(2).

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- (3) For the purposes of subsection (2)(b)(ii) an application is not finally determined until—
- (a) the Board has issued a determination notice in respect of the application under section 152 or, as the case may be, section 153,
  - (b) the period within which the issue of the notice may be reviewed by virtue of Chapter 6 has expired, and
  - (c) if the issue of the notice is so reviewed—
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
    - (iii) any appeal against his determination or directions,has been finally disposed of.
- (4) Where, in relation to an eligible scheme, an assessment period within section 159(3) comes to an end because the conditions in subsection (5) of this section are satisfied, the trustees or managers of the scheme must continue the winding up of the scheme begun (whether in accordance with this section or otherwise) before that assessment period.
- (5) The conditions are—
- (a) that an application is made by, or notice is given to, the trustees or managers of the scheme under section 157 (applications and notifications where closed schemes have insufficient assets),
  - (b) that the valuation obtained by the Board in respect of the scheme under section 158(3) has become binding, and
  - (c) that the Board is not required to assume responsibility for the scheme by virtue of section 158(1) (duty to assume responsibility for closed scheme).
- (6) Where a scheme is wound up in accordance with subsection (1)(a), the winding up is to be taken as beginning immediately before the assessment period.
- (7) Without prejudice to the power to give directions under section 134, but subject to any order made under subsection (8), the Board may give the trustees or managers of the scheme directions relating to the manner of the winding up of the scheme under this section (and may vary or revoke any such direction given by it).
- (8) The Regulator may by order direct any person specified in the order—
- (a) to take such steps as are so specified as it considers are necessary as a result of—
    - (i) the winding up of the scheme beginning, by virtue of subsection (6), immediately before the assessment period, or
    - (ii) the winding up of the scheme being continued under subsection (1) (b), and
  - (b) to take those steps within a period specified in the order.
- (9) If the trustees or managers of a scheme fail to comply with a direction to them under subsection (7), or contained in an order under subsection (8), section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (10) That section 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).

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- (11) The winding up of a scheme under this section is as effective in law as if it had been made under powers conferred by or under the scheme.
- (12) This section must be complied with in relation to a scheme—
- (a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up, and
  - (b) without regard to any such enactment, rule of law or rule of the scheme as would otherwise require or might otherwise be taken to require the implementation of any procedure or the obtaining of any consent with a view to the winding up.
- (13) Where an assessment period in relation to an eligible scheme comes to an end by virtue of the conditions in subsection (2) or (5) being satisfied, subsections (1) to (4) of section 150 apply as they apply where an assessment period comes to an end by virtue of the Board ceasing to be involved with the scheme, except that in subsection (2) of that section the reference to section 219 is to be read as a reference to subsection (6) of this section.
- (14) Where a public service pension scheme is required to be wound up under this section, the appropriate authority may by order make provision modifying any enactment in which the scheme is contained or under which it is made.
- (15) In subsection (14) “the appropriate authority”, in relation to a scheme, means such Minister of the Crown or government department as may be designated by the Treasury as having responsibility for the particular scheme.

**Commencement Information**

**I56** S. 154(1)(2)(a)(c)(6)-(15) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

*Provisions applying to closed schemes*

**155 Treatment of closed schemes**

- (1) In this section “closed scheme” means an eligible scheme which is authorised under section 153 to continue as a closed scheme.
- (2) The provisions mentioned in subsection (3) apply in relation to a closed scheme at any time when the trustees or managers of the scheme are required to wind up or continue winding up the scheme under section 154 as if that time fell within an assessment period in relation to the scheme.
- (3) The provisions are—
- (a) section 40(5) and (6) (Board to act as creditor for debt due by virtue of a contribution notice under section 38);
  - (b) section 49(5) and (6) (Board to act as creditor for debt due by virtue of a contribution notice under section 47);
  - (c) section 54(5) and (6) (Board to act as creditor for debt due by virtue of a restoration order under section 52);
  - (d) section 56(5) and (6) (Board to act as creditor for debt due by virtue of a contribution notice under section 55);

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- (e) section 133 (admission of new members, payment of contributions etc);
  - (f) section 134 (directions);
  - (g) section 137 (Board to act as creditor of the employer).
- (4) Regulations may require the trustees or managers of a closed scheme in relation to which the provisions mentioned in 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.

#### Commencement Information

**I57** S. 155(1)(4) in force at 1.11.2006 for specified purposes by S.I. 2006/2272, art. 2(5), Sch. Pt. 1

### 156 Valuations of closed schemes

- (1) Regulations may make provision requiring the trustees or managers of closed schemes to obtain actuarial valuations of the scheme at such intervals as may be prescribed for the purposes of enabling them to determine—
- (a) the benefits payable under the scheme rules;
  - (b) whether to make an application under section 157.
- (2) Regulations under this section may prescribe how—
- (a) the assets, the full scheme liabilities and the protected liabilities in relation to closed schemes, and
  - (b) their amount or value,
- are to be determined, calculated and verified.
- (3) Subject to any provision made under subsection (2), those matters are to be determined, calculated and verified in accordance with guidance issued by the Board.
- (4) In calculating the amount of any liabilities for the purposes of a valuation required by virtue of this section, a provision of the scheme rules which limits the amount of the scheme's liabilities by reference to the value of its assets is to be disregarded.
- (5) Nothing in regulations under this section may require the trustees or managers of a closed scheme to obtain an actuarial valuation of the scheme until—
- (a) the period within which the issue of the determination notice, under section 153(6), in respect of the Board's determination to authorise the scheme to continue as a closed scheme, may be reviewed by virtue of Chapter 6 has expired, and
  - (b) if the issue of the notice is so reviewed—
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the issue of the notice, and
    - (iii) any appeal against his determination or directions,has been finally disposed of and the notice has not been revoked, varied or substituted.
- (6) In this section, in relation to a scheme—
- “actuarial valuation” means a written valuation of—
- (a) the scheme's assets,

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- (b) the full scheme liabilities, and
  - (c) the protected liabilities in relation to the scheme,
- prepared and signed by the actuary;  
 “the actuary” means—
- (a) the actuary appointed under section 47(1)(b) of the Pensions Act 1995 (c. 26) (professional advisers) in relation to the scheme, or
  - (b) if no such actuary has been appointed—
    - (i) a person with prescribed qualifications or experience, or
    - (ii) a person approved by the Secretary of State;
- “assets” do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules;  
 “closed scheme” has the same meaning as in section 155;  
 “full scheme liabilities” means—
- (a) the liabilities under the scheme rules to or in respect of members of the scheme,
  - (b) other liabilities of the scheme, and
  - (c) the estimated cost of winding up the scheme;
- “liabilities” does not include liabilities in respect of money purchase benefits under the scheme rules.

#### Commencement Information

**158** S. 156(1)(2)(5)(6) in force at 1.11.2006 for specified purposes by S.I. 2006/2272, art. 2(5), Sch. Pt. 1

### *Reconsideration of closed schemes*

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

- (1) If at any time the trustees or managers of a closed scheme become aware that the value of the assets of the scheme is less than the amount of the protected liabilities in relation to the scheme, they must, before the end of the prescribed period beginning with that time, make an application to the Board for it to assume responsibility for the scheme.
- (2) Where the Board receives an application under subsection (1), it must give a copy of the application to the Regulator.
- (3) If at any time the Regulator becomes aware that the value of the assets of the scheme is less than the amount of the protected liabilities in relation to the scheme, it must give the Board a notice to that effect.
- (4) Where the Board receives a notice under subsection (3), it must give the trustees or managers of the scheme a notice to that effect.
- (5) The duty imposed by subsection (1) does not apply where the trustees or managers of a closed scheme become aware as mentioned in that subsection by reason of a notice given to them under subsection (4).
- (6) The duty imposed by subsection (3) does not apply where the Regulator becomes aware as mentioned in that subsection by reason of a copy of an application made by the trustees or managers of the closed scheme being given to it under subsection (2).

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- (7) Regulations may require notices and applications under this section to be in the prescribed form and contain the prescribed information.
- (8) If the trustees or managers of a closed scheme fail to comply with subsection (1), section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (9) In this section—
  - “assets”, in relation to a scheme, do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules;
  - “closed scheme” has the same meaning as in section 155.

#### Commencement Information

**159** S. 157(1)(7)(9) in force at 1.11.2006 for specified purposes and 6.4.2007 in so far as not already in force by [S.I. 2006/2272](#), art. 2(5), [Sch. Pt. 1](#)

VALID FROM 06/04/2007

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

- (1) Where the trustees or managers of a closed scheme—
  - (a) make an application under subsection (1) of section 157, or
  - (b) receive a notice from the Board under subsection (4) of that section,the Board must assume responsibility for the scheme in accordance with this Chapter if the value of the assets of the scheme at the relevant time was less than the amount of the protected liabilities at that time.
- (2) In subsection (1) the reference to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules.
- (3) For the purposes of determining whether the condition in subsection (1) is satisfied, the Board must, as soon as reasonably practicable, obtain an actuarial valuation (within the meaning of section 143) of the scheme as at the relevant time.
- (4) Subject to subsection (6), subsection (3) of section 143 applies for those purposes as it applies for the purposes mentioned in subsection (2) of that section (and the definitions contained in paragraphs (b) and (d) of subsection (11) of that section apply accordingly).
- (5) Subject to subsection (6), the following provisions apply in relation to a valuation obtained under subsection (3) as they apply in relation to a valuation obtained under section 143—
  - (a) subsections (4) to (7) and (11)(b) and (d) of that section;
  - (b) section 144 (approval of valuation), other than subsection (2)(b)(iii) (duty to give copy of approved valuation to employer’s insolvency practitioner);
  - (c) section 145 (binding valuations), other than subsection (3)(c) (duty to give copy of binding valuation to employer’s insolvency practitioner).
- (6) In the application of sections 143 and 145 by virtue of subsection (4) or (5)—

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- (a) [<sup>F3</sup>subsections (3), (5), (5A), (5B) and (11)(b) and (c) of section 143] apply as if the references to “the relevant time” were references to that term as defined in subsection (8) below, and
  - (b) subsection (2) of section 145 applies as if the reference to section 128(2)(a) included a reference to subsection (1) of this section.
- (7) An application under subsection (1) of section 157, or notification under subsection (4) of that section, is to be disregarded for the purposes of subsection (1) if it is made or given during an assessment period (see sections 132 and 159) in relation to the scheme which began before the application was made or notification was given.
- (8) In this section—
- “closed scheme” has the same meaning as in section 155;
  - “the relevant time” means the time immediately before the application mentioned in subsection (1)(a) was made, or (as the case may be) the notice mentioned in subsection (1)(b) was received, by the trustees or managers of the scheme.

#### Textual Amendments

- F3** Words in s. 158(6)(a) substituted (6.4.2005) by [The Occupational Pension Schemes \(Modification of Pension Protection Provisions\) Regulations 2005 \(S.I. 2005/705\)](#), regs. 1(2), **2(4)**

VALID FROM 06/04/2007

#### 159 Closed schemes: further assessment periods

- (1) Subsection (3) applies where—
- (a) an application is made under subsection (1) of section 157 in relation to a closed scheme, or
  - (b) the trustees or managers of the scheme receive a notice under subsection (4) of that section.
- (2) For the purposes of subsection (1) an application under subsection (1) of section 157, or notification under subsection (4) of that section, is to be disregarded if it is made or given during an assessment period (see section 132 and this section) in relation to the scheme which began before the application was made or notification was given.
- (3) An assessment period—
- (a) begins when the application is made or the notice is received by the trustees or managers of the scheme, and
  - (b) ends when—
    - (i) the trustees or managers receive a transfer notice under section 160, or
    - (ii) the conditions in section 154(5) (closed scheme with sufficient assets to meet protected liabilities etc) are satisfied in relation to the scheme,
 whichever first occurs.



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(4) In this section “closed scheme” has the same meaning as in section 155.

### *Assumption of responsibility for a scheme*

## **160 Transfer notice**

- (1) This section applies where the Board is required to assume responsibility for a scheme under section 127, 128, 152 or 158.
- (2) The Board must give the trustees or managers a notice (a “transfer notice”).
- (3) In a case to which section 127 or 128 applies, a transfer notice may not be given until the valuation obtained under section 143 is binding.
- (4) In a case to which section 158 applies, a transfer notice may not be given until the valuation obtained under subsection (3) of that section is binding.
- (5) A transfer notice may not be given in relation to a scheme during any period when the issue of, or failure to issue, a withdrawal notice under or by virtue of section 146 or 147 (refusal to assume responsibility) is reviewable (see section 149(6)(b)).
- (6) The Board must give a copy of any notice given under subsection (2) to—
  - (a) the Regulator, and
  - (b) any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer.
- (7) This section is subject to section 172(1) and (2) (no transfer notice within first 12 months of assessment period or when fraud compensation application is pending).

#### **Modifications etc. (not altering text)**

**C20** S. 160 modified (6.4.2005) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1(1)(d), **61**, 70(1) and amendment to earlier affecting provision (1.8.2005) by [The Occupational Pension Schemes \(Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/2113\)](#), regs. 1(2), **10(4)**

#### **Commencement Information**

**I60** S. 160(1)-(3)(5)(6) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**I61** S. 160(7) in force in so far as it relates to section 172(1) at 6.4.2005 for specified purposes by [S.I. 2005/275](#), art. 2(7), **Sch. Pt. 7**

**I62** S. 160(7) in force at 6.4.2006 in so far as not already in force by [S.I. 2006/560](#), art. 2(3), **Sch. Pt. 3**

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

- (1) Where a transfer notice is given to the trustees or managers of an eligible scheme, the Board assumes responsibility for the scheme in accordance with this Chapter.
- (2) The effect of the Board assuming responsibility for a scheme is that—
  - (a) the property, rights and liabilities of the scheme are transferred to the Board, without further assurance, with effect from the time the trustees or managers receive the transfer notice,

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- (b) the trustees or managers of the scheme are discharged from their pension obligations from that time, and
  - (c) from that time the Board is responsible for securing that compensation is (and has been) paid in accordance with the pension compensation provisions, and, accordingly, the scheme is to be treated as having been wound up immediately after that time.
- (3) In subsection (2)(a) the reference to liabilities of the scheme does not include any liability to, or in respect of, any member of the scheme, other than—
- (a) liabilities in respect of money purchase benefits, and
  - (b) such other liabilities as may be prescribed.
- (4) In subsection (2)(b) “pension obligations” in relation to the trustees or managers of the scheme means—
- (a) their obligations to provide pensions or other benefits to or in respect of persons (including any obligation to provide guaranteed minimum pensions within the meaning of the Pension Schemes Act 1993 (c. 48)), and
  - (b) their obligations to administer the scheme in accordance with the scheme rules and this or any other enactment.
- (5) Schedule 6 makes provision in respect of the transfer of the property, rights and liabilities of a scheme under subsection (2)(a).
- (6) Regulations may make further provision regarding such transfers.
- (7) Without prejudice to the generality of subsection (6), regulations may authorise the Board to modify a term of a relevant contract of insurance if—
- (a) any rights or liabilities under the contract are transferred to the Board by virtue of subsection (2)(a), and
  - (b) as a result of the transfer, the Board is required, by reason of that term, to pay a specified amount or specified amounts to a specified person who, immediately before the time mentioned in subsection (2)(a), was a member of the scheme or a person entitled to benefits in respect of such a member.
- (8) In subsection (7)—
- “relevant contract of insurance” means a contract of insurance which—
- (a) is entered with a view to securing the whole or part of the scheme’s liability for—
    - (i) any pension or other benefit payable to or in respect of one particular person whose entitlement to payment of a pension or other benefit has arisen, and
    - (ii) any benefit which will be payable in respect of that person on his death, and
  - (b) is a contract—
    - (i) which may not be surrendered, or
    - (ii) in respect of which the amount payable on surrender does not exceed the liability secured;
- “specified” means specified in, or determined in accordance with, the contract of insurance.

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#### Commencement Information

- I63** S. 161(1)(2)(a)(b)(3)(a)(4)(6)-(8) in force at 1.1.2006 for specified purposes and 6.4.2006 in so far as not already in force by [S.I. 2005/3331](#), [art. 2\(5\)](#), [Sch. Pt. 5](#)
- I64** S. 161(2)(c) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)
- I65** S. 161(5) in force at 6.4.2006 by [S.I. 2005/3331](#), [art. 2\(6\)](#), [Sch. Pt. 6](#)

### 162 The pension compensation provisions

- (1) Schedule 7 makes provision for compensation to be paid in relation to a scheme for which the Board assumes responsibility in accordance with this Chapter, including provision for—
- 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 payable, and
  - annual increases to be made to periodic compensation.
- (2) In this Part references to the pension compensation provisions are to the provisions of, and the provisions made by virtue of, this section, sections 140 to 142, 161(2)(c), 164 and 168 and Schedule 7.

(Those references do not include any provision of, or made by virtue of, section 170 (discharge of liabilities in respect of money purchase benefits).)

#### Commencement Information

- I66** S. 162 in force in so far as it relates to specified paragraphs of Schedule 7 for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes in so far as it relates to those specified paragraphs of Schedule 7 at 6.4.2005 for specified purposes by [S.I. 2005/275](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)
- I67** S. 162 in force in so far as not already in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

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

- (1) This section applies where the Board assumes responsibility for an eligible scheme in accordance with this Chapter.
- (2) Any benefits (other than money purchase benefits) which—
- were payable under the scheme rules to any member, or to any person in respect of any member, during the period beginning with the assessment date and ending with the receipt by the trustees or managers of the transfer notice, and
  - have been paid before the trustees or managers receive the transfer notice, are to be regarded as going towards discharging any liability of the Board to pay compensation to the member or, as the case may be, person in accordance with the pension compensation provisions.
- (3) Regulations may provide that, in prescribed circumstances, where—

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- (a) a member of the scheme died before the commencement of the assessment period, and
  - (b) during the period mentioned in subsection (2)(a), a person became entitled under the scheme rules to a benefit of a prescribed description in respect of the member,
- the benefit, or any part of it, is, for the purposes of subsection (2), to be treated as having become payable before the assessment date.
- (4) The Board must—
- (a) if any amount paid, during the period mentioned in subsection (2)(a), by the trustees or managers of the scheme to a member, or to a person in respect of a member, exceeded the entitlement of that member or person under the pension compensation provisions, take such steps as it considers appropriate (including adjusting future compensation payments made in accordance with those provisions) to recover an amount equal to the aggregate of—
    - (i) the amount of the excess, and
    - (ii) interest on that amount, at the prescribed rate, for the period which begins when the excess was paid by the trustees or managers and ends with the recovery of the excess, and
  - (b) if any amount so paid was less than that entitlement (or no amount was paid in respect of that entitlement), pay an amount to the member or person concerned equal to the aggregate of—
    - (i) the amount of the shortfall, and
    - (ii) interest on that amount, at the prescribed rate, for the period which begins when the shortfall ought to have been paid by the trustees or managers and ends with the payment of the shortfall by the Board.
- (5) In subsection (4) references to an amount paid do not include—
- (a) an amount paid in respect of any money purchase benefit, or
  - (b) any other amount of a prescribed description.
- (6) Nothing in subsection (4) requires the Board—
- (a) to recover any amount from a person in such circumstances as may be prescribed, or
  - (b) to recover from any person any amount which it considers to be trivial.
- (7) In this section “assessment date” is to be construed in accordance with Schedule 7.

#### **Commencement Information**

**I68** S. 163(1)-(4)(5)(a)(6)(7) in force at 1.1.2006 for specified purposes and 6.4.2006 in so far as not already in force by [S.I. 2005/3331](#), art. 2(5), [Sch. Pt. 5](#)

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

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

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- (2) Regulations under subsection (1) may provide that the postponement is on such terms and conditions (including those relating to increments) as may be prescribed.
- (3) In subsection (1) the reference to “normal pension age” is to normal pension age, within the meaning of paragraph 34 of Schedule 7, in relation to the pension or lump sum in respect of which the entitlement to compensation arises.

#### Commencement Information

**I69** S. 164 in force at 6.4.2005 by [S.I. 2005/1108](#), art. 2(2), [Sch.](#)

### 165 Guaranteed minimum pensions

- (1) The Board must notify the Commissioners of Inland Revenue where, by reason of it assuming responsibility for an eligible scheme in accordance with this Chapter, the trustees or managers of the scheme are discharged from their liability to provide a guaranteed minimum pension (within the meaning of the Pension Schemes Act 1993 (c. 48)) to or in respect of a member of the scheme.
- (2) Notification under subsection (1) must be given as soon as reasonably practicable.
- (3) In section 47 of the Pension Schemes Act 1993 (further provision concerning entitlement to a guaranteed minimum pension for the purposes of section 46), after subsection (7) insert—
  - “(8) For the purposes of section 46, a person shall be treated as entitled to a guaranteed minimum pension to which he would have been entitled but for the fact that the trustees or managers were discharged from their liability to provide that pension on the Board of the Pension Protection Fund assuming responsibility for the scheme.”

#### Commencement Information

**I70** S. 165 in force at 6.4.2006 by [S.I. 2006/560](#), art. 2(3), [Sch. Pt. 3](#)

### 166 Duty to pay scheme benefits unpaid at assessment date etc

- (1) This section applies where the Board assumes responsibility for a scheme in accordance with this Chapter.
- (2) Subject to subsection (4), the Board must pay any amount by way of pensions or other benefits which a person had become entitled to payment of under the scheme rules before the assessment date but which remained unpaid at the time the transfer notice was received by the trustees or managers of the scheme.
- (3) If, immediately before the assessment date, the person is entitled to the amount but has postponed payment of it, subsection (2) does not apply.
- (4) Subsection (2) does not apply in relation to the amount of—
  - (a) any transfer payment, or
  - (b) any payment in respect of a refund of contributions.

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- (5) Regulations may provide that, in prescribed circumstances, where—
- (a) a member of the scheme died before the commencement of the assessment period, and
  - (b) during the period beginning with the assessment date and ending with the receipt by the trustees or managers of the transfer notice, a person became entitled under the scheme rules to a benefit of a prescribed description in respect of the member,
- that person's entitlement to the benefit, or to any part of it, is, for the purposes of subsection (2), to be treated as having arisen before the assessment date.
- (6) Regulations may make provision requiring the Board, in such circumstances as may be prescribed, to take such steps (including making payments) as may be prescribed in respect of rights of prescribed descriptions to which members of the scheme were entitled immediately before the commencement of the assessment period.
- (7) For the purposes of regulations made under subsection (6)—
- (a) this Chapter (other than this subsection), and
  - (b) the scheme rules (including any relevant legislative provision within the meaning of section 318(3)),
- are to have effect subject to such modifications as may be prescribed.
- (8) In this section “assessment date” is to be construed in accordance with Schedule 7.

#### Commencement Information

**I71** S. 166(1)-(5)(8) in force at 1.1.2006 for specified purposes and 6.4.2006 in so far as not already in force by [S.I. 2005/3331](#), [art. 2\(5\)](#), [Sch. Pt. 5](#)

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

- (1) Regulations may modify any of the provisions of this Chapter as it applies to cases—
- (a) where any liability to provide pensions or other benefits to or in respect of any member or members under a scheme is discharged during an assessment period in relation to the scheme by virtue of—
    - (i) regulations under section 135(4), or
    - (ii) the Board validating any action mentioned in section 135(9), or
  - (b) where, in prescribed circumstances, any such liability of a prescribed description is discharged on the assessment date but before the commencement of the assessment period.
- (2) In this section “assessment date” is to be construed in accordance with Schedule 7.

#### Commencement Information

**I72** S. 167(1) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)

**I73** S. 167(2) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

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## 168 Administration of compensation

- (1) Regulations may make further provision regarding the operation and administration of this Chapter.
- (2) Regulations under subsection (1) may, in particular, make provision—
  - (a) prescribing the manner in which and time when compensation is to be paid (including provision requiring periodic compensation to be paid by instalments);
  - (b) for calculating the amounts of compensation according to a prescribed scale or otherwise adjusting them to avoid fractional amounts or facilitate computation;
  - (c) prescribing the circumstances and manner in which compensation to which a person (“the beneficiary”) is entitled may be made to another person on behalf of the beneficiary for any purpose (including the discharge in whole or in part of an obligation of the beneficiary or any other person);
  - (d) for the payment or distribution of compensation to or among persons claiming to be entitled on the death of any person and for dispensing with strict proof of their title;
  - (e) for the recovery of amounts of compensation paid by the Board in excess of entitlement (together with interest on such amounts for the period from payment until recovery);
  - (f) specifying the circumstances in which payment of compensation can be suspended.
- (3) In this section “compensation” means compensation payable under Schedule 7 or under section 141(2).

### Commencement Information

- I74** S. 168 in force at 20.7.2005 by [S.I. 2005/1436](#), [art. 2\(1\)](#); s. 168 as modified by regulations made under s. 286(3)(j) in force at 20.7.2005 by [S.I. 2005/1436](#), [art. 2\(1\)](#); [S.I. 2005/1986](#)
- I75** S. 168(1)(2)(a)-(c)(e)(f)(3) in force at 1.1.2006 by [S.I. 2005/3331](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)

### *Discharge of Board's liabilities*

## 169 Discharge of liabilities in respect of compensation

- (1) This section applies where the Board assumes responsibility for an eligible scheme in accordance with this Chapter.
- (2) The Board may provide for the discharge of any liability imposed by this Chapter to provide compensation—
  - (a) by the taking out of a policy of insurance or a number of such policies;
  - (b) by the entry into an annuity contract or a number of such contracts;
  - (c) by the transfer of the benefit of such a policy or policies or such a contract or contracts;
  - (d) in prescribed circumstances, by the payment of a cash sum calculated in the prescribed manner.

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#### **Commencement Information**

**I76** S. 169(1)(2)(a)-(c) in force at 6.4.2006 by [S.I. 2006/560](#), [art. 2\(3\)](#), [Sch. Pt. 3](#)

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

- (1) This subsection applies where—
- (a) the Board assumes responsibility for an eligible scheme in accordance with this Chapter, and
  - (b) one or more members are entitled, or have accrued rights, under the scheme rules to money purchase benefits.
- (2) Regulations must make provision in respect of cases to which subsection (1) applies requiring the Board to secure that liabilities in respect of such benefits transferred to the Board under section 161 are discharged by it in the prescribed manner.
- (3) The provision made under subsection (2) must include provision prescribing the manner in which protected rights are to be given effect to.
- (4) In this section—
- “accrued rights”, under the scheme rules of a scheme, include pension credit rights within the meaning of section 124(1) of the Pensions Act 1995 (c. 26);
- “protected rights” has the meaning given by section 10 of the Pension Schemes Act 1993 (c. 48) (protected rights and money purchase benefits).

#### **Commencement Information**

**I77** [S. 170](#) in force at 1.1.2006 for specified purposes and 6.4.2006 in so far as not already in force by [S.I. 2005/3331](#), [art. 2\(5\)](#), [Sch. Pt. 5](#)

### *Equal treatment*

### **171 Equal treatment**

- (1) This section applies where—
- (a) a woman has been employed on like work with a man in the same employment,
  - (b) a woman has been employed on work rated as equivalent with that of a man in the same employment, or
  - (c) a woman has been employed on work which, not being work in relation to which paragraph (a) or (b) applies, was, in terms of the demands made on her (for instance under such headings as effort, skill and decision), of equal value to that of a man in the same employment,
- and service in that employment was pensionable service under an occupational pension scheme.
- (2) If, apart from this subsection, any of the payment functions so far as it relates (directly or indirectly) to that pensionable service—
- (a) is or becomes less favourable to the woman than it is to the man, or
  - (b) is or becomes less favourable to the man than it is to the woman,



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

- (3) Subsection (2) does not operate in relation to any difference as between a woman and a man in the operation of any of the payment functions if the Board proves that the difference is genuinely due to a material factor which—
  - (a) is not the difference of sex, but
  - (b) is a material difference between the woman’s case and the man’s case.
- (4) Subsection (2) does not apply in such circumstances as may be prescribed.
- (5) This section has effect in relation to the exercise of any payment function in so far as it relates (directly or indirectly) to any pensionable service on or after 17th May 1990.
- (6) In this section—

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

  - (a) the pension compensation provisions,
  - (b) section 166 (duty to pay scheme benefits unpaid at assessment date etc),
  - (c) section 169 (discharge of liabilities in respect of compensation), or
  - (d) section 170 (discharge of liabilities in respect of money purchase benefits);

“pensionable service” has the meaning given by section 124(1) of the Pensions Act 1995 (c. 26).

**Commencement Information**

**I78** [S. 171](#) in force at 1.1.2006 for specified purposes and 6.4.2006 in so far as not already in force by [S.I. 2005/3331, art. 2\(5\)](#), [Sch. Pt. 5](#)

*Relationship with fraud compensation regime*

**172 Relationship with fraud compensation regime**

- (1) No transfer notice may be given in respect of a scheme within the first 12 months of an assessment period in relation to the scheme.
- (2) Where an application has been made under section 182 (application for fraud compensation payment), no transfer notice may be given until—
  - (a) the Board has determined the application,
  - (b) the period within which the Board’s determination may be reviewed by virtue of Chapter 6 has expired, and
  - (c) if the determination is so reviewed—
    - (i) the review and any reconsideration,
    - (ii) any reference to the PPF Ombudsman in respect of the determination, and
    - (iii) any appeal against his determination or directions,has been finally disposed of.

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- (3) Subsection (4) applies where during an assessment period in relation to a scheme the Board determines to make one or more fraud compensation payments (“the fraud compensation”) to the trustees or managers of the scheme under Chapter 4 of this Part.
- (4) For the purposes of determining whether the condition in section 127(2)(a), 128(2)(a), 152(2) or 158(1) is satisfied, any fraud compensation payment which becomes payable after the relevant time is, to the extent that it relates to a loss incurred by the scheme before that time, to be regarded as an asset of the scheme at that time.
- (5) For the purposes of subsection (4) “the relevant time”—
- (a) in the case of section 127(2)(a), has the same meaning as in that provision,
  - (b) in the case of section 128(2)(a), has the same meaning as in that provision,
  - (c) in the case of section 152(2) means the reconsideration time (within the meaning of section 151), and
  - (d) in the case of section 158(1), has the same meaning as in that provision.
- (6) Subsection (4) does not apply to the extent that the fraud compensation is payable in respect of a reduction in the value of money purchase assets of the scheme.

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

#### **Commencement Information**

**179** S. 172(1) in force at 6.4.2005 by [S.I. 2005/275](#), [art. 2\(7\)](#), [Sch. Pt. 7](#)

**180** S. 172(2)-(4)(5)(a)-(c)(6) in force at 1.9.2005 by [S.I. 2005/1720](#), [art. 2\(16\)](#), [Sch. Pt. 3](#)

### *The fund*

## **173 Pension Protection Fund**

- (1) The Pension Protection Fund shall consist of—
- (a) property and rights transferred to the Board under section 161(2)(a),
  - (b) contributions levied under section 174 or 175 (initial and pension protection levies),
  - (c) money borrowed by the Board under section 115 for the purposes of this Chapter,
  - (d) any income or capital gain credited under subsection (2),
  - (e) any amount paid to the Board by virtue of section 139 (repayment of loans to trustees or managers and payment of interest),
  - (f) amounts recovered under section 163(4)(a) or by virtue of section 168(2)(e) (overpayments),
  - (g) any amount paid to the Board in respect of a debt due to the Board under section 40(7) by virtue of a contribution notice under section 38,
  - (h) any property transferred or amounts paid to the Board as required by a restoration order under section 52,
  - (i) any amount paid to the Board in respect of a debt due to the Board under section 56(7) by virtue of a contribution notice under section 55,
  - (j) amounts transferred from the Fraud Compensation Fund under section 187 (fraud compensation transfer payments), and

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- (k) amounts of a prescribed description (other than amounts paid, directly or indirectly, to the Board by the Crown).
- (2) The Board must credit to the Pension Protection Fund any income or capital gain arising from the assets in the Fund.
- (3) The following are to be paid or transferred out of the Pension Protection Fund—
- (a) any sums required to meet liabilities transferred to the Board under section 161(2)(a),
  - (b) any sums required to make payments in accordance with the pension compensation provisions,
  - (c) any sums required for the repayment of, and the payment of interest on, money within subsection (1)(c),
  - (d) any sums required to make loans under section 139 (loans to trustees or managers),
  - (e) any sums required to make payments under section 163(4)(b) (underpayments during the assessment period),
  - (f) any sums required to make payments under section 166 (payment of unpaid scheme benefits etc),
  - (g) any sums required to discharge liabilities under section 169 or 170 (discharge of liabilities in respect of compensation or money purchase benefits),
  - (h) any sums required to meet any liabilities arising from obligations imposed on the Board by a restoration order under section 52,
  - (i) any property (other than sums) required to meet any liabilities—
    - (i) transferred to the Board as mentioned in paragraph (a) and arising from obligations imposed by a restoration order under section 52, or
    - (ii) arising from obligations imposed on the Board by such an order,
  - (j) any sums required to meet expenditure incurred by virtue of section 161(5) and paragraph 7 of Schedule 6 (expenditure associated with transfer of property, rights and liabilities to the Board), and
  - (k) sums required for prescribed purposes.
- (4) No other amounts are to be paid or transferred out of the Pension Protection Fund.
- (5) In subsection (1) (other than paragraph (d)) and subsection (3) (other than paragraph (c)) any reference to a provision of this Act is to be read as including a reference to any provision in force in Northern Ireland corresponding to that provision.

#### **Commencement Information**

- 181** S. 173(1)(a)(f)(3)(a)(e)-(g)(j) in force at 6.4.2006 by [S.I. 2006/560, art. 2\(3\)](#), **Sch. Pt. 3**
- 182** S. 173(1)(b) in force at 20.6.2005 for specified purposes (in so far as it relates to section 174 of the Act (initial levy)) by [S.I. 2005/1436, art. 2\(2\)\(a\)](#)
- 183** S. 173(1)(b) in force at 1.4.2006 in so far as not already in force by [S.I. 2006/560, art. 2\(2\)](#), **Sch. Pt. 2**
- 184** S. 173(1)(c)-(e)(g)(i)(3)(b)-(d)(h)(i) in force at 6.4.2005 by [S.I. 2005/275, art. 2\(7\)](#), **Sch. Pt. 7**
- 185** S. 173(2)(4)(5) in force at 20.6.2005 by [S.I. 2005/1436, art. 2\(2\)\(a\)](#)
- 186** S. 173(3)(k) in force for the purpose only of conferring power to make regulations (1.6.2005); and for all other purposes (30.6.2005) by [S.I. 2005/1436, art. 2\(3\)](#)

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### The levies

#### 174 Initial levy

- (1) Regulations must make provision for imposing a levy (“the initial levy”) in respect of eligible schemes for the period (“the initial period”) which—
  - (a) begins with the day appointed for this purpose by the regulations, and
  - (b) ends on the following 31st March or, if the regulations so provide, 12 months after the day referred to in paragraph (a).
- (2) The regulations must prescribe—
  - (a) the factors by reference to which the initial levy is to be assessed,
  - (b) the rate of the levy, and
  - (c) the time or times during the initial period when the levy, or any instalment of the levy, becomes payable.
- (3) Regulations under this section may only be made with the approval of the Treasury.

#### Commencement Information

**187** S. 174(1)-(3) in force at 10.2.2005 for specified purposes and at 1.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(2), [Sch. Pt. 2](#)

#### 175 Pension protection levies

- (1) For each financial year falling after the initial period, the Board must impose both of the following—
  - (a) a risk-based pension protection levy in respect of all eligible schemes;
  - (b) a scheme-based pension protection levy in respect of eligible schemes.

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

- (2) For the purposes of this section—
  - (a) a risk-based pension protection levy is a levy assessed by reference to—
    - (i) the difference between the value of a scheme’s assets (disregarding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules) and the amount of its protected liabilities,
    - (ii) except in relation to any prescribed scheme or scheme of a prescribed description, the likelihood of an insolvency event occurring in relation to the employer in relation to a scheme, and
    - (iii) if the Board considers it appropriate, one or more other risk factors mentioned in subsection (3), and
  - (b) a scheme-based pension protection levy is a levy assessed by reference to—
    - (i) the amount of a scheme’s liabilities to or in respect of members (other than liabilities in respect of money purchase benefits), and
    - (ii) if the Board considers it appropriate, one or more other scheme factors mentioned in subsection (4).

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- (3) The other risk factors referred to in subsection (2)(a)(iii) are factors which the Board considers indicate one or more of the following—
- (a) the risks associated with the nature of a scheme’s investments when compared with the nature of its liabilities;
  - (b) such other matters as may be prescribed.
- (4) The other scheme factors referred to in subsection (2)(b)(ii) are—
- (a) the number of persons who are members, or fall within any description of member, of a scheme;
  - (b) the total annual amount of pensionable earnings of active members of a scheme;
  - (c) such other factors as may be prescribed.
- (5) The Board must, before the beginning of each financial year, determine in respect of that year—
- (a) the factors by reference to which the pension protection levies are to be assessed,
  - (b) the time or times by reference to which those factors are to be assessed,
  - (c) the rate of the levies, and
  - (d) the time or times during the year when the levies, or any instalment of levy, becomes payable.
- (6) Different risk factors, scheme factors or rates may be determined in respect of different descriptions of scheme.
- (7) The rate determined in respect of a description of scheme may be nil.
- (8) In this section—
- “initial period” is to be construed in accordance with section 174;
  - “pensionable earnings”, in relation to an active member under a scheme, means the earnings by reference to which a member’s entitlement to benefits would be calculated under the scheme rules if he ceased to be an active member at the time by reference to which the factor within subsection (4)(b) is to be assessed.
- (9) In this section and sections 176 to 181 “financial year” means a period of 12 months ending with 31st March.
- (10) The Board’s duty to impose pension protection levies in respect of any financial year is subject to—
- (a) section 177 (amounts to be raised by the pension protection levies), and
  - (b) section 180 (transitional provision).

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**Modifications etc. (not altering text)**

**C21** Ss. 175-181 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 for specified purposes in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, **73-75**

**C22** S. 175 modified (with application in accordance with reg. 3(1) of the amending S.I.) by [The Occupational Pension Schemes \(Pension Protection Levies\) \(Transitional Period and Modification for Multi-employer Schemes\) Regulations 2006 \(S.I. 2006/566\)](#), regs. 1(1), **3(2)(a)**

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- C23** S. 175 modified (with application in accordance with reg. 4(1) of the amending S.I.) by [The Occupational Pension Schemes \(Pension Protection Levies\) \(Transitional Period and Modification for Multi-employer Schemes\) Regulations 2006 \(S.I. 2006/566\)](#), regs. 1(1), **4**
- C24** S. 175 modified (with application in accordance with reg. 5(1) of the amending S.I.) by [The Occupational Pension Schemes \(Pension Protection Levies\) \(Transitional Period and Modification for Multi-employer Schemes\) Regulations 2006 \(S.I. 2006/566\)](#), regs. 1(1), **5**
- C25** S. 175(1) modified (with application in accordance with reg. 3(1) of the amending S.I.) by [The Occupational Pension Schemes \(Pension Protection Levies\) \(Transitional Period and Modification for Multi-employer Schemes\) Regulations 2006 \(S.I. 2006/566\)](#), regs. 1(1), **3(2)(b)**

#### Commencement Information

- I88** S. 175 in force at 20.6.2005 for specified purposes (in so far as it relates to a consultation by the Board under section 176 of the Act (supplementary provisions about pension protection levies)) by [S.I. 2005/1436](#), **art. 2(2)(b)**
- I89** S. 175(1)(2)(a)(ii)(b)(3)(b)(4)(a)(b)(5)-(10) in force at 9.12.2005 in so far as not already in force by [S.I. 2005/3331](#), **art. 2(2)**, **Sch. Pt. 2**
- I90** S. 175(2)(a)(i)(iii)(3)(a) in force at 6.4.2005 by [S.I. 2005/275](#), **art. 2(7)**, **Sch. Pt. 7**

### 176 Supplementary provisions about pension protection levies

- (1) The Board must consult such persons as it considers appropriate in the prescribed manner before making a determination under section 175(5) in respect of a financial year if—
- (a) that year is the first financial year for which the Board is required to impose levies under section 175,
  - (b) any of the proposed levy factors or levy rates is different, or applies to a different description of scheme, from the levy factors and levy rates in respect of the pension protection levies imposed in the previous financial year, or
  - (c) no consultation has been required under this subsection in relation to the pension protection levies imposed for either of the previous two financial years.
- (2) The Board must publish details of any determination under section 175(5) in the prescribed manner.

#### Modifications etc. (not altering text)

- C21** Ss. 175-181 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 for specified purposes in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, **73-75**

#### Commencement Information

- I91** S. 176 in force for the purpose only of conferring power to make regulations (27.5.2005); and for all other purposes (20.6.2005) by [S.I. 2005/1436](#), **art. 2(4)**

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

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

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- (2) The Board must impose levies for a financial year in a form which it estimates will raise an amount not exceeding the levy ceiling for the financial year.
- (3) The pension protection levies imposed for a financial year must be in a form which the Board estimates will result in at least 80% of the amount raised by the levies for that year being raised by the risk-based pension protection levy.
- (4) For the first financial year after the transitional period, regulations may modify subsection (2) so as to provide that the reference to the levy ceiling for the financial year is to be read as a reference to such lower amount as is prescribed.
- (5) For the second financial year after the transitional period and for any subsequent financial year, the Board must impose pension protection levies in a form which it estimates will raise an amount which does not exceed by more than 25% the amount estimated under subsection (1) in respect of the pension protection levies imposed for the previous financial year.
- (6) The Secretary of State may by order substitute a different percentage for the percentage for the time being specified in subsection (5).
- (7) Before making an order under subsection (6), the Secretary of State must consult such persons as he considers appropriate.
- (8) Regulations under subsection (4), or an order under subsection (6), may be made only with the approval of the Treasury.
- (9) In this section—
  - (a) “risk-based pension protection levy” and “scheme-based pension protection levy” are to be construed in accordance with section 175, and
  - (b) “transitional period” has the meaning given by section 180(3).

#### **Modifications etc. (not altering text)**

**C21** Ss. 175-181 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 for specified purposes in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, [73-75](#)

#### **Commencement Information**

**I92** S. 177(1)-(3)(9)(a) in force at 9.12.2005 by [S.I. 2005/3331](#), [art. 2\(2\)](#), [Sch. Pt. 2](#)

**I93** S. 177(4) in force at 1.9.2006 for specified purposes and 1.10.2006 in so far as not already in force by [S.I. 2006/2272](#), [art. 2\(2\)](#)

**I94** S. 177(5)(8) in force at 1.9.2006 by [S.I. 2006/2272](#), [art. 2\(1\)](#)

**I95** S. 177(9)(b) in force at 1.4.2006 by [S.I. 2006/560](#), [art. 2\(2\)](#), [Sch. Pt. 2](#)

## **178 The levy ceiling**

- (1) The Secretary of State must, before the beginning of each financial year for which levies are required to be imposed under section 175, specify by order the amount which is to be the levy ceiling for that year for the purposes of section 177.
- (2) An order under subsection (1) in respect of the first financial year for which levies are imposed under section 175 may be made only with the approval of the Treasury.

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- (3) Subject to subsection (8), the amount specified under subsection (1) for a financial year (“the current year”) after the first year for which levies are imposed under section 175 must be—
- (a) where it appears to the Secretary of State that the level of earnings in the review period has increased, the amount specified under subsection (1) for the previous financial year increased by the earnings percentage for that review period specified under subsection (6), and
  - (b) in any other case, the amount specified under subsection (1) for the previous financial year.
- (4) In subsection (3)—
- “level of earnings” means the general level of earnings obtaining in Great Britain;
- “review period” in relation to the current year means the period of 12 months ending with the prescribed date in the previous financial year.
- (5) For the purposes of subsection (3), the Secretary of State must, in respect of each review period, review the general level of earnings obtaining in Great Britain and any changes in that level; and for the purposes of such a review the Secretary of State may estimate the general level of earnings in such manner as he thinks appropriate.
- (6) Where it appears to the Secretary of State that the general level of earnings has increased during the review period, he must by order specify the percentage by which that level has so increased (“the earnings percentage”).
- (7) The Secretary of State must discharge the duties imposed by subsections (5) and (6) in respect of a review period before the beginning of the prescribed period which ends at the time the first financial year after the review period begins.
- (8) The Secretary of State may, on the recommendation of the Board and with the approval of the Treasury, make an order under subsection (1) in respect of a financial year which specifies an amount exceeding the amount required to be specified under subsection (3).
- (9) Before making a recommendation for the purposes of subsection (8), the Board must consult such persons as it considers appropriate in the prescribed manner.

#### **Modifications etc. (not altering text)**

**C21** Ss. 175-181 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 for specified purposes in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005](#) (S.I. 2005/441), regs. 1, [73-75](#)

#### **Commencement Information**

**I96** [S. 178\(1\)\(2\)](#) in force at 9.12.2005 by [S.I. 2005/3331](#), [art. 2\(2\)](#), [Sch. Pt. 2](#)

**I97** [S. 178\(4\)\(7\)\(9\)](#) in force at 1.9.2006 for specified purposes and 1.10.2006 in so far as not already in force by [S.I. 2006/2272](#), [art. 2\(2\)](#)

**I98** [S. 178\(5\)](#) in force at 1.9.2006 by [S.I. 2006/2272](#), [art. 2\(1\)](#)

**I99** [S. 178\(6\)](#) in force at 1.10.2006 for specified purposes and 1.12.2006 in so far as not already in force by [S.I. 2006/2272](#), [art. 2\(4\)](#)



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## 179 Valuations to determine scheme underfunding

- (1) For the purposes of enabling risk-based pension protection levies (within the meaning of section 175) to be calculated in respect of eligible schemes, regulations may make provision requiring the trustees or managers of each such scheme to provide the Board or the Regulator on the Board's behalf—
  - (a) with an actuarial valuation of the scheme at such intervals as may be prescribed, and
  - (b) with such other information as the Board may require in respect of the assets and protected liabilities of the scheme at such times as may be prescribed.
- (2) For the purposes of this section, in relation to a scheme—

“an actuarial valuation” means a written valuation of the scheme's assets and protected liabilities prepared and signed by the actuary;

“the actuary” means—

  - (a) the actuary appointed under section 47(1)(b) of the Pensions Act 1995 (c. 26) (professional advisers) in relation to the scheme, or
  - (b) if no such actuary has been appointed—
    - (i) a person with prescribed qualifications or experience, or
    - (ii) a person approved by the Secretary of State.
- (3) Regulations under this section may prescribe how—
  - (a) the assets and the protected liabilities of schemes, and
  - (b) their amount or value,are to be determined, calculated and verified.
- (4) Subject to any provision made under subsection (3), those matters are to be determined, calculated and verified in accordance with guidance issued by the Board.
- (5) In calculating the amount of any liabilities for the purposes of a valuation required by virtue of this section, a provision of the scheme rules which limits the amount of the scheme's liabilities by reference to the value of its assets is to be disregarded.
- (6) In this section references to “assets” do not include assets representing the value of any rights in respect of money purchase benefits under the scheme rules.

### Modifications etc. (not altering text)

**C21** Ss. 175-181 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 for specified purposes in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, [73-75](#)

### Commencement Information

- I100** S. 179(1)(a)(3) in force for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#)
- I101** S. 179(2) in force in so far as it relates to paragraph (b)(i) of the definition of “the actuary” for the purpose only of conferring power to make regulations, orders or rules, as the case may be, 10.2.2005; and for all other purposes in relation to that paragraph of that definition at 6.4.2005 for specified purposes by [S.I. 2005/275](#), art. 2(3), [Sch. Pt. 3](#)
- I102** S. 179(2) in force in so far as not already in force except subsection (1)(b) at 6.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)

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**I103** S. 179(4)-(6) in force in so far as not already in force except subsection (1)(b) at 6.4.2005 by S.I. 2005/275, art. 2(7), **Sch. Pt. 7**

## 180 Pension protection levies during the transitional period

- (1) Regulations may provide that in respect of any financial year during the transitional period—
  - (a) sections 175 and 177(3) are to apply with such modifications as may be prescribed;
  - (b) section 177(2) is to apply as if the reference to the levy ceiling for the financial year were a reference to such lower amount as is specified in the regulations.
- (2) Regulations which contain provision made by virtue of subsection (1)(b) may only be made with the approval of the Treasury.
- (3) For the purposes of this section “the transitional period” means the prescribed period beginning immediately after the initial period (within the meaning of section 174).
- (4) If the transitional period begins with a date other than 1st April, regulations may provide that any provision of this section or of sections 175 to 179 applies, with such modifications as may be prescribed, in relation to—
  - (a) the period beginning at the same time as the transitional period and ending with the following 31st March, and
  - (b) the financial year which begins immediately after that period.

### Modifications etc. (not altering text)

**C21** Ss. 175-181 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 for specified purposes in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, **73-75**

### Commencement Information

**I104** S. 180(1)-(3) in force at 9.12.2005 by S.I. 2005/3331, art. 2(2), **Sch. Pt. 2**

## 181 Calculation, collection and recovery of levies

- (1) This section applies in relation to—
  - (a) the initial levy imposed under section 174 in respect of a scheme, and
  - (b) any pension protection levy imposed under section 175 in respect of a scheme.
- (2) The levy is payable to the Board by or on behalf of—
  - (a) the trustees or managers of the scheme, or
  - (b) any other prescribed person.
- (3) The Board must in respect of the levy—
  - (a) determine the schemes in respect of which it is imposed,
  - (b) calculate the amount of the levy in respect of each of those schemes, and
  - (c) notify any person liable to pay the levy in respect of the scheme of the amount of the levy in respect of the scheme and the date or dates on which it becomes payable.

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- (4) The Board may require the Regulator to discharge, on the Board's behalf, its functions under subsection (3) in respect of the levy.
- (5) Where a scheme is an eligible scheme for only part of the period for which the levy is imposed, except in prescribed circumstances, the amount of the levy payable in respect of the scheme for that period is such proportion of the full amount as that part bears to that period.
- (6) An amount payable by a person on account of the levy is a debt due from him to the Board.
- (7) An amount so payable may be recovered—
  - (a) by the Board, or
  - (b) if the Board so determines, by the Regulator on its behalf.
- (8) Regulations may make provision relating to—
  - (a) the collection and recovery of amounts payable by way of any levy in relation to which this section applies;
  - (b) the circumstances in which any such amount may be waived.

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**Modifications etc. (not altering text)**

- C21** Ss. 175-181 modified (9.3.2005 for specified purposes, 1.4.2005 for specified purposes, 6.4.2005 for specified purposes in so far as not already in force) by [The Pension Protection Fund \(Multi-employer Schemes\) \(Modification\) Regulations 2005 \(S.I. 2005/441\)](#), regs. 1, **73-75**
- C26** S. 181(5) excluded (1.4.2005) by [The Occupational Pension Schemes \(Levies\) Regulations 2005 \(S.I. 2005/842\)](#), regs. 1(2), **12(2)**
- C27** S. 181(5) excluded (1.4.2006) by [The Pension Protection Fund \(General and Miscellaneous Amendments\) Regulations 2006 \(S.I. 2006/580\)](#), regs. 1(1)(a), **20**

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**Commencement Information**

- I105** S. 181(1)(a)(2)(a)(3)(4)(6)(7) in force at 1.4.2005 by [S.I. 2005/275](#), art. 2(6), **Sch. Pt. 6**
- I106** [S. 181\(1\)\(b\)](#) in force at 9.12.2005 by [S.I. 2005/3331](#), art. 2(2), **Sch. Pt. 2**
- I107** S. 181(5)(8) in force at 10.2.2005 for specified purposes and at 1.4.2005 in so far as not already in force by [S.I. 2005/275](#), art. 2(2), **Sch. Pt. 2**

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