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Changes to legislation: Pensions Act 2004, Cross Heading: Restrictions on schemes during the assessment period is up to date with all changes known to be in force on or before 18 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)



Pensions Act 2004

2004 CHAPTER 35

PART 2

THE BOARD OF THE PENSION PROTECTION FUND

CHAPTER 3

PENSION PROTECTION

Restrictions on schemes during the assessment period

VALID FROM 06/04/2005

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.

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- (3) In subsection (2) “qualifying insolvency event” has the meaning given by section 127(3).
- (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).

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.
- (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.

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- (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

- II** 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—
(a) the investment of the scheme’s assets,
(b) the incurring of expenditure,
(c) the instigation or conduct of legal proceedings, and
(d) such other matters as may be prescribed.
- (3) In subsection (2)—
(a) “relevant person” in relation to a scheme means—
(i) the trustees or managers of the scheme,
(ii) the employer in relation to the scheme, or
(iii) such other persons as may be prescribed, and
(b) the reference to the assets of the scheme is a reference to those assets excluding any assets representing the value of any rights in respect of money purchase benefits under the scheme rules.
- (4) The Board may revoke or vary any direction under this 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

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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.

Commencement Information

- I2** 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](#)

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.
- (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

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- (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.

Commencement Information

- I3** 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](#)

VALID FROM 06/04/2005

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.
- (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—
- the Regulator,
 - the trustees or managers of the scheme,
 - any insolvency practitioner in relation to the employer or, if there is no such insolvency practitioner, the employer, and
 - 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—
- until—
 - the Board has issued a notice under subsection (2) relating to the determination, and
 - the period within which the issue of that notice may be reviewed by virtue of Chapter 6 has expired, and

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- (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.

VALID FROM 06/04/2005

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.
- (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.

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.

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- (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).
- (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

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(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

I4 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](#)

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.

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Commencement Information

- I5** 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](#)

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