



# Pensions Act 2004

## 2004 CHAPTER 35

### PART 2

#### THE BOARD OF THE PENSION PROTECTION FUND

### CHAPTER 3

#### PENSION PROTECTION

#### *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or section 153(2) within the authorised period (within the meaning of section 151(6)) (or any such application has been withdrawn), or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

*Status: Point in time view as at 23/07/2012.*

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- (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) [<sup>F1</sup>or (2B)].
- (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 [<sup>F2</sup>determination made by the Board or] 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.

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- (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).
- (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.

#### Textual Amendments

- F1** Words in s. 154(2)(c) inserted (23.7.2012) by [Pensions Act 2011 \(c. 19\)](#), s. 38(4), [Sch. 4 para. 16\(a\)](#); [S.I. 2012/1681](#), art. 3(b)(iii)
- F2** Words in s. 154(5)(b) inserted (23.7.2012) by [Pensions Act 2011 \(c. 19\)](#), s. 38(4), [Sch. 4 para. 10](#); [S.I. 2012/1681](#), art. 3(b)(ii)

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

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

#### Commencement Information

- I1** S. 154(1)(2)(a)(c)(6)-(15) in force at 6.4.2005 by [S.I. 2005/275](#), art. 2(7), [Sch. Pt. 7](#)
- I2** S. 154(2)(b)(3)-(5) in force at 6.4.2007 by [S.I. 2006/2272](#), art. 2(7), [Sch. Pt. 2](#)

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