



# 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*

#### **138 Payment of scheme benefits**

- (1) Subsections (2) [<sup>F1</sup>, (2A)] 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.

- [<sup>F2</sup>(2A) Benefits in the form of a lump sum may be paid to or in respect of a member under the scheme rules during the assessment period only in the circumstances in which, and to the extent to which, lump sum compensation 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.]

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*Changes to legislation: Pensions Act 2004, Section 138 is up to date with all changes known to be in force on or before 09 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) View outstanding changes*

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- (3) <sup>F3</sup>... where, on the commencement of the assessment period—
- (a) a member's pensionable service terminates, and
  - (b) he becomes a person to whom [<sup>F4</sup>Chapter 2 of Part 4ZA] 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 [<sup>F5</sup>subsections (2) and (2A)] .
- (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 [<sup>F6</sup>subsections (2A) and (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), [<sup>F7</sup>(2A),] (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) [<sup>F8</sup>, (2A)] 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 [<sup>F9</sup>subsections (2) to (3)] .
- [<sup>F10</sup>(9A) Regulations may make provision as to circumstances in which benefits in the form of a lump sum are to be treated for the purposes of subsection (2A) as being paid in the circumstances in which lump sum compensation would be payable in accordance with this Chapter.
- (9B) Regulations may create exceptions to subsection (2A).]
- (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)—

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- (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 [F11 subsections (2) and (2A)] , to be treated as having become payable before the commencement of the assessment period.
- (13) Nothing in subsection (2) [F12, (2A)] or (3) applies to money purchase benefits.

#### Textual Amendments

- F1** Words in s. 138(1) inserted (6.4.2015) by Pension Schemes Act 2015 (c. 8), ss. 59(2), 89(3)(b) (with s. 87)
- F2** S. 138(2A) inserted (6.4.2015) by Pension Schemes Act 2015 (c. 8), ss. 59(3), 89(3)(b) (with s. 87)
- F3** Word in s. 138(3) omitted (6.4.2015) by virtue of Pension Schemes Act 2015 (c. 8), ss. 59(4), 89(3)(b) (with s. 87)
- F4** Words in s. 138(3)(b) substituted (6.4.2015) by Pension Schemes Act 2015 (c. 8), s. 89(3)(b), Sch. 4 para. 40 (with s. 87)
- F5** Words in s. 138(5) substituted (6.4.2015) by Pension Schemes Act 2015 (c. 8), ss. 59(5), 89(3)(b) (with s. 87)
- F6** Words in s. 138(6) substituted (6.4.2015) by Pension Schemes Act 2015 (c. 8), ss. 59(6), 89(3)(b) (with s. 87)
- F7** Word in s. 138(7) inserted (6.4.2015) by Pension Schemes Act 2015 (c. 8), ss. 59(7), 89(3)(b) (with s. 87)
- F8** Word in s. 138(8) inserted (6.4.2015) by Pension Schemes Act 2015 (c. 8), ss. 59(8), 89(3)(b) (with s. 87)
- F9** Words in s. 138(9) substituted (6.4.2015) by Pension Schemes Act 2015 (c. 8), ss. 59(9), 89(3)(b) (with s. 87)
- F10** S. 138(9A)(9B) inserted (3.3.2015 for specified purposes, 6.4.2015 so far as not already in force) by Pension Schemes Act 2015 (c. 8), ss. 59(10), 89(1)(b)(3)(b) (with s. 87)
- F11** Words in s. 138(12) substituted (6.4.2015) by Pension Schemes Act 2015 (c. 8), ss. 59(11), 89(3)(b) (with s. 87)
- F12** Word in s. 138(13) inserted (6.4.2015) by Pension Schemes Act 2015 (c. 8), ss. 59(12), 89(3)(b) (with s. 87)

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#### **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
- C3** S. 138(2) modified (6.4.2017) by [Pensions Act 2014 \(c. 19\)](#), s. 56(1), **Sch. 20 para. 14(3)** (with [Sch. 20 paras. 9, 11](#)); [S.I. 2017/297](#), art. 2(b) (with transitional provisions in [S.I. 2017/301](#))

#### **Commencement Information**

- I1** 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**
- I2** S. 138(10)(a) in force at 25.6.2014 by [S.I. 2014/1636](#), **art. 2**
- I3** 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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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 18(5A) inserted by [2014 c. 19 s. 52\(2\)](#)
- s. 18(6) words inserted by [2014 c. 19 s. 52\(3\)](#)
- s. 18(8) words inserted by [2014 c. 19 s. 52\(3\)](#)
- s. 23(1A) inserted by [2015 c. 8 Sch. 2 para. 26\(3\)](#)
- s. 23(10A) inserted by [2015 c. 8 Sch. 2 para. 26\(5\)](#)
- s. 38(1)-(1B) substituted for s. 38(1) by [2015 c. 8 Sch. 2 para. 27](#)
- s. 38(7)(da) inserted by [2021 c. 1 s. 104\(2\)](#)
- s. 43(1)-(1B) substituted for s. 43(1) by [2015 c. 8 Sch. 2 para. 28\(2\)](#)
- s. 52(1)-(1B) substituted for s. 52(1) by [2015 c. 8 Sch. 2 para. 29](#)
- s. 80(1)(a)(iib) inserted by [2021 c. 1 s. 109\(3\)](#)
- s. 102(2)(a) words in s. 102(2) renumbered as s. 102(2)(a) by [2008 c. 30 s. 44\(5\)\(a\)](#)
- s. 102(2)(b) inserted by [2008 c. 30 s. 44\(5\)\(b\)](#)
- s. 103(1A) inserted by [2008 c. 30 s. 44\(6\)](#)
- s. 117A inserted by [2008 c. 30 Sch. 10 para. 3](#)
- s. 126(1)-(1B) substituted for s. 126(1) by [2015 c. 8 Sch. 2 para. 31](#)
- s. 188(1)(ba) inserted by [2008 c. 30 Sch. 10 para. 6](#)
- s. 189A inserted by [2008 c. 30 Sch. 10 para. 7](#)
- s. 209(9) added by [2008 c. 30 Sch. 10 para. 8](#)
- s. 291(4)(f) and word inserted by [2021 c. 1 Sch. 3 para. 19\(b\)](#)
- s. 318(3)(a)(viii)-(x) inserted by [2015 c. 8 Sch. 2 para. 38\(3\)\(a\)](#)
- s. 318(3)(b)(vi)-(viii) inserted by [2015 c. 8 Sch. 2 para. 38\(3\)\(b\)](#)
- Sch. 4 para. 7(5)(b) inserted by [2008 c. 30 s. 44\(8\)\(b\)](#)
- Sch. 4 para. 13(3) inserted by [2008 c. 30 s. 44\(9\)\(b\)](#)
- Sch. 4 para. 7(5)(a) words in Sch. 4 para. 7(5) renumbered as Sch. 4 para. 7(5)(a) by [2008 c. 30 s. 44\(8\)\(a\)](#)
- Sch. 7 para. 21(2)(c)-(cc) substituted for Sch. 7 para. 21(2)(b)(c) by [2008 c. 30 Sch. 8 para. 11](#) (This amendment not applied to legislation.gov.uk. Sch. 8 para. 10 (3.1.2012) omitted without ever being in force by virtue of 2011 c. 19, Sch. 4 para. 20; S.I. 2011/3034 art. 3(i)(iv))