
DRAFT STATUTORY INSTRUMENTS

2005 No.

The Pensions (Northern Ireland) Order 2005

PART III

THE BOARD OF THE PENSION PROTECTION FUND

CHAPTER 3

PENSION PROTECTION

Circumstances in which Board assumes responsibility for eligible schemes

Duty to assume responsibility for schemes following insolvency event

111.—(1) This Article 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 Articles 115 and 127),
- (b) after the relevant time a scheme failure notice is issued under Article 106(2)(a) 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 occurrence of the qualifying insolvency event, and
 - (ii) ending immediately before the issuing of the scheme failure notice under Article 106(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 Article 133).

(3) For the purposes of this Article, 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 Article 110(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 Article 116) in relation to the scheme which began before the occurrence of the current event.

(4) For the purposes of this Article—

- (a) the reference in paragraph (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 Article is subject to Articles 130 and 131 (cases where Board must refuse to assume responsibility for a scheme).

Duty to assume responsibility for schemes following application or notification

112.—(1) This Article applies where, in relation to an eligible scheme, the trustees or managers of the scheme—

- (a) make an application under paragraph (1) of Article 113 (an “Article 113 application”), or
- (b) receive a notice from the Board under paragraph (5)(a) of that Article (an “Article 113 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 Articles 115 and 127),
- (b) after the relevant time the Board issues a scheme failure notice under Article 114(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 Article 113 application or, as the case may be, the receipt of the Article 113 notification, and
- (ii) ending immediately before the issuing of the scheme failure notice under Article 114(2),

and the occurrence of such a withdrawal event in respect of a withdrawal notice issued during that period is not a possibility (see Article 133).

(3) In paragraph (2)—

- (a) the reference in sub-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 Article 113 application was made or, as the case may be, the Article 113 notification was received.

(4) An application under Article 113(1) or notification under Article 113(5)(a) is to be disregarded for the purposes of paragraph (1) if it is made or given during an assessment period (see Article 116) in relation to the scheme which began before the application was made or notification was given.

(5) This Article is subject to Articles 130 and 131 (cases where Board must refuse to assume responsibility for a scheme).

Applications and notifications for the purposes of Article 112

113.—(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 Article 112.

(2) Where the Board receives an application under paragraph (1), it must give a copy of the application to—

- (a) the Regulator, and
 - (b) the employer.
- (3) An application under paragraph (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 paragraph (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 paragraph (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 paragraph (1) does not apply where the trustees or managers of an eligible scheme become aware as mentioned in that paragraph by reason of a notice given to them under paragraph (5).
- (7) The duty imposed by paragraph (4) does not apply where the Regulator becomes aware as mentioned in that paragraph 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 paragraph (2).
- (8) Regulations may require notices under this Article to be in the prescribed form and to contain the prescribed information.

Board’s duty where application or notification received under Article 113

- 114.**—(1) This Article applies where the Board—
- (a) receives an application under paragraph (1) of Article 113 and is satisfied that sub-paragraphs (a) and (b) of that paragraph are satisfied in relation to the application, or
 - (b) is notified by the Regulator under Article 113(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”).
- (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 paragraph (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 Article—
- (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 sub-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 sub-paragraph.

- (6) For the purposes of this Part a notice issued under paragraph (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 paragraph (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 Article must be in the prescribed form and contain such information as may be prescribed.
- (9) A notice given under paragraph (7) in relation to a withdrawal notice under paragraph (3) which has become binding must state the time from which the Board ceases to be involved with the scheme (see Article 133).

Protected liabilities

- 115.**—(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 Article 146) 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 paragraph (1)(a), references in Articles 124 to 126 and Schedule 6 (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.