

PENSIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – the Board of the Pension Protection Fund

Chapter 3 – Pension Protection

Winding up

Section 154: Requirement to wind up schemes with sufficient assets to meet protected liabilities

526. This section sets out the requirements for schemes to wind up when a scheme rescue is not possible but the scheme has sufficient assets to meet the protected liabilities. Schemes authorised to continue as closed schemes are required to wind up under this section, but because they cannot obtain buy-out quotations they may be forced to wind up by paying their liabilities as they fall due rather than buying out their members' rights under the scheme by purchasing annuities.
527. Where an assessment period ends, the trustees or managers must wind up the scheme, or continue to wind up the scheme (if this had already commenced before the assessment period) if:
- a scheme rescue is not possible but the scheme has sufficient assets to meet the protected liabilities (see *section 151(2) or (3)*);
 - the trustees or managers did not make an application for reconsideration (see *section 151*) or apply to continue as a close scheme (see *section 153(2)*) within the authorised period or if such an application was made it has been finally determined, and
 - that if an application was made Board is not required to assume responsibility for the scheme under *section 152*.
528. *Subsection (4)* states that when an assessment period in relation to a closed scheme (as set out in *section 159(3)*) comes to an end because the conditions set out in *subsection (5)* have been met the scheme trustees or managers must continue the winding up of the scheme which was begun before the assessment period. The conditions are that: an application is made by, or notice is given to, the trustees or managers of a scheme as set out in *section 157*; the valuation obtained by the Board under *section 158(3)* has become binding; and the Board is not required to assume responsibility for the scheme under *section 158(1)*.
529. *Subsection (7)* provides that the Board may give directions to the trustees or managers of a scheme relating to the manner in which the scheme is wound up under this section. Under *subsection (8)* the Regulator may, by order, direct any person specified to take steps needed as a result of the winding up being backdated to the start of assessment

*These notes refer to the Pensions Act 2004 (c.35)
which received Royal Assent on 18 November 2004*

period by virtue of *subsection (6)* or the continuation of a winding up which began before the assessment period and to take those steps within a prescribed period.

530. *Subsection (9)* states that section 10 of the Pensions Act 1995 (civil penalties) will apply to any trustee or manager who has failed to take all reasonable steps to secure compliance with *subsections (7) and (8)*. *Subsection (10)* states that *subsection (9)* 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)*.
531. *Subsection (11)* states that the winding up of a scheme under this section has the same effect in law as if it had been done under powers conferred by or under the scheme. *Subsection (12)* states that this section must be complied with, regardless of any enactment's or rule of law or rule of a scheme that would normally prevent a scheme from winding up, or require a procedure to be implemented or consent obtained.
532. *Subsection (13)* provides that where an assessment period comes to an end with the scheme being required to wind up/continue winding up under this section (see *section 132(2)(b)(iii)* and *159(3)(b)(ii)*), *section 150(1) to (4)* will apply. Those provisions require adjustments to be made to the benefits paid during the assessment period, so that they reflect the benefits payable under the scheme (subject to the requirements of sections 73 to 73B of the Pensions Act 1995 (winding up)).
533. *Subsection (14)* provides that where a public service pension scheme is wound up regulations may modify any enactment containing the scheme rules or under which it is made.