

Decision Document

2010/11 Pension Protection Levy Consultation Policy Statement

Foreword

I'd like to thank all those who responded to the consultation on the 2010/11 pension protection levy, which we published at the end of September. Your views remain central to our work and have informed the conclusions set out in this document.

Understandably, affordability of the levy is the biggest concern at the moment and this creates difficult decisions for all of us. At the PPF we need to avoid imposing a burdensome levy on schemes and employers — both weaker and stronger — at a time when cash flow is restricted, while making sure we provide the level of protection that scheme members deserve.

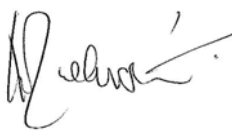
In September we proposed an overall levy estimate unchanged in real terms at £720 million and a risk-based levy cap of 0.5 per cent, which would protect twice as many schemes as in previous years. These require a levy scaling factor of 1.64.

A minority of respondents opposed the reduction in cap because it increases the share of levy for uncapped schemes. The reduction in cap is a short-term measure, but one that we've made with the long-term in mind: helping hard pressed schemes through the recession means fewer claims for surviving schemes to fund in future. After consultation, therefore, we've decided to stick to these proposals.

One point of change from the original proposals concerns block transfers. This remains a difficult area in which to ensure risk is appropriately taken account of and levy income is not lost. We have considered respondents' comments on our proposals, revised from those first indicated in November 2008, and made changes: certification of material block transfers is no longer expected, while the levy calculation for schemes with uncertified full transfers is more proportionate.

This document is accompanied by the final determination for the 2010/11 levy and the final version of the new levy practice guide. Schemes can now calculate their expected bills and put in place risk-reduction measures. The Pensions Regulator's Exchange system is now accessible for this and for submission of data for the 2011/12 levy.

Just before we published this document, the consultation on insolvency risk measurement for 2011/12 closed. We'll be publishing our conclusions on that in the New Year, as well as the next stage of our long-term levy work. Until then, I'd like to wish you a happy holiday season and a prosperous New Year.



Alan Rubenstein
Chief Executive

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Chapter 1: Introduction and background

1.1 The 2010/11 Pension Protection Levy Consultation

- 1.1.1 The 2010/11 pension protection levy consultation set out the changes to the levy that we proposed to introduce in the upcoming levy year. The consultation period lasted six weeks, from 30 September to 11 November 2009.
- 1.1.2 The consultation document invited respondents to provide their comments on the proposals, which covered a range of issues.
- 1.1.3 These included our proposals to reduce the risk-based levy cap to protect a larger number of schemes than in previous years, and to change the way that failure scores are allocated to overseas companies.
- 1.1.4 In relation to block transfers, we proposed an alternative method for calculating the levy in cases where a full or material transfer is not notified or certified. We also asked for respondents' views on the standard form agreements used for contingent assets, particularly the amendment and replacement conditions contained within them.
- 1.1.5 We would like to thank everyone who responded to the 2010/11 levy consultation.

1.2 Policy statement on the 2010/11 Pension Protection Levy

- 1.2.1 This document confirms that the levy estimate for 2010/11 is £720 million, the levy scaling factor is 1.64 and the taper boundaries remain the same as in 2009/10. The levy scaling factor, scheme-based levy multiplier and taper have been included in the final determination for 2010/11 and will not change.
- 1.2.2 Chapter 2 summarises the responses we received and confirms the PPF's final policy position on the main issues that were covered. These were:
 - the 2010/11 levy estimate, parameters, scaling factor and the levy cap
 - probabilities of insolvency for foreign companies
 - contingent assets
 - certification of block transfers in 2010/11
 - changes to the layout and structure of the determination, and
 - the levy practice guide.

- 1.2.3 Details of the electronic data submission process are outlined in Chapter 3, with relevant dates and deadlines both for 2010/11 and 2011/12. Changes for the coming year worth noting are the simplification to a single deadline (30 June 2010) for full block transfers certified for 2010/11, and a slight alteration of the deadline for certifying deficit reduction contributions, from 7 April 2010 to 9 April 2010, to take account of the Easter holiday. We encourage schemes to take note of all data deadlines and act accordingly.

1.3 Determination under section 175(5) of the Pensions Act 2004

- 1.3.1 This document is accompanied by the Board's determination under section 175(5) of the Pensions Act 2004 ('the determination') for the 2010/11 levy year, attached as Annex A.
- 1.3.2 The determination is the legal document that governs how the levy is calculated each year and it cannot be departed from. It therefore takes precedence over any other communications from the PPF.
- 1.3.3 The final version of the Levy Practice Guide, which explains how the Board would generally expect to exercise the discretion provided in the determination, is attached as Annex B.

1.4 Future levies

2011/12

- 1.4.1 A consultation on insolvency risk measurement for the 2011/12 pension protection levy was published on 9 November 2009. The consultation period closed on 14 December. The Board's response will be published in early 2010.
- 1.4.2 The consultation on the levy estimate, scaling factor and other policy matters for 2011/12 will be published in autumn 2010, with conclusions and the final determination being published before the end of 2010.

Later years

- 1.4.3 The PPF is currently working with two stakeholder groups on proposals for the future development of the pension protection levy (see 'Update on the Future Development of the Pension Protection Levy', July 2009). The Board expects to publish the next consultation on this area of work in early 2010. Proposals would be for implementation from 2012/13 at the earliest.

Chapter 2: Responses to the proposals and the Board's confirmed policy

2.1 The 2010/11 levy estimate, parameters and scaling factor

Summary of the proposals

- 2.1.1 The consultation document confirmed the Board's intention to set a levy estimate of £700 million, indexed to earnings, as announced in June 2009. Indexation, using the most up-to-date figures not subject to revision at the time of publication of the consultation, produced a levy estimate of £720 million. The decision to keep the levy stable, despite the decline in scheme funding in the last 12 months and an increase in risk to the PPF, was made as a part of an affordability package to help ease the burden on pension schemes. As a result, all schemes will pay less than they would have done if we had allowed the levy to rise toward the true level of risk the PPF faces.
- 2.1.2 In addition to restraining the total levy estimate, the Board proposed to reduce the risk-based levy cap from one per cent of liabilities to 0.5 per cent, to further help the weakest 10 per cent of schemes that pay the levy. Doubling the number of schemes that will benefit from the cap is another way we are trying to maintain the affordability of the levy in the current economic climate.
- 2.1.3 We proposed that the levy taper boundaries and the funding level at which no risk-based levy is payable should be kept at the same level as in 2009/10 (starting at 120 per cent, increasing to 140 per cent), as changing it would lead to instability and a less fair levy.
- 2.1.4 We also announced that to achieve the levy estimate the scheme-based levy multiplier would be 0.000145 and that the levy scaling factor for 2010/11 would be 1.64, and we explained the assumptions that we adopted to calculate those figures.

Responses

- 2.1.5 Our proposal to keep the levy estimate stable did not receive any opposition, however three respondents questioned whether keeping the amount collected lower than the amount needed could cause a funding gap that would require a significant levy increase in future years to make up for it. These respondents suggested that it would also be helpful if the PPF provided more information on expected future funding needs.
- 2.1.6 Two of the eight respondents that commented on our proposal to reduce the cap welcomed the proposal as a way of assisting small, struggling schemes, and most respondents recognised that the change will help to protect weaker schemes.

- 2.1.7 While six respondents expressed their concern that reducing the cap would increase the cost of the risk-based levy for uncapped schemes, respondents did not argue that a levy as high as one per cent of liabilities was in fact affordable in the current environment, which was the heart of the issue.

The Board's confirmed policy

- 2.1.8 The PPF conducts extensive modelling on a range of economic scenarios to provide an indication about our future funding needs. However, the estimate of the levy quantum for each year is heavily based on scheme data and other variables that are not known this far in advance, making it impossible to accurately estimate our funding needs for 2011/12 and beyond at this stage. The Board will consult on the proposed levy estimate, levy scaling factor and other policy matters for 2011/12 in 2010.
- 2.1.9 We have calculated that on average, levy invoices for uncapped schemes will increase by five per cent when compared to the amount they would pay with a cap that would protect five per cent of schemes, as in previous years. Though the difference is not insignificant to some schemes, the Board considers that a temporary change to the cap to protect more schemes during a difficult time is appropriate in all the circumstances. In the long term, it is in the interests of levy payers as a whole that the Board acts now to protect the weakest 10 per cent of schemes and help them through the recession and its aftermath, as there will be fewer claims on the PPF and a stronger base of levy payers in the future.
- 2.1.10 For these reasons, the Board has decided to implement the policy as proposed, and reduce the cap to 0.5 per cent of protected liabilities to protect about 10 per cent of schemes. As noted above, the Board sees this as a temporary move reflecting economic conditions.

2.2 Insolvency risk measurement

Summary of the proposals

- 2.2.1 In response to concerns previously raised by stakeholders, we proposed to introduce an improved methodology for assigning probabilities of insolvency to overseas failure scores.
- 2.2.2 This method will involve publishing a table that equates a failure score for an employer/guarantor in a foreign country with a UK equivalent failure score, and the foreign company will then receive the insolvency probability associated with that UK score.
- 2.2.3 The revised methodology will increase the consistency of foreign scores with UK scores.

Responses

- 2.2.4 This proposal was generally well received, and respondents noted that the system will be more transparent and comprehensible as a result.

The Board's confirmed policy

- 2.2.5 In view of the support this proposal received, the Board will implement the method that was proposed. The complete foreign insolvency probability table, which schemes can use to find their local percentile failure score and their corresponding UK failure score, is published on the website.

2.3 Contingent assets

Summary of the proposals

- 2.3.1 Having reviewed the scope of the contingent asset regime and the requirements relating to contingent assets, we proposed to make several minor changes to the contingent asset regime in 2010/11. One change is intended to simplify the process for substituting real estate subject to a type B(ii) contingent asset, with property of at least equal value.
- 2.3.2 However, we also proposed to tighten the requirements in relation to real estate valuations for type B(ii) assets. When re-certifying these assets we will require a valuation that is no more than 15 months old, although a desk top update of an existing full valuation would satisfy this requirement.
- 2.3.3 We have also reviewed and updated the standard form agreements used to secure a contingent asset, and we provided examples of these forms for respondents to comment on. We sought views on the threshold funding levels that appear in the 'amendment and replacement' appendices to these agreements. In particular we asked whether it was appropriate to increase the thresholds to provide extra security to trustees.

Responses

- 2.3.4 Two respondents expressed their support for simplifying the process for substituting real estate in type B(ii) assets, with several others arguing for simplification of contingent asset requirements in general.
- 2.3.5 One respondent commented that we should not require more frequent valuations for type B(ii) assets in cases where the property is worth substantially more than the amount charged against it, as fluctuating property values would not pose a risk to the security it provides. They said that requiring more frequent valuations would add cost to the contingent asset system.
- 2.3.6 Only two respondents referred to the issue of threshold funding levels, and both argued that it was not necessary for the funding level to increase above 105 per cent, and that increasing it could decrease flexibility in this type of guarantee.
- 2.3.7 We received a request from one respondent that we consider broadening the domicile requirements for type A contingent asset to include companies based in Hong Kong, in addition to OECD and EU states.

- 2.3.8 A small number of respondents also provided specific drafting comments on the standard form contingent asset agreements.

The Board's confirmed policy

- 2.3.9 The Board will be implementing the changes as proposed in the consultation document, and schemes will now benefit from a specific mechanism for the substitution of property that is the subject of a type B(ii) contingent asset with property of at least the same value.
- 2.3.10 We appreciate that requiring schemes to conduct property valuations more frequently could marginally increase costs and administrative work for schemes. However, in our experience of Type B(ii) contingent assets notified to the PPF, property is rarely worth substantially more than the amount charged against it, so the level of security the property provides will often vary as its value changes. The Board believes that at a time of fluctuating prices, more frequent valuations are needed to ensure we continue to recognise type B(ii) contingent assets fairly. The decision to accept valuations up to 15 months old, so that the same valuation can be used for two years, and to allow a desk top valuation in other years, was made to avoid imposing additional requirements on schemes that are too onerous.
- 2.3.11 We have also decided to maintain the threshold funding levels that appear in the contingent asset amendment and replacement conditions, set out in the standard form agreements, at 104 and 105 per cent. We agree with respondents that this provides an acceptable basic level of security for the purposes of recognising the contingent assets in the levy. However, the Board expects to apply a more stringent test where contingent assets are amended or replaced otherwise than in accordance with this mechanism, as outlined in 2.6.3 below.
- 2.3.12 The Board has considered the request to broaden domicile requirements, and considers it reasonable to extend the range of permitted domiciles to include Hong Kong. This change applies wherever OECD and/or EU domicile was previously required.
- 2.3.13 The Board has also made various further drafting changes to the standard form agreements in response to stakeholder comments, where the suggested amendments were consistent with the overall contingent asset regime.

2.4 Block transfers

Summary of the proposals

- 2.4.1 In November 2008 the Board indicated that we would expect schemes to certify both full and material partial transfers to us, commencing in 2010/11. This policy was proposed to prevent the loss of levy income as a result of liabilities 'disappearing' for the period between the date of the transfer and the next s179 valuation of the receiving scheme. We advised that we would expect full transfers in 2009/10 and material partial transfers

for 2010/11 to be notified to us by 30 June 2009. At that time we said that the method for calculating a scheme's levy where a transfer had not been reported would be similar to the method used in 2009/10 for full transfers. That approach involved adding the transferring and receiving scheme's valuations together and reducing the value of the transferred assets by five per cent per annum.

- 2.4.2 In the consultation document we confirmed that we would indeed expect notification of full and material transfers for 2010/11. Having reviewed the data provided by schemes, we proposed a simpler approach for calculating the levy where a transfer was not certified correctly, and in the case of material transfers, not certified by 30 June 2009. This approach involved calculating the levy for the transferring and receiving schemes based on their funding positions pre-transfer, but adjusting the calculation of the receiving scheme's underfunding risk by adding one third of the transferred asset value. The scheme-based levy would be calculated by adding the value of the transferred assets to estimated liabilities.

Responses

- 2.4.3 Our proposals on block transfers received the largest number of responses of any aspect of the 2010/11 levy (eight responses in total). The majority of respondents were opposed to this proposal, as they thought that the way it would operate was potentially disproportionate.
- 2.4.4 The aspect that caused the most concern to respondents was that we proposed to change the rules applying to actions that had already taken place, without giving schemes an opportunity to comply, as the deadline for submitting certificates had already passed. Respondents felt that the new method for calculating the levy where no notification was submitted was not in all cases similar to the manner in which we calculated whole of scheme transfers for 2009/10, as we had previously said it would be. They argued that the effect of the simplifications to the formula would negatively affect schemes as it could result in significant increases to their levy.
- 2.4.5 Two respondents asserted that it was not fair to base the adjustment to the levy on the value of assets transferred and not the liabilities. In doing so, schemes receiving a transfer where the assets transferred exceeded the liabilities would pay a higher levy than those where the transfer was less well funded, which is counter intuitive to the principle that schemes should pay a fair levy based on the level of risk they pose to the PPF.
- 2.4.6 One respondent suggested that a receiving scheme should also be able to have its levy assessed according to the certificate it submitted, even if the transferring scheme had not submitted its part correctly.

The Board's confirmed policy

- 2.4.7 The Board's intention in proposing the simplification was to provide a proportionate way of dealing with an issue that it recognises is likely to be of limited significance in relation to the overall risks it covers. In light of the responses to the consultation, the Board has decided not to implement the proposed calculation methodology.

- 2.4.8 As a result, the Board has considered further options for dealing with block transfers in 2010/11.
- 2.4.9 The Board has therefore decided that we will continue to treat uncertified full transfers in the same way as we did in 2009/10, so that the valuations of the relevant schemes will be added together, and the value of the transferring assets will be reduced by five per cent per annum. However, the Board has retained discretion not to apply the disincentive asset adjustment and/or to use post-transfer valuations which take into account transfers not properly certified, in limited circumstances.
- 2.4.10 We will not disincentivise schemes with material block transfers that did not report them by June 2009, as we are currently unable to implement a simple, automated system that can fairly take these into account.
- 2.4.11 We recognise that some schemes have already met the cost of certifying material transfers by the June 2009 deadline, on the understanding that a disincentive would apply if they failed to do so. However, by definition the transfers concerned are material and as a result the schemes involved will pay levies in 2010/11 that better reflect the actual level of risk they pose than if the transfers had not been certified.

2.5 The Determination

- 2.5.1 This year we took the opportunity to update not only the content but the style and structure of the determination, to make it easier to navigate and more user-friendly.

Responses

- 2.5.2 Respondents were generally supportive of the new style and format of the determination. Several minor points were helpfully identified by respondents as requiring clarification, and these issues have been addressed in the final version.
- 2.5.3 The final version of the determination remains largely the same as the version that was consulted on. However changes have been made to the block transfer provisions, and the contingent asset amendment and replacement conditions, in line with the changes to the policies that have been described above, as well as other more general drafting improvements.

2.6 The Levy Practice Guide

- 2.6.1 Another new development this year is the introduction of the Levy Practice Guide. This document accompanies the determination, and gives stakeholders guidance on the way the Board may exercise its discretion in a range of cases. Topics covered include requests for data corrections, the application of block transfer rules and the amendment and replacement of contingent assets.

- 2.6.2 The Levy Practice Guide was generally welcomed by all respondents, particularly the examples of situations in which we might accept data corrections.
- 2.6.3 Minor changes have been made to the Levy Practice Guide during the revision process. One area that has been further clarified relates to the exercise of the Board's discretion on the amendment and replacement of contingent assets. In particular, we have specified that the point at which the actual funding level of the scheme will be considered so high that the release of some assets will always be acceptable will be equivalent to the top of the taper. We hope to further develop the practice guide as the Board's experience of working with the discretions grows.
- 2.6.4 The final versions of the 2010/11 determination and Levy Practice Guide are attached as annexes A and B respectively.

Chapter 3: Electronic data submission

3.1 Electronic submission of data

- 3.1.1 Schemes wishing to certify deficit reduction contributions, contingent assets and block transfers for 2010/11 and 2011/12 should do so through the Pensions Regulator's Exchange system. Pre-populated pages of Exchange will make recertification of contingent assets an easier task.
- 3.1.2 We would particularly like to remind schemes that there is still time to submit information in respect of contingent assets and deficit reduction contributions, which may reduce your levy bill, for the 2010/11 levy year.
- 3.1.3 It is worth noting that the deadline for submitting deficit reduction contributions will be 9 April in 2010, rather than 7 April as it has been in previous years, due to the Easter bank holidays falling in the first week of April in 2010.

3.2 Data deadlines and measurement dates

2010/11

- 3.2.1 The following deadlines apply to the 2010/11 levy year:
- 5pm on 30 March 2009 for providing information to D&B regarding sponsoring employers' failure scores
 - 5pm on 31 March 2009 for updating Exchange with levy-related information (except where set out below)
 - 5pm on 30 June 2009 for final certification of partial block transfers that have taken place up to and including 31 March 2009
 - 5pm on 31 March 2010 for certification/re-certification of contingent assets
 - 5pm on 9 April 2010 for deficit reduction contributions
 - 5pm on 30 June 2010 for final certification of full block transfers that have taken place up to and including 31 March 2010.
- 3.2.2 Submission of certificates for contingent assets, deficit reduction contributions and block transfers will be supported by Exchange.
- 3.2.3 Please note it is our general policy to enforce deadlines strictly, even where the Board has discretion in the matter, and missing them may have adverse consequences for schemes.

2011/12

3.2.4 The provisional deadlines for the 2011/12 levy year are:

- 5pm on 30 March 2010 for providing information to D&B regarding sponsoring employers' failure scores
- 5pm on 31 March 2010 for updating Exchange with levy-related information (except where set out below)
- 5pm on 30 June 2010 for final certification of partial block transfers that have taken place up to and including 31 March 2010
- 5pm on 31 March 2011 for certification/re-certification of contingent assets
- 5pm on 7 April 2011 for deficit reduction contributions
- 5pm on 30 June 2011 for final certification of full block transfers that have taken place up to and including 31 March 2011.

3.2.5 We strongly encourage schemes to contact D&B about their sponsoring employers' failure scores, and to begin work on risk reduction measures and the related voluntary certificates, at the earliest opportunity.

Annex A – The Board’s Determination under section 175(5) of the Pensions Act 2004 in respect of the levy year 1 April 2010 – 31 March 2011

The Board of the Pension Protection Fund

**Determination under
Section 175(5) of the Pensions Act 2004
in respect of the financial year
1 April 2010 – 31 March 2011**

18 December 2009

Determination by the Board of the Pension Protection Fund under section 175(5) of the Pensions Act 2004

The Board of the Pension Protection Fund hereby makes the following determination in respect of the financial year 1 April 2010 to 31 March 2011: in respect of that year, the factors and times by reference to which the pension protection levies are to be assessed, and the rate of the levies, and the dates at which the levies are to become payable are to be as set out in the Levy Rules appended to this determination (the "Rules").

Important note:

The attention of trustees and advisers is specifically drawn to Rule A2, and the consequent importance of ensuring that complete, accurate and up to date information is submitted through the Pensions Regulator's Exchange system by the relevant deadlines. Provision of information forming part of the scheme return is a legal duty under s.64 Pensions Act 2004, with civil penalties for non compliance. The scheme return submitted must contain all the information the Regulator asks for (s.65). As regards other information, the submission of which is not mandated by law, the trustees will need to ensure it is properly submitted by the relevant deadlines to ensure it is taken into account in the levy calculation. The importance of accuracy in all information supplied to the Regulator or the Board is underlined by the criminal sanctions which may apply where false or misleading information is supplied knowingly or recklessly (s.80 and s.195).

The appendices to the Rules are available from the Board's website at http://www.pensionprotectionfund.org.uk/levy/1011_determination/Pages/10-11Determination.aspx.

THE LEVY RULES

Part A – General

A1. How to interpret these Rules

A1.1. Definitions used in these Rules and the Appendices attached to these Rules

In these Rules, the following expressions have the meanings shown next to them or, as the case may be, provided by the provision referred to:

“1995 Act” – the Pensions Act 1995.

“Act” – the Pensions Act 2004.

“Actuarial Transfer Information” – is defined in Rule F2.3.

“Acceptable Form” – has the meaning given to it in the Contingent Asset Appendix.

“Allocated Member” – is defined in Rule E4.1.

“API” – stands for “assumed probability of insolvency” and means the Board’s assumed probability of insolvency in respect of an undertaking.

“Basic Transfer Information” – is defined in Rule F2.2.

“Board” – the Board of the Pension Protection Fund established under section 107 of the Act.

“Centralised Scheme” – is defined in Rule E4.2(4).

“Contingent Asset” – is defined in Rule D2.

“Contingent Asset Certificate” – a certificate which complies with Rule D2.4.

“DBUK” – Dun & Bradstreet Limited of Marlow International, Parkway, Marlow, Bucks SL7 1AJ (Company number 00160043).

“Deficit-Reduction Contribution” – is defined in Rule D1.

“Employer” – is as defined in section 318 of the Act, provided that the identity of the Employer in relation to a Member shall be assessed by the Board by reference to data which has been Submitted in accordance with Rule A2.2.

“Exchange” – the scheme maintenance system maintained by the Pensions Regulator for the online submission of Scheme Returns and other information by or on behalf of pension schemes.

“Failed Scheme” – a Scheme which meets the criteria in Rule C5.

“Failure Score” – is a UK Failure Score or a Non-UK Failure Score, as applicable.

“First Transfer Date” – is the date that the first transfer of assets is made from the Transferring Scheme to the Receiving Scheme in relation to a Full Transfer or a Qualifying Transfer.

“Last Man Standing Scheme” – is defined in Rule E4.2(2).

“Levies” – the RBL and the SBL. For the avoidance of doubt, where the term “levy” is used in these Rules, this includes the RBL and the SBL.

“Levy Year” – is, as the context requires, any period of 1 April to 31 March in respect of which the Board has made a determination under section 175(5) of the Act.

“Measurement Time” – is construed in accordance with Rule A2.3

“Median” – is calculated as set out in Rule E2.8.

“Member” – means an active, deferred, pensioner or pension credit member of a Scheme, but excludes any such members with purely money purchase benefits as defined in section 181 of the Pension Schemes Act 1993.

“MFR Valuation” – the Results of a valuation carried out by the Scheme Actuary in a manner which is in accordance with sections 56-60 of the 1995 Act, and Submitted by or on behalf of the trustees, whether as a matter of legal obligation or otherwise.

“Multi-Employer Regulations” – the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005.

“Multi-Employer Scheme” – as defined in section 307 of the Act.

“New Scheme” – a Scheme which becomes an eligible scheme as defined in section 126 of the Act on or after 1 April 2010.

“Non-UK Failure Score” - is as set out in Rule E2.2(3).

“No Return Scheme” - is defined in Rule A2.4.

“Partially Guaranteed Scheme” - as defined in The Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005.

“Partial Segregation Scheme” – is defined in Rule E4.2(3).

“Pension Credit Members” - individuals who have rights under the relevant Scheme attributable to a pension credit. Such pension credit members shall be deemed to have been employed by the same Employer as the Member from whom their rights under the Scheme are derived.

"Post-Transfer Valuation" - the valuation submitted by a Receiving Scheme or a Transferring Scheme as part of the Actuarial Transfer Information, for the purposes of Rule F2.3.

"PPF" – the Pension Protection Fund.

"Previous Determination" – any determination of the Board under section 175(5) of the Act for the purposes of a Levy Year before the 2010/11 Levy Year.

"Protected Liabilities" – as defined in section 131 of the Act.

"Qualifying Transfer" – is defined in Rule F3.1.

"RBL" – the risk-based pension protection levy as defined in section 175 of the Act.

"Recent Scheme" – is a Scheme the trustees of which have

- (i) for the first time been sent a Scheme Return notice requiring them to submit a Scheme Return and the return date for that Scheme Return falls between 1 April 2009 and 31 March 2010 (inclusive); and
- (ii) no later than 5.00pm on 31 March 2010 Submitted a Scheme Return.

"Results" – those data items required to be completed on Exchange.

"Risk Indicator" – is defined in Rule E2.4(2).

"Rules" – these Rules issued by the Board for the 2010/11 Levy Year.

"SBL" - the scheme-based pension protection levy as defined in section 175 of the Act.

"Scheme" – an "eligible scheme" as defined in section 126 of the Act.

"Scheme Actuary" - the actuary in respect of the Scheme within the meaning of section 179(2) of the Act.

"Scheme Return" – a completed return Submitted in respect of the Scheme via Exchange in accordance with sections 63 to 65 inclusive of the Act. For the avoidance of doubt, a Scheme Return does not include information relating to Contingent Assets, Deficit-Reduction Contributions or Full or Qualifying Transfers.

"Section 179" – Section 179 of the Act and regulations and relevant guidance made and issued under that section.

"Section 179 Valuation" - the Results of an actuarial valuation of the Scheme which has been Submitted on Exchange and has been carried out in a manner which is in accordance with Section 179, whether as a matter of legal obligation or otherwise.

"Segregated Part" – in respect of an eligible scheme is as defined in Part 4, 5, 7 or 8 of the Multi-Employer Regulations.

“Segregated Scheme” – as defined in the Multi-Employer Regulations.

“SIC Code” – the Standard Industry Classification Code, 1972.

“Submitted” – and associated terms are to be construed in accordance with Rule A2.2.

“tPR” – the Pensions Regulator, established under section 1 of the Act and, where the context so requires, its predecessor, the Occupational Pensions Regulatory Authority.

“UK Failure Score” – is as set out in Rule E2.1(3).

“Unsecured Part” – in respect of a Partially Guaranteed Scheme the “unsecured part” as defined in The Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005.

“Value” - in the case of the assets or the Protected Liabilities of the Scheme shall be interpreted in accordance with Rule A6.1.

A1.2 General Interpretation

(1) All references to dates and times in these Rules relate to Greenwich Mean Time or, at the times when it is in force, British Summer Time.

(2) References to midnight on a day are to midnight at the end of that day.

(3) Unless the context otherwise requires, terms used in these Rules bear the same meaning as in the Act.

(4) References to Scheme “trustees” include managers of a Scheme if that Scheme does not have trustees.

(5) Headings are not part of this determination and are only for ease of reference and shall not be used in its construction and interpretation.

(6) References to any gender include the other gender.

(7) References to the singular include the plural and vice versa.

(8) References to specific Rules and Appendices are to the relevant provisions in these Rules and the Appendices to them and, except for paragraph (11) below, “Rules” includes the Appendices.

(9) A reference to any statutory provision includes a reference to any amendment, consolidation or re-enactment of the provision from time to time in force and all secondary legislation made under it.

(10) Except for the purposes of Rule A6.1(4), in the case of a Segregated Scheme, each segregated section shall (except where these Rules expressly or by implication require otherwise) be treated as if it were a separate Scheme for

the purposes of these Rules. Similarly where a Segregated Part of a Scheme has been created on or before 31 March 2010, each of the Segregated Part(s) and the remainder of the Scheme shall (except where these Rules expressly or by implication require otherwise) be treated as if it were a separate Scheme for the purposes of these Rules. References to Schemes shall be construed accordingly.

(11) In the event of any inconsistency between these Rules and the Appendices to this determination, the Rules shall prevail.

(12) The term "calculate" and associated terms shall in any relevant case include "re-calculate" and its associated terms.

(13) In determining whether it is satisfied as to any matter set out in these Rules, the Board shall take account of any guidance which it has published or which appears in the help files within Exchange (including guidance in the form of "Frequently Asked Questions"). However, the Rules shall prevail in the case of inconsistency.

(14) Further guidance may be published by the Board as to how it expects to use its discretionary powers in these Rules. The Board will have regard to such guidance but may decide to depart from it.

A2. Validated data on Exchange: the general rule for calculations

A2.1 What is the general rule for calculating the Levies?

For calculating the Levies, the Board shall use data which has been Submitted at the relevant Measurement Time except where expressly provided otherwise in these Rules.

A2.2 Methods of Submitting information

Where these Rules refer to certain information being or having been Submitted (and any associated terms), the requirement shall be satisfied and the information treated as having been Submitted only if the Board is satisfied that:

- (1) except where (2), (3) or (4) of this Rule A2.2 apply, the information:
 - (i) has been validly entered and submitted on Exchange on behalf of such Schemes as it relates to; or
 - (ii) has been pre-populated on Exchange,

and, in each case, is held on Exchange at the relevant Measurement Time.

- (2) in the case of hard copy supporting documentation required for submission of Contingent Assets (for the avoidance of doubt not including Contingent Asset Certificates), the documentation has been received by post or hand delivery to:

The Board of the Pension Protection Fund
Knollys House
17 Addiscombe Road

Croydon
Surrey
CR0 6SR

Marked for the attention of "Director of Legal Re: Contingent Assets". For the avoidance of doubt, delivery by fax is not permissible.

(3) in the case of a Scheme the trustees of which have been expressly permitted by tPR to complete their Scheme Return on paper rather than on Exchange, the information which is equivalent to what would be the contents of a Scheme Return is provided to the tPR in such manner as tPR has stipulated (or, in the absence of such a stipulation, by post).

(4) the information has been received in accordance with a permitted alternative method. A "permitted alternative method" is any different method of provision of information to those methods set out at paragraphs (1), (2) or (3) for the purposes of the 2010/11 Levy Year which, after the date of final publication of this determination, the Board has expressly stipulated on its website (whether as an alternative or a replacement to those methods).

A2.3 The Measurement Time and deadlines

The Measurement Time for each item of information is the deadline for Submission of that information. The Measurement Time shall be 5.00pm on 31 March 2009 except as set out below:

- (1) In relation to Contingent Assets, 5.00pm on 31 March 2010.
- (2) In relation to Deficit-Reduction Contributions, 5.00pm on 9 April 2010.
- (3) In relation to Recent Schemes, midnight on 31 March 2010.
- (4) In relation to New Schemes and No Return Schemes, it shall be construed in accordance with Rule A2.4.
- (5) In relation to Qualifying Transfers, 5.00pm on 30 June 2009 for Submission of both Basic Transfer Information and Actuarial Transfer Information.
- (6) In relation to Full Transfers, 5.00pm on 30 June 2010 for Submission of both Basic Transfer Information and Actuarial Transfer Information.
- (7) Where otherwise expressly stated in the Rules.

A2.4 New Schemes and Schemes not yet required to file a Scheme Return

(1) In the case of a New Scheme, where reference is made to information or documents being Submitted by a particular date, references to the Measurement Time or a deadline shall be treated as requiring the information or documents to be Submitted not later than 28 days after the scheme becomes a Scheme, or by such later date as the Board shall require if it calls for other information or documents to be Submitted.

(2) In the case of a Scheme which has not, by midnight on 31 March 2010, been required to complete a Scheme Return (a "No Return Scheme"), where reference is made to information or documents being Submitted by a particular

date, references to the Measurement Time shall be treated as requiring the information or documents to be Submitted by the date on which the Scheme is required to complete and Submit a Scheme Return or by such earlier date as the Board shall require if it calls for information or documents to be Submitted.

A3. How the Board shall calculate the Levies

A3.1 The SBL and the RBL

The Board shall calculate the SBL and the RBL in respect of each Scheme using Part C of these Rules.

A3.2 Acts and decisions of the Board

Any act or decision of the Board under these Rules may be taken on behalf of the Board of the PPF either by the Chief Executive of the Board or by such member of the Board's staff as may be authorised for the purpose.

A3.3 Information Submitted on Exchange by 5.00pm 31 March 2009

The matters referred to in these Rules shall be assessed, measured, quantified or estimated at such dates and in such manner as is provided for in these Rules. In the absence of such provision, these Rules shall be applied in accordance with the position as it existed at 5.00pm on 31 March 2009.

A4. When are the Levies payable?

The Levies in respect of a Scheme are to become payable on the earliest of the following dates:

- (1) the date upon which the person liable to pay the Levies in respect of the Scheme is sent notification of the amount of the Levies in respect of the Scheme (or, in the cases in which these Rules provide for a revised notification to be issued, the date upon which that person is sent a revised notification);
- (2) the date on which any Scheme ceases to be a Scheme; or
- (3) 31 March 2011.

A5. Calculation principles

In performing the calculations required by this determination:

- (1) The Board shall round all monetary figures to the nearest penny at each stage of the calculation, save for the final amounts of the SBL and the RBL which shall each be rounded to the nearest pound; and
- (2) The Board shall round all figures representing an API to six decimal places (that is, to four decimal places when expressed as a percentage) at each stage of the calculation. Without limitation, this shall apply to (i) all figures derived by

taking the average of APIs and to (ii) the product of the weighted APIs and a scaling factor based on Scheme structure in accordance with Rule E4.

(3) Where a value which falls to be rounded in accordance with (1) or (2) above falls exactly halfway between two potential rounded figures it shall be rounded upwards.

A6. Actuarial valuations

A6.1 What is meant by "Value" of Scheme assets or Protected Liabilities?

(1) Where a Section 179 Valuation has been Submitted, subject to Rule A6.1(4) and Part F, any reference in these Rules to the Value of the assets or Protected Liabilities is to that value or amount as shown in the Section 179 Valuation which is Submitted as at the Measurement Time but then adjusted in a manner which in the view of the Board best gives effect to the approach set out in the Transformation Appendix to these Rules and results in the Scheme's assets and its liabilities being consistently treated for these purposes.

(2) Where a Section 179 Valuation has not been Submitted but an MFR Valuation has been Submitted, subject to Rule A6.1(4) and Part F of these Rules, any reference to the Value of the assets or Protected Liabilities of the Scheme is to that value or amount as shown in the MFR Valuation which is Submitted as at the Measurement Time but then adjusted in a manner which in the view of the Board best gives effect to the approach set out in the MFR Conversion Appendix to these Rules and results in the Scheme's assets and its liabilities being consistently treated for these purposes.

(3) Where:

(i) neither a Section 179 Valuation nor an MFR Valuation has been Submitted at the Measurement Time;

(ii) Rule A6.2 does not apply; and

(iii) the Board has, after the Measurement Time, but before calculation of the Levies, obtained a Section 179 Valuation in respect of the Scheme,

any reference to the Value of the assets or Protected Liabilities of the Scheme is to that value or amount as shown in the Section 179 Valuation that the Board has then obtained, adjusted first in accordance with the Transformation Appendix as in Rule A6.1(1) and second by reducing the value of the assets by 5%.

(4) Where a Segregated Part has been created by the operation of an option or requirement to segregate on or before 31 March 2010 (whether or not any such Segregated Part has transferred to the PPF) and there is no Section 179 Valuation calculated by reference only to the Segregated Part and/or the remainder of the Scheme:

(i) the Board shall estimate such data in relation to any Segregated Part as it considers appropriate for the purpose of assessing the Value of

the assets or Protected Liabilities of the Segregated Part by multiplying the equivalent data for the entire Scheme by A/B. A shall be the number of Allocated Members of the Employer for that Segregated Part; B shall be the total number of Members in the entire Scheme. Rule E4.1 shall apply when determining the number of Allocated Members of each Employer in relation to a Scheme;

- (ii) the Board shall estimate such data in relation to the remainder of the Scheme as it considers appropriate for the purpose of assessing the Value of the assets or Protected Liabilities of the Segregated Part by multiplying the equivalent data for the entire Scheme by C/D. C shall be the total number of Members who are not Allocated Members of the Employer for that Segregated Part (including for the avoidance of doubt any Member not formally attributed to any current Employer). D shall be the total number of Members in the entire Scheme. Rule E4.1 shall apply when determining the number of Allocated Members of each Employer in relation to a Scheme; and
- (iii) where there is no Section 179 Valuation for the entire Scheme, the approach set out in this Rule A6.1(4) shall be applied in conjunction with Rule A6.1(2) (use of Minimum Funding Requirement data adjusted in accordance with the MFR Conversion Appendix) in order to estimate the assets and Protected Liabilities of the Segregated Part and the remainder of the Scheme.

A6.2 Schemes which are not yet obliged to complete a Section 179 Valuation

Where no Section 179 Valuation has been Submitted in relation to a Scheme but where the trustees are not obliged to complete a Section 179 Valuation at or before the Measurement Time, the Board may obtain from the trustees of that Scheme such information as will allow the Board to make a determination of the Value of the assets or Protected Liabilities of the Scheme equivalent to that in Rule A6.1.

Part B – Use of alternative information in exceptional circumstances

B1. Where the Levies cannot be calculated under these Rules

B1.1 When does this Rule B1 apply?

- (1) It is intended that the provisions contained in these Rules should in all cases permit the calculation of the amount of the Levies in respect of a Scheme.
- (2) In any exceptional situation for which these Rules fail to make the provision required for a calculation of the Levies to be performed, this Rule B1 applies.
- (3) This Rule B1 also applies in any case where the Board is unable to obtain any item of information which would normally be required for the application of these Rules.

B1.2 How will the Board calculate the Levies?

Where this Rule B1 applies, the Board hereby determines that the calculation of the Levies shall be performed in such manner as, in the opinion of the Board, is:

- (1) reasonably practicable for the Board; and
- (2) best gives effect in that situation to the general approach laid down by these Rules.

B2. Correction by the Board

B2.1 When could data be corrected?

This Rule B2.1 applies if it appears to the Board that either:

- (1) the information supplied for or used in the calculation of the Levies is incorrect in a material respect;
- (2) a notification required by or under a certificate in relation to Contingent Assets has not been duly given; or
- (3) a certificate or declaration given for the purposes of these Rules was improperly given or contained information which was incorrect in a material respect.

B2.2 Correction of the data

- (1) Where Rule B2.1 applies, the Board may calculate the Levies on the basis of information which appears to it to be correct for the purposes of these Rules. Where the Levies have already been calculated in respect of a Scheme, the Board may review and revise the amount of the Levies calculated in respect of a

Scheme on the basis of information which appears to it to be correct but it shall not be under an obligation so to act.

(2) The Board is under no obligation to take into account corrected information merely because the Scheme has been disadvantaged by the failure of the trustees or those acting on its or their behalf to supply correct information at the proper time.

(3) For the purposes of Rule B2.1(1), information is not incorrect where it is correct and legitimate in itself, but it would have been open to the person supplying it to supply some different or additional information which might have caused these Rules to be applied differently.

B2.3 What if a certificate or declaration is incorrect?

(1) Where Rule B2.1(2) or (3) applies, in calculating the Levies in respect of the relevant Scheme the Board may disregard the relevant certificate or declaration if it believes that it has been improperly given.

(2) Where Rule B2.1(2) or (3) applies, in calculating the Levies in respect of the relevant Scheme the Board may disregard any information in the certificate or declaration, which is believed to be incorrect.

(3) Where the Levies have already been calculated in respect of a Scheme, the Board may review and revise the amount of the Levies calculated in respect of a Scheme on the basis set out in (1) or (2) above but it shall not be under an obligation so to act.

B3 Reliance on information

B3.1 The Board may obtain further information

The Board may, at any time prior to the calculation of the Levies in respect of a Scheme, take such steps as it thinks fit to obtain further or amended information for the purposes of that calculation.

B3.2 The Board may fill in gaps in its information

If, at the time of any calculation of the levy in respect of a Scheme, any information necessary for such calculation has not been Submitted in the manner or format or at the time anticipated by these Rules, then the Board may instead use equivalent information Submitted or provided in a different manner or format or at a different time.

B3.3 The Board's powers in this Rule B3 are discretionary

The Board is under no obligation to use the powers in Rules B3.1 and/or B3.2 where the relevant information has not been Submitted on or before the relevant Measurement Time and will not do so merely because a Scheme has been disadvantaged by the failure of the trustees or those acting on its or their behalf to Submit information by the relevant deadline.

B4 Disruption in the delivery of information

B4.1 Without prejudice to Rule B3, the Board may at its discretion take account of information Submitted after any applicable deadline but only in circumstances where it appears to the Board that:

(1) The information was despatched at an appropriate time, but was delayed or lost in transit; or

(2) Both

(a) the provider of the information was prevented from meeting the deadline by the temporary inaccessibility of the PPF website or Exchange, or the interruption of electronic communications, or other like cause; and

(b) the information was Submitted as soon as reasonably practicable thereafter.

Part C – How much will the Levies be?

C1. SBL formula

C1.1 Subject to Rule C3.3, the SBL in respect of a Scheme shall be:

$$L \times 0.000145$$

C1.2 L shall be the Value of the Scheme's Protected Liabilities.

C2. RBL formula

C2.1 Subject to Rules C3, D2 and D3, the RBL in respect of a Scheme shall be:

$$U \times P \times R \times C$$

C2.2 U shall be the underfunding of the Scheme and is calculated using Rule C4. P shall be the insolvency probability associated with the Scheme Employer(s) and is calculated using Rule C6. R shall be 0.8 because that is the proportion of the Levies intended to be risk-based for the 2010/11 Levy Year. C shall be 1.64 because that is the "risk-based levy scaling factor" for the 2010/11 Levy Year.

C3. Variations to the SBL and RBL formulae

C3.1 The maximum RBL in respect of the Scheme is 0.005 x the Value of the Scheme's Protected Liabilities, because that is the "RBL cap" for the 2010/11 Levy Year.

C3.2 If the Scheme is authorised by the Board under section 153 of the Act to continue as a closed Scheme, the RBL shall be zero.

C3.3 If the Scheme is a Failed Scheme the SBL shall be zero and the RBL shall be zero.

C3.4 For a New Scheme, subject to Rules C3.5 to C3.7 inclusive, the SBL and RBL shall be the product of multiplying, respectively, the amounts shown in Rule C1.1 and C2.1 by $N/365$ where N is the number of days during the 2010/11 Levy Year for which the New Scheme is a Scheme.

C3.5 Unless they refer to provision of information or documents, in relation to a New Scheme, references in these Rules to the Measurement Time, shall be read as references to the first date on which the New Scheme was a Scheme.

C3.6 This Rule C3.6 applies if the Board is satisfied that:

(1) the New Scheme is the successor to the rights and liabilities of a Scheme which existed on 1 April 2010 ("the Predecessor Scheme") or to some substantial part of the rights and liabilities of such a Scheme;

(2) the Levies which are or will be payable in respect of the Predecessor Scheme sufficiently take account of the assets and liabilities of the New Scheme; and

(3) that the Levies in respect of the Predecessor Scheme either have been paid or will be promptly paid.

Where this Rule C3.6 applies the Board may determine that the Levies in respect of the New Scheme shall be nil.

C3.7 New Scheme is not materially underfunded

Where the Board considers that both:

(1) no Section 179 Valuation information is conveniently available in respect of a New Scheme; and

(2) it is unlikely that the New Scheme is materially underfunded at the relevant time

the Board may determine that the SBL and/or the RBL shall be nil.

C3.8 Partially Guaranteed Schemes

(1) The Board shall, it where judges it necessary, obtain from the trustees of a Partially Guaranteed Scheme such information as will allow the Board to make what is in its view an appropriate determination of the assets and protected liabilities of the Unsecured Part.

(2) The information referred to in (1) above shall be used by the Board in substitution for the Section 179 Valuation falling within Rule A6.1 or the Value as defined in Rule A6.1.

(3) In calculating the Levies for a Partially Guaranteed Scheme, the Board may also apply these Rules with such modifications as appear to it appropriate for the purpose of ensuring that the Levies payable in respect of the Scheme correspond so far as reasonably practicable to the amounts which would have been payable if the Unsecured Part had been a separate Scheme.

C3.9 Multi-Employer Schemes

In the case of a Multi-Employer Scheme, the Board may apply Rule C3.3 with such modifications as appear to it appropriate for the purpose of ensuring that:

(1) zero Levies are only applied to the Segregated Parts (if any) to which that Rule C3.3 applies; and

(2) appropriate Levies are charged to the remainder (if any) of the Scheme.

C4 How is U calculated?

U is calculated by determining the Value of a Scheme’s assets (**A**) expressed as a percentage (%) of the Value of the Scheme’s Protected Liabilities (**PL**), and applying the table below.

<i>Value of the Scheme’s assets</i>	<i>U=</i>
A < (120% of PL)	(PL x 1.21) - A
(120% of PL) ≤ A < (125% of PL)	1% of PL
(125% of PL) ≤ A < (130% of PL)	0.75% of PL
(130% of PL) ≤ A < (135% of PL)	0.50% of PL
(135% of PL) ≤ A < (140% of PL)	0.25% of PL
A ≥ (140% of PL)	0

In this Rule C4, **A** shall include the Deficit-Reduction Contributions figure which is stated in the most recently Submitted compliant certificate (if any) under Rule D1.

C5 What is a Failed Scheme?

A Scheme is a Failed Scheme if it meets all of the criteria in this Rule C5.

C5.1 Failure notice received

A Scheme meets the criteria in this Rule C5.1 if, no later than midnight on 31 March 2010, the Board has either:

- (i) received a Scheme failure notice, issued under Section 122(2)(a) of the Act; or
- (ii) issued such a notice pursuant to Section 124 of the Act; or
- (iii) issued a Scheme failure notice under Section 130(2) of the Act.

C5.2 No withdrawal notice

A Scheme meets the criteria in this Rule C5.2 if, before the calculation of the Levies for the Scheme concerned, the Board has neither:

- (i) received a withdrawal notice issued under Section 122(2)(b) of the Act; nor
- (ii) issued a withdrawal notice under Section 130(3) of the Act.

C5.3 Failure notice must be binding

A Scheme meets the criteria in this Rule C5.3 if, before the calculation of the Levies for the Scheme concerned, the Scheme failure notice (as referred to in C5.1) has become binding either:

- (1) in accordance with Section 125 of the Act; or
- (2) in accordance with Section 130(6) of the Act, as the case may be.

C6 Assumed insolvency probability

C6.1 What is P?

P is the insolvency probability associated with the Employer(s) in relation to the Scheme. It shall be calculated as in Part E of these Rules subject to a maximum value of 0.03.

C7 Re-issued invoices

C7.1 What if a payment has been made?

Where the Board issues a revised notification of the amount of the Levies in respect of the Scheme, any amount already paid in respect of that Scheme pursuant to any previous notification shall be deemed deducted from the amount due pursuant to the revised notification.

D Reducing the levy by reducing risk

D1 Deficit-Reduction Contributions

D1.1 When does this Rule apply?

This Rule D1 applies where:

- (i) a certificate in respect of a Deficit-Reduction Contribution that complies with Rule D1.2 has been Submitted by the Measurement Time; or
- (ii) there has been provided or Submitted a certificate in respect of a Deficit-Reduction Contribution which complied with the requirements and deadlines set out in or under a Previous Determination.

D1.2 What must the certificate of Deficit-Reduction Contributions contain?

The certificate must contain the information specified in the Deficit-Reduction Contributions Appendix, which must be calculated in accordance with the rules set out in that Appendix.

D1.3 Which certificates can be taken into account?

A certificate shall not be taken into account unless it refers to, and the information contained within it has been calculated by reference to, the same Section 179 Valuation or MFR Valuation of the Scheme as is used under Rule A6.1, or in a case to which Part F of these Rules applies, to the relevant Post-Transfer Valuation.

D1.4 Effect of Deficit-Reduction Contributions on the Levies

Where this Rule D1 applies, for the purposes of these Rules the value of the assets of the Scheme shall be increased by the Deficit-Reduction Contributions figure which is stated in the most recently provided or Submitted compliant certificate.

D2 Current Contingent Assets

D2.1 When does this Rule D2 apply?

This Rule D2 applies where the Board is satisfied that there has been Submitted by or on behalf of the Scheme trustees, before the relevant Measurement Time:

- (1) a Contingent Asset Certificate; and
- (2) satisfactory hard copy supporting documents, as required by the Contingent Asset Appendix.

D2.2 What is a Contingent Asset?

A "Contingent Asset" must be one of either:

- (1) a Type A Contingent Asset, which is a guarantee from a parent company or any relevant associated undertaking in Acceptable Form and which complies with paragraphs 6 and 7 of the Contingent Asset Appendix;
- (2) a Type B Contingent Asset, which is a security in Acceptable Form and which complies with paragraphs 8 to 11 inclusive of the Contingent Asset Appendix;
- (3) a Type C Contingent Asset, which is a letter of credit or bank guarantee in favour of the Scheme trustees in Acceptable Form and which complies with paragraphs 12 to 16 inclusive of the Contingent Asset Appendix,

and in all cases it must comply with Rule D2.3.

D2.3 Further provisions about Contingent Assets

- (1) The Contingent Asset must comprise or result from an arrangement which becomes or became effective no later than 1 April 2010 except in the case of a New Scheme where it may take effect on the date on which the New Scheme becomes a Scheme if that is later.
- (2) The Contingent Asset must appear to the Board to reduce the risk of compensation being payable from the Board in the event of an insolvency event occurring in respect of an Employer in relation to the Scheme.

D2.4 The Contingent Asset Certificate

In order to be a Contingent Asset Certificate, a certificate must:

- (1) contain the information set out in paragraphs 30 to 48 inclusive of the Contingent Asset Appendix which is relevant to the type of Contingent Asset;
- (2) certify that the Scheme benefits from one or more Contingent Assets as specified in Rule D2.2; and
- (3) provide all the information and certifications required by Exchange in relation to the relevant Contingent Asset;

provided, however, that if the certificate required on Exchange requests less or different information or certifications than those set out in the Contingent Asset Appendix, then the correct and full completion and Submission of the relevant certificate in Exchange shall be treated as sufficient compliance with sub-Rules (1) and (2) above, provided however that the Board reserves the right to request the further or different information required in accordance with the Contingent Asset Appendix and to reject the certificate if such information is not supplied.

D2.5 Are Contingent Assets from previous years accepted?

(1) Where one or more Contingent Assets was recognised by the Board for the purposes of calculating a Scheme's RBL for a Levy Year ending on or before 31 March 2010 this Rule D2.5 applies.

(2) The Board shall not give that Scheme credit for Contingent Assets for the 2010/11 Levy Year unless:

- (i) it gave credit for it in the 2009/10 Levy Year;
- (ii) the relevant requirements of Rules D2 and D3 are satisfied;
- (iii) the Contingent Asset is re-certified by a Contingent Asset Certificate being submitted by or on behalf of the trustees on or before the Measurement Time; and
- (iv) the requirements of the Contingent Asset Appendix which are relevant to Contingent Assets which have been recognised in a previous Levy Year are satisfied.

D2.6 What is the effect of the Board recognising a Contingent Asset for the 2010/11 Levy Year?

The Board shall take into account a Contingent Asset for the purposes of calculating the Scheme's Levies for the 2010/11 Levy Year and calculate the Scheme's RBL in accordance with the Contingent Asset Appendix but only if it appears to the Board that the asset meets all the relevant provisions of this Rule D2 and the Contingent Asset Appendix.

D3 Cancellation, amendment and replacement of Contingent Assets

D3.1 No recognition of any Contingent Asset unless previous year's Contingent Assets still in place and not weakened

(1) This Rule D3.1 shall apply if, in respect of a Scheme, the Board gave credit for one or more Contingent Assets (each referred to below as the "Original Contingent Asset") for the purposes of calculating the RBL for the 2009/10 Levy Year.

(2) Where this Rule D3.1 applies then, notwithstanding any other provision of the Rules, the Board shall not take into account any Contingent Asset for the purposes of that Scheme's Levies for the 2010/11 Levy Year unless:

- (i) that Scheme certifies to the Board that each Original Contingent Asset satisfies the requirements for recognition for the 2010/11 Levy Year; and,
- (ii) the condition specified in Rule D3.1(3) below is satisfied in relation to each Original Contingent Asset.

(3) The condition referred to in Rule D3.1(2) is that no amendments have been made to the terms of the Original Contingent Asset since it was last certified to the Board or, if any such amendments have been made, the Board is satisfied that they do not reduce the value of that Original Contingent Asset.

(4) This Rule D3.1 is subject to Rule D3.3.

D3.2 Withdrawal of recognition where Contingent Asset cancelled or amended during 2010/11 Levy Year

(1) This Rule D3.2 shall apply if the trustees of a Scheme notify the Board, or if the Board otherwise becomes aware, that at some time during the 2010/11 Levy Year the information contained in a Contingent Asset Certificate has ceased or will cease to be true and correct.

(2) Where this Rule D3.2 applies, if:

(i) the instrument representing the Contingent Asset has been or is to be terminated;

(ii) its terms have been or are to be varied in such a way as will in the opinion of the Board reduce the value of the asset; or

(iii) any other step has been or is to be taken which has had or will have substantially the same effect,

the Board will calculate the RBL in respect of the Scheme as if that Contingent Asset had not existed at the Measurement Time (that is to say, the Contingent Asset shall be wholly disregarded for the purposes of calculating the RBL for the 2010/11 Levy Year).

(3) This Rule D3.2 is subject to Rule D3.3.

D3.3 Is there material detriment to the Scheme?

(1) If, in relation to a Scheme, the Board would be required to recognise one or more Contingent Assets for the purposes of the 2010/11 Levy Year, and is prevented from doing so only by the operation of Rule D3.1 or, as the case may be, Rule D3.2, then the Board may nonetheless recognise any or all of those Contingent Assets for the purposes of the 2010/11 Levy Year, in full or in part, if Rule D3.3(2) applies.

(2) This Rule D3.3(2) applies if in the opinion of the Board the condition specified in Rule D3.3(3) is met either:

(i) in the case of Rule D3.1, comparing the position at 1 April 2010 with the position at 1 April 2009; or

(ii) in the case of Rule D3.2, comparing the position following each relevant change to any Contingent Asset with the position at 1 April 2010.

(3) The condition referred to in Rules D3.3(1) and (2) above is that any action or inaction of the trustees in relation to the Contingent Asset was reasonable and did not have a materially detrimental effect on the position of the Scheme in all the circumstances. For this Rule D3.3(3), "action or inaction" includes without limitation in consenting to amendment or termination of the instrument constituting a Contingent Asset or in failing to enforce rights available to them pursuant to any such instrument. For this Rule D3.3(3), the "position of the Scheme in all the circumstances" includes without limitation:

- (i) any changes in the funding level of the Scheme (ignoring Contingent Assets) over the period in question;
- (ii) the absolute funding level of the Scheme;
- (iii) the implementation of new Contingent Assets in substitution for or in addition to those that were already in place; and
- (iv) the effect of the trustees' action or inaction when considered together with the effect of any earlier changes in relation to relevant Contingent Assets.

D3.4 Position where equivalent rules have previously been applied

It is the Board's intention that where recognition of an otherwise acceptable Contingent Asset is prevented or restricted by virtue of Rules D3.1 or D3.2, or the equivalent of either of them in any Previous Determination, then the Scheme should not receive any recognition for Contingent Assets in any subsequent Levy Year unless and until in the opinion of the Board the position of the Scheme (including any continuing Contingent Assets for which recognition is sought) is no worse than it was prior to the event which caused Rule D3.1 or D3.2 (or their equivalent in a Previous Determination) to apply. Recognition of Contingent Assets for the 2010/11 Levy Year shall be restricted accordingly.

D3.5 General provisions regarding this Rule D3

For the purposes of this Rule D3:

- (1) A change in the value of real estate or securities comprising a Type B asset, after the date of the valuation given in the Contingent Asset Certificate, is not a matter which falls to be notified to the Board, and will not lead to any recalculation of the RBL.
- (2) A reduction in the face value of a Type C(ii) Contingent Asset in accordance with its terms upon the making of a Planned Contribution (as defined in the Type C(ii) Contingent Asset Standard Form referred to in the Contingent Asset Appendix) shall not be regarded as a variation in the terms of that Type C(ii) Contingent Asset, is not a matter which falls to be notified to the Board during the Levy Year, and will not lead to any recalculation of the RBL.
- (3) The RBL will not be recalculated if steps are taken to increase the value of a Contingent Asset.

(4) The replacement of a Type C(i) Contingent Asset which has expired, by another Type C(i) Contingent Asset of the same or greater value, whether issued by the same or a different counterparty, shall be deemed to the continuation of the expired asset for the purposes of applying Rules D3.1 and D3.2.

(5) The "value" of a Contingent Asset shall, in the case of a Type A Contingent Asset, take into account the covenant strength of the guarantor(s) as well as the amount guaranteed.

Part E – Measuring Employer Insolvency Risk

E1 How to calculate P

This Rule E1 sets out how to calculate P for the purposes of Rule C2.1 and is subject to Rule E3 (API Appeals).

E1.1 Single Employer Schemes

In the case of a Scheme with a single Employer, P is the API of that Employer, which is calculated in accordance with the following Rules, as applicable. Such Rules shall be operated, if applicable, in the following order until an API has been calculated:

- (1) Rule E2.1 (UK Failure Scores);
- (2) Rule E2.2 (Non-UK Failure Scores);
- (3) Rule E2.4 (Risk Indicators);
- (4) Rule E2.5 (Scheme averages);
- (5) Rule E2.6 (Industry averages); and
- (6) Rule E2.7 (Blended averages).

E1.2 Multi-Employer Schemes

In the case of a Scheme with more than one Employer, the API of each Employer is calculated as set out in Rule E1.1 and P is calculated as set out in Rule E4.3.

E1.3 New, Recent and No Return Schemes

In the case of a New Scheme, a Recent Scheme, or a No Return Scheme, the API of each Employer which has been Submitted and which existed at the Measurement Time shall be calculated as set out in Rule E1.1 and the API of each Employer which did not exist at the Measurement Time shall be calculated as set out in Rule E1.1(4) onwards.

E2 How to calculate APIs

E2.1 UK Failure Scores

- (1) This Rule E2.1 applies where DBUK is able to assign a UK Failure Score to an Employer.
- (2) Where this Rule E2.1 applies, the API of that Employer shall be the API associated with the UK Failure Score which applies to that Employer as shown in table 1 of the API Appendix.

(3) The UK Failure Score which applies to an Employer shall be the value which DBUK informs the Board that it has assigned to that Employer as its UK Failure Score. For the avoidance of doubt, UK Failure Scores to be provided to the Board are, subject to Rule E2.3 (Severe risk parents), to be the normal UK failure score which was assigned to that Employer by DBUK in the ordinary course of its business as at the Measurement Time, (or, if different, the score which would have been assigned if account had been taken of all data that was received by DBUK at least 24 hours before the Measurement Time).

E2.2 Non-UK Failure Scores

(1) This Rule E2.2 applies where DBUK is unable to assign a UK Failure Score to an Employer, but DBUK or one of its associated undertakings is able to assign a Non-UK Failure Score.

(2) Where this Rule E2.2 applies, the API of that Employer shall be the API associated with the UK Failure Score which maps from the Non-UK Failure Score which applies to that Employer, as shown in tables 1 and 2 of the API Appendix.

(3) The Non-UK Failure Score which applies to an Employer shall be the value which DBUK or, where applicable, the relevant associated undertaking informs the Board that it has assigned to that Employer as its non-UK Failure Score. For the avoidance of doubt, Non-UK Failure Scores to be provided to the Board are, subject to Rule E2.3 (Severe risk parents), to be the normal non-UK failure score which was assigned to that Employer by DBUK (or the relevant associated undertaking, as the case may be) in the ordinary course of its businesses as at the Measurement Time, (or, if different, the score which would have been assigned if account had been taken of all data that was received by DBUK or the relevant associated undertaking, as the case may be, at least 24 hours before the Measurement Time).

E2.3 Severe risk parents

The Board has instructed DBUK that Failure Scores should be those which would be assigned to the Employer if there were to be disregarded any rule or practice whereby DBUK normally limits the maximum failure score obtainable by a company where it is a subsidiary of another company and that parent company is regarded as being at severe risk of insolvency.

E2.4 Risk Indicators

(1) This Rule E2.4 applies where there is an Employer to which DBUK or the relevant associated undertaking of DBUK would not in the ordinary course of business assign a Failure Score, but to which an associated undertaking of DBUK would expect to assign a Risk Indicator.

(2) Where this Rule E2.4 applies, DBUK will provide the Board with the "Risk Indicator". The "Risk Indicator" is assigned to the Employer in question by the relevant associated undertaking of DBUK in the ordinary course of its business and in the absence of a local failure score or local equivalent, based on data provided to the relevant associated undertaking at least 24 hours before the Measurement Time.

(3) In such cases the API associated with the Risk Indicator will be such as the Board has been advised by DBUK is appropriate for the purposes of achieving equivalence with the API Appendix to these Rules.

E2.5 Scheme averages

(1) This Rule E2.5 applies where there are at least 10 Employers participating in the Scheme, and where application of Rules E2.1 to 2.4 inclusive has failed to produce a Failure Score or Risk Indicator for all those Employers but has produced a Failure Score or Risk Indicator for at least 90% of those Employers (or at least 50% if there are more than 100 Employers in relation to the Scheme).

(2) Where this Rule E2.5 applies, the API for each Employer for whom no Failure Score or Risk Indicator has been produced shall be the mean API of the other Employers in relation to that Scheme in respect of whom Failure Scores or Risk Indicators have been produced.

E2.6 Industry averages

(1) This Rule E2.6 applies where Rules E2.1 to E2.5 inclusive do not produce a Failure Score or Risk Indicator for a particular Employer.

(2) Where Rule E2.6 applies, the API for that Employer will be based upon the assignment of the Employer to an industry group based on two-digit 1972 Standard Industry Classification (SIC) codes, in accordance with this Rule E2.6.

(3) The Employer will be assigned by the Board to whatever industry group appears most appropriate.

(4) The API for an Employer shall be the probability which DBUK notifies to the Board as being the Median API for all UK-domiciled Employers within that industry group in respect of whom it has provided the Board with UK Failure Scores for the purposes of the 2010/11 Levy Year.

E2.7 Blended averages

(1) This Rule E2.7 applies where the Board either:

(i) is unable to determine the most appropriate SIC Code for an Employer; or

(ii) has not been provided with a Failure Score for any Employers within the industry group to which that Employer would be assigned,

(2) Where this Rule E2.7 applies, the API for the Employer shall be the probability which DBUK notifies to the Board as being the Median API for all UK-domiciled Employers (irrespective of industry group) in respect of whom it has provided the Board with Failure Scores for the purposes of the 2010/11 Levy Year.

E2.8 Medians

For the purposes of Rule E2.6 and E2.7, Medians shall be based on the same set of probability data as supplied by DBUK to the Board for the purposes of calculating the scaling factor in the 2010/11 Levy Year. The Board may instruct DBUK to exclude specified classes of Failure Score which it regards as unrepresentative when calculating the relevant Medians. For the avoidance of doubt, in determining such Medians DBUK shall not include any Employer to which a Scheme average API has been applied in accordance with Rule E2.5.

E3. DBUK appeals

E3.1 When does this Rule E3 apply?

This Rule E3 can only apply in relation to a decision of DBUK, where DBUK informs the Board that:

- (1) it has made a decision under either of Rules E3.3 or E3.4;
- (2) that decision was made for a reason in Rule E3.5; and
- (3) that decision was made after receiving representations made by or on behalf of the Scheme trustees and/or Employer which comply with Rule E3.2(1), or following a request by the Board which complies with Rule E3.2(2).

For the avoidance of doubt the assignment of an Employer to an industry group by the Board under Rule E2.6(3) is not a decision of DBUK for the purposes of this Rule E3.

E3.2 Representations and requests for an appeal

- (1) Where representations are made by the Scheme trustee or Employer:
 - (i) any representations must first be made to DBUK (or, where applicable, an associated undertaking) by or on behalf of the Scheme trustees or Employer not later than 28 days after the date shown on the notification of the Levies in respect of the 2010/11 Levy year; and
 - (ii) the relevant applicant must also comply with any other relevant deadlines throughout DBUK's appeal process as may be stipulated by DBUK.
- (2) A request by the Board must be made no later than 31 March 2011.

E3.3 DBUK may act if the score is incorrect

DBUK may decide for a reason in Rule E3.5 that the Failure Score or other measure applied in accordance with Rules E2.1 to E2.7 inclusive assigned to an Employer as at the Measurement Time, was incorrect.

E3.4 DBUK may review cases using averages across Employers

DBUK may decide, for a reason in Rule E3.5, that either:

- (1) the procedures set out in Rules E2.5 to E2.7 inclusive have produced a result which was incorrect as compared with the result intended by those procedures; or
- (2) these Rules prescribed that a different procedure should have been applied.

E3.5 The reasons applicable for Rule E3.3 and E3.4

DBUK may only act if it decides that its original decision was based upon information which, as at the Measurement Time, was incorrect or incomplete by comparison with the information which should normally have been taken into account by DBUK in assigning a Failure Score or other measure at that date:

- (1) because, for reasons not related to any action or inaction of the relevant Employer, DBUK did not have access to information which would normally have been available to, and would normally have been taken into account by, DBUK at that date; or
- (2) because DBUK did not apply the procedures for assigning the Failure Score or other measure as they should normally have been applied.

E3.6 What happens if there is a new Failure Score (or other measure)?

- (1) Where this Rule E3 applies, the Failure Score (or other measure) shall be the higher or lower Failure Score (or other measure) which DBUK informs the Board ought to have been assigned to the Employer as at the Measurement Time.
- (2) Where this Rule E3 applies the Board will, where necessary, issue a revised notification of the amount of the Levies in respect of the Scheme.

E4. Insolvency Risk for Multi-Employer Schemes

E4.1 Membership numbers

- (1) The number of Allocated Members of a Scheme for each Employer is to be determined by reference to the information Submitted as at the Measurement Time.
- (2) Such Submitted information will be deemed to be correct if it is compiled in accordance with the relevant help files in Exchange as at the Measurement Time.
- (3) "Allocated Member" includes Pension Credit Members allocated to an Employer using the definition of "Pension Credit Member" in these Rules.

E4.2 Categorisation of Multi-Employer Schemes

- (1) Each Multi-Employer Scheme is to be determined as being either a "Last Man Standing Scheme", a "Partial Segregation Scheme" or a "Centralised Scheme" in accordance with the information Submitted for the Scheme as at the Measurement Time.
- (2) A "Last Man Standing Scheme" is a Scheme:
 - (i) which is not a Centralised Scheme; and
 - (ii) the rules of which do not include a requirement or discretion for the trustees to segregate assets on cessation of participation of an Employer.
- (3) A "Partial Segregation Scheme" is a Scheme the rules of which include a requirement or discretion for the trustees to segregate assets on cessation of participation of an Employer.
- (4) A "Centralised Scheme" is a Scheme:
 - (i) which is established as a centralised scheme for non-associated Employers, and whose rules do not include a requirement or discretion for the trustees to segregate assets on cessation of participation of an Employer;
 - (ii) which is stated in the data Submitted as at the Measurement Time as being such a Scheme; and
 - (iii) in relation to which the Board has, if requested by the Board, received satisfactory evidence in support of the statements in (i) before the calculation of the Levies for that Scheme.

E4.3 How is P calculated for such Schemes?

- (1) In the case of a Last Man Standing Scheme, P shall be 0.9 multiplied by the weighted average of API for each Employer in relation to the Scheme.
- (2) In the case of a Partial Segregation Scheme, P shall be the weighted average of API for each Employer.
- (3) In the case of a Centralised Scheme, P shall be the weighted average of API for each Employer multiplied by A/B where A is the largest number of Members of the Scheme in relation to whom any one Employer is the Employer, and B is the total number of Members of the Scheme.
- (4) In each case, the weighted average shall be calculated by:
 - (i) separately determining the API for each Employer in accordance with Rules E1, E2 and E3, and then

(ii) calculating the weighted average API for all Employers, where the weightings are equal to the number of Allocated Members for each Employer, divided by the total number of Members.

Part F – Special Rules for Scheme transfers

F1 When do these special rules apply?

F1.1 Which transfers are covered by these Rules?

(1) This Part F of the Rules sets out special rules which apply where there has been a Full Transfer or a Qualifying Transfer.

(2) The Board shall not be obliged to take into account any transfers of assets or liabilities between Schemes which are not Full Transfers or Qualifying Transfers, save where it was required to do so under the terms of a Previous Determination.

F1.2 Carry forward of certificates

For Schemes where block transfer information was Submitted and accepted for use in the 2009/10 Levies, and where no new Section 179 Valuation for that Scheme is Submitted in accordance with Rule A6.1 and no further certificate for that Scheme is Submitted before 5.00pm on 30 June 2010, the information used for 2009/10 will be carried forward and used in 2010/11.

F1.3 What is a Full Transfer?

A "Full Transfer" is where, on any date or dates prior to 1 April 2010:

(i) there are fewer than two Members remaining in a scheme (the "Transferring Scheme"); and

(ii) the Transferring Scheme has transferred (in groups of two or more Members) Members to one or more other Schemes (each, the "Receiving Scheme")

and there remain fewer than two Members in the Transferring Scheme on 1 April 2010.

F1.4 What is the effect of a Full Transfer?

Where there has been a Full Transfer this Part F of the Rules applies to the Transferring Scheme and the Receiving Scheme.

F2 The Board's expectation for additional information and the rules in relation to Full Transfers

F2.1 The Board's expectations of Scheme trustees

If there is no Section 179 Valuation for the Receiving Scheme(s) which reflects the Full Transfer and is Submitted at the Measurement Time, the trustees of the Transferring Scheme and the Receiving Scheme(s) shall be expected to agree and Submit the information in Rules F2.2 and F2.3 by 5.00pm on 30 June 2010 unless that information has already been Submitted.

F2.2 Basic Transfer Information

The Basic Transfer Information is specified in Part A of the Transfers Appendix attached to these Rules and is expected to be agreed and Submitted by or on behalf of the Schemes' trustees by 5.00pm on 30 June 2010.

F2.3 Actuarial Transfer Information

The Actuarial Transfer Information is specified in Part A of the Transfers Appendix and calculated in accordance with the provisions set out in Part B of the Transfers Appendix attached to these Rules. The Actuarial Transfer Information is expected to be agreed and Submitted by or on behalf of the Schemes' trustees by 5.00pm on 30 June 2010.

F2.4 The Board's objective

(1) This Rule F2.4 applies where all of the information in Rules F2.2 and F2.3 is Submitted by 5.00pm on 30 June 2010.

(2) Where this Rule F2.4 applies, the Board will make what is in its view an appropriate determination of the Value of the assets and/or Protected Liabilities of the Receiving Scheme(s) as at 31 March 2009.

(3) The determination referred to in Rule F2.4(2) will be made taking the Full Transfer into account and giving best effect to the general approach set out in the Transformation Appendix. In any case where a transfer of assets and liabilities occurs between 1 April 2009 and 31 March 2010 (inclusive), the Board shall make its determination based upon the position of the Transferring Scheme and the Receiving Scheme(s) post-transfer and shall adjust the assets and Protected Liabilities of the Transferring Scheme and the Receiving Scheme(s) in a manner which gives best effect to the approach set out in the Transformation Appendix.

(4) Any determination made under Rule F2.4(2) shall be used in substitution for the valuation the Board would otherwise use in accordance with Rule A6.

F2.5 Absence of information

(1) Where any of the information in Rule F2.2 and/or F2.3 has not been Submitted by 5.00pm on 30 June 2010, this Rule F2.5 applies.

(2) Where this Rule F2.5 applies, the Board shall make a determination of the Levies of the Receiving Scheme(s) in accordance with the "Poor Data Methodology" provided that if the Board is satisfied that the trustees of any Receiving Scheme have made all efforts that were reasonable in the circumstances to Submit or procure that the Transferring Scheme Submits the information in Rules F2.2 and F2.3 by 5.00pm on 30 June 2010 the Board shall not be obliged to determine the Levies of that Receiving Scheme in accordance with the Poor Data Methodology and may instead:

(i) determine the Levies of that Receiving Scheme in accordance with the Poor Data Methodology but without applying the adjustment to the estimated value of assets for the Transferring Scheme referred to in paragraph 12 of the Transfers Appendix;

(ii) determine the Levies of that Receiving Scheme in accordance with any Post-Transfer Valuation which reflects the Full Transfer(s) and which has been Submitted by the Receiving Scheme by 5.00pm on 30 June 2010; or

(iii) determine the Levies of that Receiving Scheme by using a combination of the approaches set out in (i) and (ii) above and the Poor Data Methodology,

in each case in such manner which in the view of the Board best gives effect to the general approach laid down by these Rules.

(3) The "Poor Data Methodology" is the methodology set out in Part C of the Transfers Appendix to these Rules.

(4) Any determination made under Rule F2.5(2) shall be used in substitution for the valuation the Board would otherwise use in accordance with Rule A6.

F3 Qualifying Transfers

F3.1 What are Qualifying Transfers?

A "Qualifying Transfer" is where:

(1) on any date or dates prior to 1 April 2009, a Scheme (the "Transferring Scheme") has transferred some of its liabilities for two or more Members to another Scheme (the "Receiving Scheme") or to another pension scheme or insurance company;

(2) that transfer is not a Full Transfer; and

(3) the value of the assets transferred exceeds one or more of:

(i) 5% of the asset value of the Transferring Scheme as stated in the last MFR or Section 179 Valuation before the First Transfer Date which is Submitted as at the Measurement Time;

(ii) 5% of the asset value of the relevant Receiving Scheme as stated in the last MFR or Section 179 Valuation before the First Transfer Date which is Submitted as at the Measurement Time; or

(iii) £1.5 million.

F3.2 Can a Qualifying Transfer be considered?

(1) This Rule F3.2 applies where:

- (i) there is a Qualifying Transfer;
 - (ii) there is no Section 179 Valuation for the Transferring Scheme and/or the Receiving Scheme which reflects the relevant transfer and is Submitted prior to the Measurement Time; and
 - (iii) the trustees of the Transferring Scheme and the Receiving Scheme agree and Submit the Basic Transfer Information and the Actuarial Transfer Information both specified in Part A of the Transfers Appendix attached to these Rules and calculated in accordance with the provisions set out in Part B of the Transfers Appendix attached to these Rules by 5.00pm on 30 June 2009.
- (2) Where this Rule F3.2 applies, the Board shall make what is in its view an appropriate determination of the Value of the assets and/or Protected Liabilities of the Transferring Scheme and the Receiving Scheme as at 31 March 2009.
- (3) The determination referred to in Rule F3.2(2) will be made taking the Qualifying Transfer into account and giving best effect to the general approach set out in the Transformation Appendix.
- (4) Any determination made under Rule F3.2(2) shall be used in substitution for the valuation the Board would otherwise use in accordance with Rule A6.

F4 The effect of a Full Transfer or a Qualifying Transfer

Where the Board makes a determination under Rule F2.4, F2.5 or F3.2, in respect of each Transferring Scheme and Receiving Scheme to which it applies, the Board shall calculate the SBL and RBL and shall invoice, or re-invoice, as the case may be, based on that determination.

Annex B – The Levy Practice Guide

The Board of the Pension Protection Fund (the “PPF”)

**PPF Levy Practice Guidance in respect of the financial year
1 April 2010 – 31 March 2011**

Guidance on the use of discretionary powers

The determination of the PPF issued under section 175(5) of the Pensions Act 2004 contains a number of discretionary powers for the PPF. This guidance note sets out principles and case studies showing how the PPF expects to exercise those discretionary powers.

This document is not part of the determination and it is not a binding restriction on the way in which the PPF will exercise its powers. The PPF will update this document from time to time in the light of its experience, either for the current levy year or for future years. The PPF will have regard to this document but may decide to depart from it when the circumstances of an individual case make it appropriate to do so or when the PPF is persuaded that the approach indicated in this document is no longer appropriate.

This document is not a binding interpretation of the law, which can only be supplied by the courts.

The first part of this document focuses on the limited circumstances in which the PPF may calculate the levies using something other than data submitted on the Pensions Regulator’s Exchange system at the relevant deadline. The second part covers contingent assets, specifically the rules that apply when contingent asset cover is removed, amended or replaced. Finally we include a reminder of how scheme trustees can appeal their invoices, including the exercise of any relevant discretions.

I. DISCRETIONS RELATING TO SCHEME DATA

A. Introduction

As is made clear by the determination, in the vast majority of cases (and except where expressly stated, such as in the case of contingent assets, where hard copy documentation will be equally relevant) the fundamental basis of the calculation of the Levies will be the data submitted on Exchange at the relevant measurement time, together with the data provided to Dun & Bradstreet in respect of that time. Cases for the use of PPF discretion will be

exceptional. Most cases will be determined by a straightforward application of the basic rules in the determination.

B. Exercising the discretionary powers

There are a number of different categories of case in which exercise of discretion may be relevant:

1. Cases where it is not possible to produce an invoice which complies with the determination – usually, this will be because the data supplied to the PPF is insufficient.
2. Data errors including (a) cases where the PPF's own plausibility tests indicate that there is an error; and (b) other data errors, that do not fit into category (a).
3. Mistaken analysis/presentation of the scheme's partial winding up provisions or the persons who were the employers in relation to the scheme.
4. Post-deadline changes to information on Exchange and accepting late data.
5. Cases where the information on full block transfers expected by the PPF has not been provided, or has not been provided in full, by the relevant deadline.

1. Inability to produce an invoice

This (rare) situation will most commonly arise where the data supplied by the scheme via Exchange is insufficient to allow the calculation of an invoice which complies with the determination. This will usually be dealt with through the application of prudent assumptions e.g. it will be assumed that the scheme is amongst the least well funded schemes.

2. Data errors

The PPF does not generally allow data corrections. Some of the reasons for this are as follows:

- Requests for corrections cause an administrative and cost burden in making changes to our databases and generating new invoices.

- The need to issue new invoices extends the invoicing period and delays the receipt by the PPF of the levies and thereby delays the investment of levy revenue. We are trying to increase stability in the levy estimate, reduce the invoicing period and create conditions in which schemes can know and budget for their invoices in advance. The provision of correct information by the deadlines is essential to achieving this. The sooner the PPF has accurate data on all schemes, the sooner we can validate it and begin invoicing, the shorter the invoicing period, and the closer the amount we collect will be to the levy estimate.
- We also think that it is reasonable to expect schemes to supply us with correct data and to incentivise appropriate behaviour. Schemes and their advisers have had a number of years now to get used to the system and provision of scheme return data is a legal obligation¹.

Notwithstanding this, some sensible exceptions need to be made, so we still reserve the discretion to allow schemes to correct incorrect data or indeed to correct it ourselves. However, in order to achieve the policy aims, these exceptions must be extremely limited. Additionally, the discretion only applies where the information originally supplied was, in fact, incorrect (as opposed to where the scheme could have submitted later information or presented the information more advantageously but chose not to).

(a) Plausibility tests

Over its short history, the PPF has developed a data testing regime designed to flag data which we believe, based on our experience, is likely to be incorrect. Clearly, these tests cannot be designed to cover all data (for example, we cannot test whether a scheme has established who its employers are correctly), but we have tried to develop a significant body of tests. In doing so, we aim to ensure that we are protected to a certain extent from gaming of the levy system. Where possible, we also carry out these tests

¹ Under s.64 Pensions Act 2004, with civil penalties for non compliance. The scheme return submitted must contain all the information the Regulator asks for (s.65). The importance of accuracy is underlined by the criminal sanctions which may apply where false or misleading information is supplied knowingly or recklessly (s80 and s195) – which applies more broadly than scheme return information.

very shortly after the measurement date, so that we can capture any changes in the scaling factor.

The fact that a test has been triggered does not necessarily mean that the data is incorrect. The tests are designed to flag data which we think is inconsistent or unusual, in some cases, as compared with other data. Nor will tests detect all erroneous data – so schemes should not rely upon them to pick up their errors.

Where a test is triggered, we conduct data cleansing activities on the particular piece of data that is flagged as inconsistent or unusual. In these circumstances, we will contact the trustees or their advisers to confirm whether the data is correct and seek an explanation if it is and the correct data if it is not.

In most cases, where the information referred to in our correspondence is confirmed to be incorrect, we will correct it.

However, equally, in most cases, we will not permit other data (in respect of which no tests have been triggered) to be amended at the same time. If we allowed other corrections once a plausibility test had been triggered, this would render the data deadlines meaningless for any scheme where any plausibility test was triggered. This would not be fair for those for whom no plausibility test was triggered.

(b) Other data errors

In considering whether or not to exercise its discretionary powers, the PPF will consider the following circumstances:

- a. The effect of the error on the calculation of the Levies.
- b. The reason that erroneous data was submitted².
- c. Responsibility for the erroneous data, including whether any professional indemnity insurance may compensate the scheme.

² In particular, where the scheme can establish that it has had difficulty with Exchange (e.g. the system does not allow correct data to be input or is misleading) and has made an error as a result, the PPF might be more likely to allow the correction.

d. The speed with which the error was identified.

e. The reason for the error.

Where an error has resulted in under-calculation of the levies, the PPF is more likely to exercise its discretionary power to make a data correction, as the underpayment is to the detriment of all other levy payers who have submitted correct data³. Where the scheme pays higher levies, as a result of a mistake by someone with responsibility for the scheme, it is not usually unfair to collect and retain the higher levies as the scheme has not provided the correct information anticipated by the Act⁴. In a case where the extra cost is caused by the carelessness of professional advisers, the trustees may be able to take action against those advisers for any loss suffered as a result.

3. Winding up provisions and employer relationship

The PPF accepts that some of the matters reported through Exchange – such as the nature of winding up provisions and the identity of the employers – are subject to uncertainty and complex analysis. In considering whether or not to exercise its discretionary powers, the PPF will take account of the circumstances set out in 3 above, including taking account of questions as to whether there is a good explanation as to why the incorrect analysis was used.

4. Late data

Exchange allows for an update of information right up to the relevant deadline. Therefore, requests for exercise of discretion based on changes in information which are not updated will not normally be accepted. Notwithstanding this, the Board does retain the right to obtain data from schemes after the relevant deadlines and may exercise this discretion, for example, where the levy will otherwise be understated.

Additionally, where a communication failure has occurred Rule B4 of the determination may apply. This generally requires evidence that the

³ If the scheme appears deliberately to have entered incorrect data in an attempt to reduce their invoice, a correction will almost certainly be made. An offence may also have been committed.

⁴ See footnote 1 above

information was despatched at an appropriate time, but was delayed by the post or by breakdown in electronic communications. For example, where contingent assets hard copy documentation has been sent to us by courier, we would generally expect you to be able to provide us with:

- a copy of the collection receipt from the courier indicating the time of collection by the courier; and
- evidence of the service level requested from the courier.

From these, we could then establish whether the documents were indeed despatched at an appropriate time and were delayed.

5. Block transfers

Where there is a 'full' block transfer – i.e. the transferring scheme ceases to be eligible – the PPF expects the schemes involved to provide full information through Exchange as described in Rule F2 of the determination. Where that information has not been provided in full or at all by the relevant deadline, the levies for the scheme(s) receiving the block transfer are to be calculated using the "poor data methodology" set out in the Transfers Appendix to the Determination. This involves using the asset and liability figures of the transferring scheme but applying a discount to the assets.

The provision of full information about a transfer involves a degree of cooperation and coordination between the transferring and receiving schemes, which the PPF considers to be reasonable in circumstances where assets and liabilities are being moved between the schemes. However the PPF recognises that transfers can be complex (for example, a large scheme may receive a very large number of small transfers in, all of which are full transfers) and that in some circumstances there may be minor deficiencies in the information provided which are beyond the control of the receiving scheme. Accordingly, within Rule F2.5 the PPF retains the discretion to calculate the levy differently in circumstances where the trustees of the receiving scheme have made all efforts that were reasonable in the circumstances to ensure full submission of the requisite information.

C. Examples

Example 1 – correction request accepted

The ABC Pension Scheme was established in 1998, but had received a transfer from the XYZ Pension Scheme, which was established in 1985. Andrew, the

chairman of trustees of the ABC Pension Scheme, was completing the scheme return online, but found that Exchange would not allow him to enter a figure in the "pre 1997" liabilities box. He emailed the PPF's stakeholder support team to let them know that there was a problem and the figure that should be in the box.

When Andrew receives his invoice, it seems quite high and he writes to the PPF's stakeholder support team, the next day, to check what figure had been used for the pre-1997 liabilities, explaining the problem with Exchange and referring to his previous email.

Andrew's correction is granted and his invoice adjusted. The problem here was with Exchange and Andrew could not have been expected to provide accurate data through Exchange.

Example 2 – correction request denied

The DEF Pension Scheme has asked its actuary, John, to fill in the scheme return for it. John asks his temporary secretary to extract the data for the latest s179 valuation from his firm's system. Unfortunately, he gives the secretary the wrong PSR number and he fails to check her work. As a result, John submits the wrong valuation results. To make matters worse, the PSR he does use is for a bigger scheme which has a greater deficit.

When the DEF Pension Scheme gets its invoice, Peter, the chairman of trustees, calls John and expresses his concern at the size of the invoice. John reviews the invoice, realises his mistake, and gives Peter the correct figures. Peter writes to the PPF the next day, requesting that his invoice is adjusted by using the correct figures for the DEF Pension Scheme's s179 valuation results.

Peter's request is denied. He has given no explanation as to why the mistake could not reasonably have been avoided. There may be a claim against the professional indemnity insurance carried by John's firm.

Example 3 – correction request granted

Martin, a trustee of the UVW Pension Scheme, is filling in the scheme return. He is completing the scheme structure question and gets out the trust deed to check what the scheme provides in terms of partial winding up. He reads clause 32 of the deed, which states as follows:

“Upon a Participating Company ceasing to participate in the Scheme the Principal Employer may, subject to Rule 33, segregate a part of the assets of the Scheme in relation to-

- (i) those Active Members who are then in the Service of the Participating Company; and (if the Principal Employer so decides)*
- (ii) Members in the Service of the Participating Company who are not Active Members, and other Members who were formerly in its Service and persons whose benefits arise in respect of such Members,*

the choice of (i) or (ii)(or neither) being determined by the Principal Employer at its absolute discretion.”

Martin fills in the Scheme return ticking the box which says that the scheme has a discretion to segregate. He is later discussing the issues around partial winding up rules with his legal adviser, David. David tells him that, whilst on its face, it might appear that Martin had ticked the right box, in fact, the correct analysis is that the scheme does not have a provision for partial winding up. He explains that this is because of the precise wording of the legislation, which only treats the scheme as having an option to segregate if that option is given to the trustees, not the Principal Employer as the deed provides.

Martin contacts the PPF and asks if he can amend this. He explains that he filled in the scheme return on the basis of what he thought was appropriate and had seen no reason to seek legal advice on this issue.

The invoice for the UVW Scheme is adjusted on the basis that the scheme is a scheme without a provision for partial winding up. Martin has made a mistake on a highly technical legal matter, but one which (as a lay trustee) he reasonably thought was straightforward.

Example 4

The GHI Pension Scheme transferred all its assets and liabilities to the RST Pension Scheme on 1 January 2010. As part of the transfer agreement, the Trustees of the GHI Pension Scheme undertook to “take all such actions as are required to ensure that appropriate notification is made in relation to the transfer to ensure that no fines or other loss is suffered by the RST Pension Scheme”. However, Paul, the scheme administrator of the GHI pension scheme who is charged with doing this task takes a 6 month sabbatical

starting in February and forgets to pass on this task to his colleagues. Because it was Paul's task, nobody at the RST Pension Scheme takes a note and consequently nobody chases Paul.

When the chairman of trustees of the GHI Pension Scheme, receives a levy invoice for the 2010/11 levy year, she informs the PPF's eligibility team that the GHI scheme has fewer than two members. The eligibility team ask her to explain in a bit more detail and she tells them about the transfer.

As a result, the RST Pension Scheme (which has not yet been invoiced) receives an invoice based on an underfunding figure which Ayesha, a trustee of the RST Pension Scheme, finds surprisingly high. Ayesha queries this and is referred to the requirements in respect of block transfers. She asks if she can resolve the situation by making sure all the required information is submitted in the next week. Her request is rejected. She has provided no reason as to why the transfer was not properly notified and she may be able to recover the loss through the transfer agreement provisions. Even if she were not so able, she had the opportunity to insist on something more specific in the transfer agreement which would have allowed her to make a claim.

Example 5

The JKL Pension Scheme transferred all its assets and liabilities to the OPQ Pension Scheme on 1 January 2010. As part of the transfer agreement, the Trustees of the JKL Pension Scheme undertook to "take all such actions as are required to ensure that appropriate notification is made in relation to the transfer to ensure that no fines or other loss is suffered by the OPQ Pension Scheme".

Jin, the scheme administrator of the JKL Pension Scheme who is charged with doing this task immediately starts the notification process and Jane, the administrator of the OPQ Scheme confirms the basic details in February 2009. Jane then asks Tim, the Scheme Actuary to supply her with a valuation of the OPQ Scheme after the transfer, which she posts on Exchange on 15th May.

However, Jin takes a 3 month sabbatical starting at the beginning of May and forgets to pass on the task of supplying the post-transfer valuation for the JKL Pension Scheme to his colleagues. He does not put an out of office note on his emails. Jane, the administrator of the OPQ Pension Scheme, emails Jin with increasing urgency as the 30 June deadline approaches and also emails the trustees direct, to remind them of the information expected by the PPF. She points out that the information they are expected to supply is extremely simple (as they will have no assets or liabilities) and highlights the effect that

their failure could have on the OPQ Scheme. Lastly, on 27th June, she emails the PPF stakeholder support team to explain her difficulty.

When Jessica, the chairman of trustees of the JKL Pension Scheme, receives a levy invoice for the 2009/10 levy year, she informs the PPF's eligibility team that the JKL scheme has fewer than two members. The eligibility team ask her to explain in a bit more detail and she tells them about the transfer.

As a result, the OPQ Pension Scheme (which has not yet been invoiced) receives an invoice based on an underfunding figure which Tim finds surprisingly high. Fiona, the chairman of the trustees, queries this and is referred to the requirements in respect of block transfers. She explains that Jane had done everything she could to comply with the provisions and had tried to ensure that the JKL Pension Scheme did too. She refers the stakeholder support team to the data she submitted on Exchange and sends in copies of Jane's increasingly urgent emails to the JKL Pension Scheme.

Her request to adjust the invoice for the OPQ Pension Scheme (to use the post-transfer valuation she has supplied) is accepted. Jane has indeed done everything she could to properly notify the transfer and, although she may be able to recover the loss through the transfer agreement provisions, given her exemplary efforts, it is unduly harsh to require the scheme to pursue that route.

Example 6 – correction imposed

MNO Pension Scheme entered its Section 179 Valuation data on Exchange on 27 March 2009. In the liabilities section, the sum of the liabilities excluding expenses for active members, deferred members, pensioner members, estimated costs of winding up, estimated expenses of benefit installation/payment and external liabilities came to £100,000 less than the figure entered in the total protected liabilities box. The mismatch in the figures triggered a PPF plausibility test and on 6 April 2009 the PPF data cleansing team contacted MNO Pension Scheme to seek an explanation. Rachel, the scheme actuary, realised that she had mistakenly entered the liabilities in respect of the deferred members to be £100,000 less than the actual liabilities in respect of deferred members. The PPF imposes the data correction.

II. AMENDMENT AND REPLACEMENT OF CONTINGENT ASSETS

A. Background

1. Since the PPF contingent asset regime was introduced as part of the first risk based levy in 2006/07, it has always been a key policy of the PPF only to recognise contingent assets that are "long term" in nature. Generally this means that only agreements of indefinite duration are recognised; however there are the following main exceptions:

(a) all the PPF standard form agreements contain provisions whereby "excess" contingent asset cover may be reduced once certain funding levels are achieved;

(b) Type C(i) letters of credit/bank guarantees need only be for a minimum one year duration; however they must include an "evergreen" provision whereby the trustees may call on the asset if it is not renewed before expiry; and

(c) Type C(ii) letters of credit/bank guarantees need only last for as long as the schedule of deficit reduction contributions which they guarantee.

In each case, it will be seen that the overall long term funding enhancement associated with the arrangement will be (very broadly) constant, whether because the contingent asset remains in place itself or it has been replaced by another contingent asset or cash in the scheme.

2. Policy justifications behind this approach include:

(a) Although the levy for individual schemes is currently calculated based on measures of short term underfunding and insolvency risk, that measure is scaled so that each scheme makes a contribution in respect of future years' risk as well. The PPF therefore considers it is fair within the current system only to include, in the calculation of assets at the measurement date, contingent assets that are expected to be in place for the long term (as, of course, are the assets in the scheme already). To take a simple example, consider a scheme which has a weak employer, but benefits from a fixed term guarantee from a strong parent. If, shortly after the expiry of the guarantee, the employer becomes insolvent, is abandoned by the parent and the PPF

takes over the scheme, then the scheme will have substantially underpaid for the risk it posed to the PPF over the preceding years.

(b) The PPF seeks more generally to encourage behaviours which remove long-term risk from the system, to the benefit of the wider community of eligible schemes.

However, contingent asset agreements are private agreements between the providers and the trustees of the scheme. The PPF is not a party to the agreements, and the contingent asset providers and trustees are able (as a matter of contract) to cancel or amend the agreements at any time. The trustees' scope to do this will of course be significantly circumscribed by their duties as trustees; however, ultimately, that decision is a matter for the trustees, not the Board and the PPF cannot directly guarantee that a PPF-compliant contingent asset entered into in year 1 will in fact still be in place in year 2. What the PPF can and should do, however, is reflect the subsequent history of the contingent asset in calculating the levy.

3. The PPF recognises that removal, reduction or replacement of contingent assets may in some cases be entirely appropriate and not lead to any, or any significant, increase in risk. A broad outline of such "acceptable changes" is set out at B below. However, other changes by voluntary actions of the parties are regarded as "unacceptable changes".

Arguably, where a contingent asset that was expected to be in place for the long term is subject to an unacceptable change, the PPF should "claw back" at least part of the levy reductions related to that contingent asset for every year since the asset was put in place. However this would be a rather extreme approach, as well as being administratively difficult to achieve. Instead, the approach of the PPF in the determinations up to and including that for 2009/10 has been (very broadly) as follows:

(a) where an unacceptable change occurs in the middle of a levy year, the levy for that year will be recalculated as if the contingent asset in question had never been in place during that year

(b) where an unacceptable change occurs between levy years, no credit at all will be given for any contingent assets in the latter year (even if there remain some contingent assets with value which would otherwise satisfy the recognition requirements)

(c) where an unacceptable change takes place, the scheme may not be given credit for any contingent assets in future years until the position has at least been restored to that which prevailed before the unacceptable change occurred.

In practice, it is very difficult to specify in advance all of the possible circumstances in which parties might legitimately want to make changes to their contingent asset arrangements, and the impact which such changes ought to have on the levy. The PPF has become aware of isolated examples in which the prescriptive rules in past years' determinations have hindered or prevented entirely appropriate actions. The determination for 2010/11 therefore contains, at Rule D3, a slightly broader discretion whereby the PPF can decide not to adjust the levy where contingent assets are subject to acceptable changes, whilst the basic non-recognition rule will continue to apply for unacceptable changes.

4. The broad principles on which the PPF intends to exercise this discretion are as follows:

(a) Any change that is made strictly in accordance with rules set out in the standard form agreements is very likely to be an acceptable change. So, in circumstances where the guarantor in respect of a Type A contingent asset puts forward a "Proposal" as defined in the standard form guarantee, and under the terms of the agreement the Trustees may not unreasonably withhold their consent to the Proposal, then the Proposal is very likely to be an acceptable change. The fact that the trustees may have been content to do this on shorter notice than the standard form anticipates would not generally affect this analysis.

(b) A fall in the market value of a piece of land charged in a Type B(ii) asset or the securities charged in a Type B(iii), taken alone, does not trigger specific action under Rule D3 (though of course it may result in a direct reduction in the levy credit each time the contingent asset value is used in the levy). Analogous changes in value resulting from actions entirely outside the control of the parties to the contingent asset agreement are very likely to be acceptable changes. However, the PPF regards the following as being within the control of the parties and therefore potentially unacceptable changes:

(i) a decision by a contingent asset provider not to continue to provide the asset on grounds of cost – e.g. where a Type C(i) asset

is not renewed on expiry, or a charge is released in order to improve the balance sheet of the chargor; or

(ii) a decision by trustees not to enforce rights available to them – e.g. where a Type C(i) asset is not renewed and the trustees elect not to claim under the “evergreen” provisions.

(c) Where there are multiple contingent assets, the PPF will look at all the assets together, comparing the overall position after the change with that before.

(d) If a guarantor in respect of a Type A guarantee is replaced, this will usually be an acceptable change if the new guarantor is at least as strong as the old one. Strength will usually be assessed based on failure scores or risk indicators provided by D&B, as at a date within five days on either side of the date of replacement. Otherwise such a change is likely to be unacceptable.

(e) If a liability cap is amended upwards within the same cap type (e.g. a guarantee of a 100% funding level on a s179 basis is changed to a guarantee of 105%) this will usually be acceptable.

(f) If a liability cap type is changed (e.g. a £10m cap is converted to a cap guaranteeing 100% funding on a s179 basis), the actual monetary value of the cap as at the point of the change will be calculated and if the monetary value remains the same or increases the change will usually be acceptable.

(g) Replacement of a Type A guarantee with a Type B or C contingent asset of equal monetary value will usually be an acceptable change; changes in the opposite direction will usually not be.

(h) Where the actual funding level (including Type B and C contingent assets) of the scheme reaches the top of the PPF ‘funding taper’ in force at the time, it will usually be acceptable to release any Type B or C contingent assets to the extent they bring the funding level above that point. The top of the taper is the s179 funding level above which the scheme will pay zero risk based levy – which for the levy year 2010/11 is 140%. Similarly, Type A guarantees which guarantee a funding level beyond the top of the taper may usually be scaled back to the top of the taper. It should be noted that this test is more stringent than that set out in the standard form agreements themselves; where a change is made outside the terms of the

agreement, but funding is below the top of the taper, the PPF will take into account all the circumstances of the case – including the other factors set out in this section 4 – when determining whether the change is acceptable.

(i) Where the aggregate funding level is not so high as to satisfy the test in (i) above, it will usually only be acceptable to reduce Type B and C cover if and to the extent there has been an at least equal improvement in the actual funding level of the scheme since the contingent asset was put in place.

(j) The value associated with any liability cap as at a particular date will be estimated by the PPF based on whatever funding data appears to it most appropriate – typically the type of asset and liability data used for the levy.

(k) Extending the list of companies whose pensions obligations are secured by the contingent asset to include new employers will usually be acceptable (and will be necessary to enable the trustees to give the required certification each year). Removal of a company from coverage is likely only to be acceptable if it has ceased to be an employer within the statutory definition set out in section 318 of the Pensions Act 2004.

Although the above paragraphs cover most of the issues that typically arise where contingent assets are amended, removed or replaced, the PPF recognises that in unusual cases the parties involved may want to seek an advance indication from the PPF as to how it would treat a specific transaction for levy purposes. The PPF will endeavour to provide such an indication, provided that comprehensive information about the anticipated transaction and the trustees' rationale for agreeing to it are provided in good time. The PPF will aim to respond to such requests within 20 working days, meaning that requests will need to be received by the end of February 2010 in respect of transactions planned to take place before the 31 March deadline.

B. Examples of changes to contingent assets which are likely to be acceptable

(i) A guarantee of the full s75 debt given by Supermarket Ltd is released and replaced by a guarantee in the same terms given by Supermarché S.A. On the date of the change, Supermarket Ltd has a UK failure score for which the associated PPF probability of insolvency is 0.5%, whilst Supermarché S.A. has a French failure score for which the associated PPF probability of insolvency is 0.3%.

(ii) A Type C(i) letter of credit for £10m issued by Bank A expires and is replaced by a Type C(i) bank guarantee for £20m issued by Bank B (Banks A and B must of course both satisfy the recognition requirements as to credit rating, domicile, regulation etc).

(iii) Based on the most recent s179 valuation (dated 31 January 2009 and as at 31 July 2008) and applying the PPF roll-forward methodology, the scheme is 150% funded (without taking into account any contingent assets) as at 31 March 2009. All existing Type B and C contingent assets are released with effect from 31 March 2009.

(iv) As at 31 March 2009, the scheme has liabilities of £100m and assets of £80m on a s179 basis. A Type C(i) contingent asset valued at £10m is put in place. As at 31 March 2010 the scheme's assets have increased to £95m and the liabilities to £105m, meaning the scheme is now over 90% funded. The Type C(i) contingent asset is released.

C. Examples of changes unlikely to be acceptable

(v) As example B(i) above, but Supermarché S.A.'s associated PPF probability of insolvency is 0.6%.

(vi) As B(ii), but the sponsor can only afford a bank guarantee for £5m from Bank B (unless the funding level has improved sufficiently in the meantime).

(vii) As B(iii), but the scheme is only 100% funded as at 31 March 2009 and the Type B and C contingent assets are released and replaced with parent company guarantees.

(viii) Supermarché S.A. guarantees the obligations of three UK subsidiaries, all of which participate in the scheme. One of the subsidiaries is in financial difficulties and Supermarché S.A. persuades the trustees to release the guarantee in relation to that subsidiary while continuing to cover the other two. In fact, assuming the subsidiary that is in financial difficulties is an associate of the guarantor and remains an employer in relation to the scheme, the guarantee will have ceased to satisfy the requirements for recognition in any case.

III. APPEALING A LEVY INVOICE

The calculation of a levy invoice is a 'reviewable matter' under section 207 of the Pensions Act 2004. The formal review process considers whether the PPF

has followed the rules of the determination when calculating the levy. Accordingly, if the trustees of a scheme are unhappy about the way in which the PPF has exercised any of the limited discretions reserved in the determination, and described above, they should apply for a review in the normal way.

It is important to note that the PPF cannot change or depart from the levy determination itself, including the levy formula, or any of the policies or rules contained in it, when calculating individual invoices. So, for example, in a case where D&B have properly provided a failure score for the employer in relation to the scheme, an application which argues that the PPF should depart from the determination and use something other than that D&B score will not be successful, as there is no discretion in this regard.

We consult annually on the levy rules and anyone with an interest in the PPF can respond.

Details of how to apply for a review of a levy invoice, and of levy consultations and how to respond, can be found on the PPF website:

www.pensionprotectionfund.org.uk

