



Pension
Protection
Fund

2011/12 Pension Protection Levy Consultation Policy Statement

December 2010

Foreword

First of all, I would like to thank everyone who responded to the 2011/12 pension protection levy consultation, which was published on 30 September. As ever, your views were considered carefully in coming to the conclusions set out in this document.


The estimate for the 2011/12 pension protection levy will be £600m. Whilst there is still significant uncertainty about the long-term impact of the proposed move to CPI, uncertainty that may continue for some time, the Board has felt it right to reflect the broad expectation that it should lead to lower costs for PPF compensation. Obviously, this choice was easier to make in the context of the improvement in the PPF's balance sheet that we reported in October and our new funding strategy – published in August – looking forwards to 2030 and beyond.

Quite deliberately there were few new policy proposals for 2011/12, given that we are consulting on significant change for the years from 2012/13 – and because some changes to insolvency risk measurement had previously consulted on. It's likely, then, that 2011/12 will be the last year in which the current formula will apply. A primary consideration was stability of levy distribution and minimal changes that would achieve this.

We did, however, consult on changes to the parameters of the levy. We proposed a risk-based scaling factor of 2.07 and a scheme-based levy multiplier of 0.000135, and proposed adjustments to the start point of the taper and the cap on the risk-based levy. These changes were designed, as far as is possible with the existing approach to the levy, to maintain a distribution of levy and prevalence of capping consistent with 2010/11. These proposed changes are now confirmed.

This document includes the final 2011/12 Determination, related appendices and the Levy Practice Guidance that were published in September. These will be the basis on which levies for 2011/12 will be calculated – schemes should consult these closely in deciding what risk reduction measures to put in place.

I would like to take this opportunity to encourage your participation into the new levy framework consultation which is open until 20 December. This proposal would introduce significant changes to how levies are calculated, with new ways of measuring funding and insolvency risk so that schemes experience greater predictability and stability. We hope that all stakeholders continue to share their views with us on this important initiative.



Alan Rubenstein
Chief Executive

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Chapter 1: Introduction and background

1.1 The 2011/12 Pension Protection Levy Consultation

- 1.1.1 The 2011/12 pension protection levy consultation set out the changes to the levy that we proposed to introduce on 1 April 2011. The consultation period lasted five weeks, from 30 September to 4 November 2010.
- 1.1.2 The consultation document invited respondents to comment on the proposals, which included changes to the levy parameters. We also asked specific questions relating to the certification of block transfers.
- 1.1.3 Our proposal for the 2011/12 pension protection levy reduced the levy estimate to £600 million compared to £720 million in 2010/11. This change was announced in response to the expected move from the Retail Prices Index (RPI) to the Consumer Prices Index (CPI) as the basis for indexation and revaluation of PPF compensation.
- 1.1.4 The proposal also updated the levy parameters for 2011/12. The start point of the levy taper would be shifted upwards, so that it affects schemes with funding between 135 and 155 per cent. Schemes with funding below 135 per cent would have their underfunding calculated using the formula $1.36 \times \text{protected liabilities} - \text{assets}$ (1.36L-A). In addition, we proposed to continue to protect the weakest 10 per cent of schemes through the risk-based levy cap. This requires setting the risk-based levy cap at 0.75 per cent of liabilities. These changes would help result in a more even distribution of the levy.
- 1.1.5 We also noted how policy developments relating to insolvency risk, upon which we consulted last year, will be implemented for the calculation of the 2011/12 levy.
- 1.1.6 In total we received 16 responses, including six sponsoring employers and three industry bodies. Submissions were also made by legal, actuarial and consultancy bodies. The highest number of responses was directed to the levy taper and the lowest to the levy scaling factor.
- 1.1.7 We would like to thank all respondents to the 2011/12 levy consultation.

1.2 Policy Statement on the 2011/12 Pension Protection Levy

- 1.2.1 This document confirms that the levy estimate for 2011/12 is £600 million, the levy scaling factor is 2.07 and the scheme-based levy multiplier is 0.000135.
- 1.2.2 The risk-based levy cap will be 0.75 per cent of liabilities and the taper will apply at 135 per cent to 155 per cent levels of funding.
- 1.2.3 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:
- levy estimate;
 - scaling factor;
 - levy cap; and
 - taper.
- 1.2.4 Details of the electronic data submission process for 2011/12 levy are outlined in Chapter 4 below, with relevant dates and deadlines for 2011/12. Schemes are encouraged 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 2011/12 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 communication made by the PPF.
- 1.3.3 Following the positive response to the publication of the Levy Practice Guidance and Contingent Asset Guidance, we have updated these to provide further illustrative examples for levy payers. We hope that these continue to be useful to schemes and their advisors.

1.4 Future Framework

- 1.4.1 A consultation on the proposed new framework and new levy formula from 2012/13 was published on 7 October 2010. The consultation document sets out our proposals for a levy framework that is based on a "bottom-up" approach, with changes in individual scheme levies more closely linked to changes in a particular scheme's risk, and a proposal to fix the levy parameters for a three year period.
- 1.4.2 The proposal aims to enhance stability and predictability by using averaged measures of funding and insolvency. In addition, investment strategy would be incorporated as a risk factor in the risk-based levy.
- 1.4.3 The consultation period closes on 20 December. We would encourage stakeholders to provide feedback on this proposal, which is planned for implementation in 2012/13. The Board's response will be published in early 2011.

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

2.1 The 2011/12 levy estimate and scaling factor

Summary of the proposals

- 2.1.1 The consultation document announced the Board's intention to set a levy estimate of £600 million. This figure was set at a lower level than for 2010/11 to reflect the expected passage of legislation changing the basis for indexation and revaluation from RPI to CPI.
- 2.1.2 Given the uncertainty that surrounds the proposed move to CPI and the reactions of a range of parties, from pension schemes and their sponsoring employers to participants in the bulk-annuity market, it is impossible to quantify precisely the impact on long term risk to the PPF. We have assessed that reducing the annual levy to this level would result in an 85 per cent probability of meeting our funding target of self-sufficiency by 2030 based on the sensitivity assumptions we made in our Funding Strategy.¹
- 2.1.3 For the risk-based levy, the Board proposed that the levy scaling factor would be 2.07, with a scheme-based levy multiplier of 0.000135.

Summary of responses

- 2.1.4 Our proposal to reduce the levy estimate was generally welcomed, however two respondents believed the reduction could have been a more significant one. Another respondent suggested that the PPF should provide an indication of the levy estimate over the next few years based on its long-term modelling.

The Board's confirmed policy

- 2.1.5 A number of factors are taken into account when setting the levy. The Board believes that the 2011/12 levy estimate of £600 million strikes the right balance between recognising some reduction in expected claims as a result of the move to CPI, whilst reflecting the continuing uncertainty around the extent of that impact and the wider risk environment.
- 2.1.6 A significant reduction in the levy estimate from £720 million in 2010/11 to £600m for 2011/12 is being passed on immediately, resulting from the proposed move to CPI. This is consistent with the amounts necessary to keep us on track for our target of funding self-sufficiency by 2030. A materially lower levy estimate for

¹ Full details of the work we have done to illustrate the impact of the move to CPI are set out in the PPF's funding strategy document which was published in August 2010. This is available at:
http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/PPF_Funding_Strategy_Document.pdf

2011/12 could challenge the PPF's ability to meet its long-term obligation to members.

- 2.1.7 With the publication of the New Framework and regular updating of the Funding Strategy, we will keep under review the interaction of the levy estimate and PPF funding scenarios and consider how information can best be presented as part of work to implement the New Framework.

2.2 Levy Cap

Summary of the proposals

- 2.2.1 The Board proposed to maintain the objective set in 2010/11 to protect the weakest 10 per cent of schemes with a cap on the risk-based levy. For 2011/12, this means setting the cap at the level of 0.75 per cent of liabilities.

Responses

- 2.2.2 Four respondents, representing sponsoring employers and consultancy bodies, commented on the cap. Two submissions were not supportive of changing the level of the cap to 0.75 per cent of liabilities and raised affordability concerns.
- 2.2.3 One respondent was supportive of raising the level of the cap to 0.75 per cent to continue to protect 10 per cent of schemes, in order to keep the extent of cross-subsidy low. Another went further, arguing there should be no cap whatsoever - as it was an unwarranted subsidy by the 90 per cent of schemes that are uncapped.

The Board's confirmed policy

- 2.2.4 The Board continues to consider the affordability of the levy as an important principle; however, this must be balanced against the effective costs that would be imposed on uncapped schemes through a higher levy scaling factor. Setting the cap at 0.75 per cent of liabilities requires uncapped schemes to pay over £100 million of additional levy. In the Board's judgement, to increase that cost to protect a larger proportion of schemes would be unjustified.
- 2.2.5 The New Framework on the 2012/13 levy, if implemented, would reduce the cost of providing cross-subsidy and the Board will look again at the affordability issues when developing its proposals for future years.

2.3 The Taper

Summary of the proposals

- 2.3.1 We proposed to alter the calculation of underfunding risk by moving the range at which the taper would be effective by 15 per cent. For 2011/12, schemes that were less than 135 per cent funded would be assessed by reference to the formula $1.36 \times \text{protected liabilities} - \text{assets}$. Schemes that are 135 to 155 per cent funded on a section 179 basis would fall within the taper and pay a risk-based levy using funding that is a fixed percentage of liabilities. Those that are more than 155 per cent funded would pay no risk-based levy.

- 2.3.2 This change was considered necessary to maintain a relatively stable distribution of levy across schemes. Otherwise, the proportion of schemes that would pay no risk-based levy would double and remaining schemes would pay higher levies because a higher scaling factor would be required.

Responses

- 2.3.3 A number of respondents (five) commented on the proposal to move the taper to start at 135 per cent funded. The responses expressed concerns about the impact on some schemes. In particular, two respondents commented specifically on the effect of the taper change on well-funded schemes with low-risk investment strategies and suggested that these would experience disproportionately large increases in their levy. These respondents suggested that the effect on these schemes would run counter to the proposal for 2012/13.

The Board's confirmed policy

- 2.3.4 The Board has confirmed that the effect of funding improvements in the absence of this change would introduce an undesirable distribution of levy. The 15 per cent shift in the taper does not completely counteract the 26 per cent improvement in funding that schemes, on aggregate, have experienced. We feel that this proposal achieves an appropriate balance so that schemes that are less well-funded do not bear a significantly larger portion of the levy compared to 2010/11.
- 2.3.5 We recognise that schemes that have low risk investment strategies may have seen less benefit from the improvement in scheme funding than other schemes, and will therefore be disadvantaged by a shift to the taper that is set having regard to average improvements in funding. However the analysis that we have done suggests that, whilst for individual schemes the impacts may be significant, the aggregate impact on well-funded schemes with low investment risk is limited, particularly by comparison with the shift in the levy burden that would take place if the taper were left unchanged.
- 2.3.6 The Board has decided, therefore, to proceed with the proposed increase to the start point of the levy taper.
- 2.3.7 The proposals under consultation for 2012/13 would provide a long-term solution to this issue, by providing proper recognition for lower risk investment strategies. This would allow a well-funded scheme with sufficiently low investment risk to pay no risk-based levy.

2.4 The Determination

- 2.4.1 The draft 2011/12 Determination and appendices were published with the consultation document. We received positive feedback on last year's move to a more user-friendly format, and have maintained this for 2011/12.
- 2.4.2 We also published updated versions of the Levy Practice Guidance and the Contingent Asset Guidance. These reflect feedback we received since they were first published, for example where illustrative examples could provide more clarity for schemes and their advisers.

Responses

- 2.4.3 A number of respondents provided comments relating to clarificatory amendments; we have considered these suggestions and many of these have been reflected in the Determination.
- 2.4.4 Annex A contains a copy of the final Determination as made by the Board. This document is not subject to further change.

Chapter 3: Consultation Questions

- 3.1 There were two questions in the 2011/12 consultation in connection with suggestions that there could be a conflict between the Actuarial Code of Practice and PPF requirements for certification of assets in the Block Transfer Guidance.
- 3.2 There were five responses to these questions, providing a range of helpful suggestions about how this issue could be successfully managed. The degree of perceived conflict varied depending on what expectations were attached to the certification requirement.
- 3.3 Two commentators suggested wording changes for the Transfers Appendix and Guidance, while two others suggested changes to the certification process (e.g. a separate document to accompany the certificate).

The Board's confirmed policy

- 3.4 We do not believe that any changes to the Determination or Appendices are required to address this issue. We propose to describe in the Block Transfers Guidance what our expectations are where the Determination and Exchange require the actuary to provide certification.
- 3.5 We will be discussing the wording of the Guidance with those respondents expressing an interest in the issue. This Guidance will be published before the start of the levy year.
- 3.6 We expect that this should remove any potential for conflict between PPF requirements and the Actuarial Code, and thank all respondents for their suggestions.

Chapter 4: Data submission

4.1 Electronic submission of data

4.1.1 For the 2011/12 levy, the Measurement date for insolvency risk and funding was 31 March 2010. We will use scheme returns that were submitted through the Exchange system by this date.

- New contingent assets need to be certified, and existing contingent assets re-certified, by 5pm on 31 March 2011.
- The deadline for submission of deficit-reduction contribution certificates is 5pm on 7 April 2011.

4.2 Data deadlines and measurement dates

4.2.1 The following deadlines are applicable for the 2011/12 levy year.

- *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 (with the exceptions set out below)
- *5pm on 30 June 2010* for certification of partial block transfers that occur up to and including *31 March 2010*
- *5pm on 31 March 2011* for certification or re-certification of contingent assets
- *5pm on 7 April 2011* for certification of deficit-reduction contributions. Schemes are reminded that the certificate should relate to the contributions paid since the valuation that will be used for the 2011/12 Levy (this will generally be the valuation entered on Exchange by 31 March 2010 but may be a later block transfer valuation).
- *5pm on 30 June 2011* for final certification of full block transfers occurring up to and including 31 March 2011

4.2.2 Certification(s) should be made using the Pensions Regulator's Exchange system, which will continue to support deficit-reduction contributions, contingent assets and block transfers.

4.2.3 Schemes are reminded of PPF's policy to enforce deadlines strictly, even where the Board may have discretion in the matter. Failure to observe the above deadlines may result in adverse consequences for schemes.

**Annex A – The Board’s Determination under section 175(5)
of the Pensions Act 2004 in respect of the financial year 1
April 2011 – 31 March 2012**

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 2011 – 31 March 2012**

17 December 2010

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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 2011 to 31 March 2012: 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 attention of trustees and advisers is also drawn to the Board's Levy Practice Guidance. Schemes should note that the Board does not anticipate that the discretionary powers set out in the Determination will normally be exercised so as to correct data submitted on Exchange at the relevant measurement time.

The appendices to the Rules are available from the Board's website at http://www.pensionprotectionfund.org.uk/levy/1011_determination/Pages/11-12Determination.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.

“Binding Failure Notice” – is a Failure Notice which is treated as binding under section 125 of the Act or under section 130(6) of the Act.

“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 as set out 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 Notice” – is a notice issued under section 122(2)(a) of the Act, or pursuant to section 124 of the Act, or under section 130(2) of the Act.

“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 2011.

“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 2011/12 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 2010 and 31 March 2011 (inclusive); and
- (ii) no later than 5.00pm on 31 March 2011 Submitted a Scheme Return.

“Rescue Notice” – is a notice issued under section 122(2)(b) of the Act or under section 130(3) of the Act.

“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 2011/12 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 2011, 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, 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 or email 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 2011/12 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 2010 except as set out below:

- (1) In relation to Contingent Assets, 5.00pm on 31 March 2011.
- (2) In relation to Deficit-Reduction Contributions, 5.00pm on 7 April 2011.
- (3) In relation to Recent Schemes, 5pm on 31 March 2011.
- (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 2010 for Submission of both Basic Transfer Information and Actuarial Transfer Information.
- (6) In relation to Full Transfers, 5.00pm on 30 June 2011 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 5pm on 31 March 2011, 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 done or 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 2010

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 2010.

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 2012.

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), A6.3, 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) Rules A6.2 and A6.3 do 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 2011 (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.

A6.3 Schemes which have completed a valuation pursuant to section 143 or 156 of the Act

Where a Scheme has undertaken a valuation under section 143 or section 156 of the Act, the Board may obtain from the trustees of the Scheme such information as will allow the Board to make a determination of the Value of the assets or Protected Liabilities of the Scheme in the manner which in the view of the Board best gives effect to the general approach laid down by these Rules.

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 it is not reasonably practicable for the Board 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 and by using such assumptions as in the opinion of the Board:

(1) is prudent and 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 (in the opinion of the Board) comparable 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:

$$L \times 0.000135.$$

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 2011/12 Levy Year. C shall be 2.07 because that is the "risk-based levy scaling factor" for the 2011/12 Levy Year.

C3. Variations to the SBL and RBL formulae

C3.1 The maximum RBL in respect of the Scheme is $0.0075 \times$ the Value of the Scheme's Protected Liabilities, because that is the "RBL cap" for the 2011/12 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 2011/12 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. This Rule C3.5 is subject to Rule E1.3.

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 2011 ("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 the amount (which may be zero) of the Levies in respect of the New Scheme.

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, where it 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 < (135% of PL)	(PL x 1.36) – A
(135% of PL) ≤ A < (140% of PL)	1% of PL
(140% of PL) ≤ A < (145% of PL)	0.75% of PL
(145% of PL) ≤ A < (150% of PL)	0.50% of PL
(150% of PL) ≤ A < (155% of PL)	0.25% of PL
A ≥ (155% 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?

C5.1 A Scheme is a Failed Scheme if it meets all of the criteria in this Rule C5 and:

- (i) has not been authorised by the Board under section 153 of the Act to continue as a closed scheme; and
- (ii) is not a Scheme to which section 146 and/or section 147 of the Act applies.

C5.2 Failure Notice received

A Scheme meets the criteria in this Rule C5.2 if, no later than midnight on 31 March 2011, the Board has either received or issued a Failure Notice in respect of the Scheme.

C5.3 No Rescue Notice

A Scheme meets the criteria in this Rule C5.3 if, before the calculation of the Levies for the Scheme concerned, the Board has neither received or issued a Rescue Notice in respect of the Scheme.

C5.4 Failure Notice must be binding

A Scheme meets the criteria in this Rule C5.4 if, before the calculation of the Levies for the Scheme concerned, the Scheme Failure Notice has become a Binding Failure Notice.

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. If the amount paid in respect of any previous notification exceeds the amount due pursuant to the revised notification, the difference between the notifications in question will be credited to the Scheme.

Part D - Reducing the RBL 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; and
- (iii) it appears to the Board (to the extent that it is to be recognised for the purpose of the calculation of the RBL) that the certified contribution has the effect of reducing the difference between a Scheme's assets and Protected Liabilities where Protected Liabilities exceed the assets, or increasing that difference where the assets exceed the Protected Liabilities.

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 2011 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 a Contingent Asset was recognised by the Board for the purposes of calculating a Scheme's RBL for a Levy Year ending on or before 31 March 2011 this Rule D2.5 applies.

(2) The Board shall give that Scheme credit for that Contingent Asset for the 2011/12 Levy Year where:

- (i) it gave credit for it in the 2010/11 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 Where a Scheme's Contingent Asset has been recognised by the Board for the purposes of calculating a Scheme's RBL for a Levy Year ending on or before 31 March 2010 but was **not** so recognised for the 2010/11 Levy Year, nothing in this Rule D2.5 is to be taken as preventing the Scheme from Submitting the Contingent Asset for the consideration of the Board with a new Contingent Asset Certificate and any other required documentation.

D2.7 What is the effect of the Board recognising a Contingent Asset for the 2011/12 Levy Year?

The Board shall take into account a Contingent Asset for the purposes of calculating the Scheme's Levies for the 2011/12 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 2010/11 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 2011/12 Levy Year unless:

(i) that Scheme certifies to the Board that each Original Contingent Asset satisfies the requirements for recognition for the 2011/12 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 2011/12 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 2011/12 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 2011/12 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 2011/12 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 2011/12 Levy Year, in full or in part, if Rule D3.3(2) applies.

(2) This Rule D3.2(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 2011 with the position at 1 April 2010; 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 2011.

(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 a Scheme has removed or reduced contingent asset cover

(1) This Rule applies where:

(i) one or more Contingent Assets (the "Previous 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 2011 (the "Earlier Levy Year"); and

(ii) one of those Previous Contingent Assets was not recognised (whether in full or in part and whether or not a certificate in respect of that Previous Contingent Asset had been Submitted) for the purposes of the Scheme's RBL for a Levy Year or years subsequent to the Earlier Levy Year (including, for the avoidance of doubt, the 2010/11 Levy Year by virtue of Rules D3.1 or D3.2 or otherwise).

(2) Where Rule D3.4(1) applies, it is the Board's intention that the Scheme should not receive any recognition for any Contingent Assets in any Levy Year

subsequent to the Earlier 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 point at which all of the Previous Contingent Assets remained recognised by the Board for the purposes of the calculation of the RBL.

(3) Recognition of Contingent Assets for the 2011/12 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) Under no circumstances will the RBL be reduced as a result of steps taken to increase the value of a Contingent Asset after the start of the 2011/12 Levy Year.

(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 be 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 E2.6 (Industry averages); and
- (5) 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 in respect of that Scheme as set out in Rule E1.1 but with the application of Rule E2.5 after Rule E2.4, 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 existed at 31 March 2010 shall be calculated in respect of that Scheme as set out in Rule E1.1 and the API of each Employer which did not exist at 31 March 2010 shall be calculated in respect of that Scheme as set out in Rule E1.1 but disregarding paragraphs E1.1(1), E1.1(2) and E1.1(3).

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 in respect of a Scheme.

(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 (Overrides to DBUK's standard methodology), 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, 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 Overrides to DBUK's standard methodology

(1) The Board has instructed DBUK to disregard 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, except in the situation where an Employer's domestic or global ultimate parent company is rated as being at severe risk of insolvency in which case DBUK's normal rule or practice will apply.

(2) The Board has instructed DBUK to apply its normal approach (as at the date of this Determination) to enhancing the score of an Employer that has branches in three or more different regions, notwithstanding that such an approach was not part of DBUK's normal methodology as at 31 March 2010.

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" which applies to an Employer shall be the value which DBUK informs the Board that the relevant associated undertaking of DBUK has assigned to the Employer in question in respect of the Scheme in the ordinary course of that relevant associated undertaking's business and in the absence of a Non-UK Failure Score, 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 a 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 in respect of that Scheme 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 in respect of a particular Scheme.

(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 2011/12 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 2011/12 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 2011/12 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 2011/12 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.

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 which was 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 and this occurred for one of the following reasons:

- (1) because 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 and, in a case where representations were made on behalf of the Scheme trustees or Employer, that lack of access was not related to any action or inaction of the relevant employer; 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) "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 2010/11 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 2011, the information used for 2010/11 will be carried forward and used in 2011/12.

F1.3 What is a Full Transfer?

A "Full Transfer" is where, on any date or dates prior to 1 April 2011:

(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 2011.

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 2011 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 2011.

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 2011.

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 2011.

(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 2010.

(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 2010 and 31 March 2011 (inclusive), the Board shall make its determination based upon the assets and Protected Liabilities 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.

(5) For the avoidance of doubt, the provisions of this Part F apply to a Receiving Scheme that is a New Scheme or a scheme to which Rule A6.2 (Schemes which are not yet obliged to complete a Section 179 Valuation) applies.

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 2011, 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 2011 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 liabilities for the Transferring Scheme referred to in paragraph 12 of the Transfers Appendix;
- (ii) determine the Levies of that Receiving Scheme in accordance with the assets and Protected Liabilities contained in 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 2011; 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 prior to 1 April 2010, a Scheme (the "Transferring Scheme") has transferred all of its liabilities in respect of two or more Members to another single destination (being a Scheme (the "Receiving Scheme"), another pension scheme, or an 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 2010.

(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 2010.

(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 – Levy Practice Guidance

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

PPF Levy Practice Guidance in respect of the financial year 1 April 2011 – 31 March 2012

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. The third section covers deficit reduction contributions. 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 Senior 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 scheme name of the “DEF Pension Scheme”, and no PSR number, and the secretary inputs the valuation data from the DEF (Works) Pension Scheme, instead of the DEF Senior Pension Scheme. John fails to check her work. As a result, John submits the wrong valuation results. To make matters worse, the DEF (Works) Pension Scheme is a bigger scheme with a greater deficit.

John realises the mistake a week later, when trying to certify a deficit-reduction contributions certificate. John does not continue with the certification, and does nothing until the DEF Senior Pension Scheme gets its invoice, and Peter, the chairman of trustees, calls John and expresses his concern at the size of the invoice. Peter asks for the correct figures but John does not provide them until six weeks after his conversation with Peter, at which point he writes to the PPF the next day, requesting that his invoice is adjusted by using the correct figures for the DEF Senior Pension Scheme’s s179 valuation results. Peter estimates that the mistakes have increased the invoice from £45,000 to £150,000.

Peter’s request is refused. Whilst the mistake has had an impact on the scheme’s invoice, the mistake could reasonably have been avoided, and there was an unreasonable delay in taking action. The Trustees will no doubt be considering whether they should seek to recover the increased levy cost

against their advisers, who will be required to carry professional indemnity insurance.

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 – request to use late post-transfer valuation denied; “Poor data methodology” applied to scheme

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 - request to use late post-transfer valuation granted

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 2011/12 is 155%. 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 2011 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.

(v) A Type B contingent asset (charge over property/cash/securities) is released but the underlying asset that was subject to the charge is then transferred into the scheme (i.e. the underlying asset changes from being a contingent asset to a tangible asset).

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. DEFICIT REDUCTION CONTRIBUTIONS

It is intended that the deficit-reduction contribution regime recognises, for levy purposes, only those contributions that have the effect of reducing the difference between a scheme's assets and liabilities (or increasing that difference where the assets exceed the liabilities). It is for the Board to decide to what extent a deficit-reduction contribution certificate will be recognised for levy purposes.

The Board anticipates that it will only exercise this discretion not to recognise a deficit reduction contribution for levy purposes in situations where the Board is of the clear opinion that the certified contribution was not made in accordance with the Board's intention.

Where an actuary certifies a deficit-reduction contributions certificate on Exchange, this certification should be made with due regard to the requirement, set out in Rule D1.1(iii) of the Determination, that the certified contribution has the effect of reducing the difference between a scheme's assets and protected liabilities where protected liabilities exceed the assets, or increasing that difference where the assets exceed the protected liabilities. The Board also expects that where prudent estimation is used, the appropriate level of prudence is considered with regard to Rule D1.1(iii).

Examples of deficit-reduction contributions which will not be recognised in full for levy purposes

- (i) A scheme has undertaken an enhanced transfer value exercise. The total enhancements amounted to £1,000,000 but the corresponding employer contribution was only £600,000. The scheme sought to certify the £1,000,000 as a deficit-reduction contribution. However, the net effect to the scheme of the exercise was a £400,000 loss. Therefore, the Board did not accept the deficit-reduction contribution certificate as the scheme should not be treated as having reduced deficit if it had in fact created a new set of liabilities and partly paid contributions towards those, and the scheme actuary should have reflected the net loss to the scheme in any other deficit-reduction contribution certificates given in respect of the scheme.

- (ii) A scheme has undertaken an exercise with scheme members where pensioners have agreed to forgo pension increases in exchange for a higher, non-increasing pension. The scheme asked whether this benefit change would be counted as an

augmentation and therefore deducted from the protected liabilities that could be regarded as reduced by a deficit contribution certificate. The Board decided that it should be treated as an augmentation, as the scheme had replaced a benefit that the Board would not provide for in PPF compensation (i.e. pre-1997 pension increases) for a fixed amount that the Board would have to cover. The Board's liabilities had therefore been increased by the exercise.

IV. 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

