

## Treatment of closed schemes and applications by closed schemes for a further assessment period under section 157

### **Background**

This document is intended to provide guidance for trustees where a Scheme has been authorised to continue as a closed scheme under section 153 of the Pensions Act 2004 (the **Act**). It is not intended to provide an overview of every aspect of the relevant legislation. Trustees should seek advice from their own legal and actuarial advisers when administering a closed scheme.

### **Treatment of Closed Schemes**

#### **The requirement to wind up**

Where a scheme has been authorised to continue as a closed scheme, the trustees must wind up the scheme. The winding up is to be taken as beginning immediately before the assessment period (section 154(6) of the Act).

Where a scheme is winding up, trustees must pay benefits in accordance with the statutory priority order.

During the assessment period, trustees are required to reduce members' benefits to PPF compensation levels (the **lower of test**). Where a member's benefits were reduced during the assessment period under the lower of test, the difference (between the benefits due to the member under the scheme rules and the benefits as reduced under the lower of test) falls due to the member at the end of the assessment period. However, this amount will take into account any reduction under the statutory priority order. In other words, members should only receive a top up to payments received during the assessment period up to the level of benefits that the scheme could afford to pay under the statutory priority order.

Where at any time during the assessment period the scheme is being wound up, the trustees are required to disregard the winding up for the purposes of paying benefits. If, during the assessment period, members have been paid more than they are entitled to because of this requirement to disregard the winding up, the trustees must take such steps as they consider appropriate to recover an amount equal to the excess from the affected members. The steps can include the adjustment of future payments under the scheme rules.

Where a scheme has been authorised by the PPF to continue as a closed scheme, certain provisions of the Act apply as if the scheme were still in an assessment period. Section 155(3) of the Act specifies these provisions and they are also listed in Appendix 2.

The trustees should be mindful in particular of sections 133, 134 and 137 of the Act.

Section 133 prohibits the admission of new members to the scheme and the further accrual of benefits (amongst other things).

Section 134 gives the PPF power to give directions to trustees and other relevant persons regarding the exercise of their powers in relation to the investment of the scheme's assets, the incurring of expenditure, the instigation or conduct of legal proceedings and the amendment of the scheme rules. The directions must be given with a view to ensuring that the scheme's protected liabilities do not exceed its assets or that the excess is kept to a minimum. Each direction would be specific to the scheme.

The Regulator also has power to issue certain directions under section 154(8) of the Act.

We encourage trustees of closed schemes to maintain contact with their PPF caseworker for example by providing the PPF with copies of the audited scheme accounts.

### **PPF Levy**

A closed scheme remains an eligible scheme. This means that closed schemes will be liable to pay the scheme-based and the risk-based pension protection levies calculated in accordance with the Board's levy determination for the relevant financial year. For the 2011/12 levy year, the risk-based levy for closed schemes is zero. Closed schemes are also required to comply with the requirement to submit a section 179 valuation to the Board and to submit scheme information (via the Pension Regulator's electronic system "Exchange") by the published deadlines.

A further point to note is that the fact a scheme has been authorised to continue as a closed scheme under section 153 of the Act is a ground on which an application for a waiver of the Pension Protection Fund levies can be made.

Further information about the Pension Protection Fund levies, the Board's determination and how to apply for a waiver can be found on the Pension Protection Fund's website under the heading "Pension Protection Fund Levy."

Where a scheme ceases to be an eligible scheme it will not be required to pay the pension protection levies.

### **Valuations of Closed Schemes**

Trustees of closed schemes are required to obtain actuarial valuations at certain intervals (please see below).

The valuation allows trustees or managers of closed schemes to determine the benefits payable by the scheme and whether to make an application to the PPF under section 157. However, please note that it is not essential that the trustees have obtained a section 156 valuation before making a section 157 application. Please discuss with your caseworker what would be required.

The effective date of the first closed scheme valuation should be either:

- Within 3 years after the effective date of the section 143 (entry) valuation; or
- Where the scheme was not authorised as a closed scheme within 3

years of the effective date of the section 143 (entry) valuation, within 15 months of the determination date.

Where the trustees of a scheme have applied for authorisation to continue as a closed scheme, the PPF issues a determination notice to confirm whether the scheme is authorised to continue as a closed scheme. The PPF's determination notice is subject to a review period before it becomes binding. The day on which the determination to authorise the scheme as a closed scheme becomes binding is called the determination date.

Subsequent closed scheme valuations shall be obtained with an effective date within 3 years after the effective date of most recent closed scheme valuation.

A section 156 valuation must be completed and signed by the actuary with 15 months of its effective date.

For further information on closed scheme valuations, please refer to the section 156 guidance.

[http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/Section\\_156\\_Guidance.pdf](http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/Section_156_Guidance.pdf)

### **Application for a further assessment period**

If the trustees become aware that the value of the assets of the scheme is less than the amount of the protected liabilities they must make an application to the PPF under section 157. The application must be made within six months of the time when the trustees become aware that the value of the assets of the scheme is less than the amount of the protected liabilities. The application should be provided in the format set out in Appendix 1.

If at anytime the Pensions Regulator becomes aware that the value of the assets of the scheme is less than the amount of the protected liabilities, it must notify the PPF. The PPF will then notify the trustees.

### **Further Assessment Period**

A new assessment period begins when the application under section 157 is made (or the trustees receive the notice that the Regulator has made a section 157 notification). At that point, the trustees would again need to reduce benefits to PPF compensation levels.

The assessment period will end when the trustees or managers receive a transfer notice under section 160 or the conditions under section 154(5) (closed scheme with sufficient assets to meet protected liabilities etc) are satisfied in relation to the scheme.

## **Duty to assume responsibility for closed schemes**

Where the trustees make a section 157 application (or the Regulator makes a section 157 notification) the PPF must assume responsibility for the scheme if the value of the assets of the scheme at the relevant time was less than the amount of the protected liabilities. Please note, the “relevant time” for these purposes is the time immediately before the section 157 application was made (or the time immediately before the trustees received the notice of the Regulator’s section 157 notification).

The PPF will obtain an actuarial valuation at the relevant time for the purposes of determining whether the value of the assets of the scheme at the relevant time was less than the amount of the protected liabilities. The actuarial valuation obtained under section 158 must be prepared broadly using the same principles as a section 143 valuation.

Following the approval by the PPF of the valuation, a two month binding period will apply and, providing no formal reviews are received, the valuation will then become binding and the scheme will transfer to the PPF.

## **Queries**

Trustees should direct any queries regarding the above guidance to their PPF caseworker. Alternatively, please refer to the contact details provided on our website [www.pensionprotectionfund.org.uk](http://www.pensionprotectionfund.org.uk)

*For guidance on how to apply to be a closed scheme please see the guidance on Applications for Reconsideration and Closed Scheme Authorisation*

<sup>2</sup>**Appendix 1**

**Application under section 157**

Purpose of application	
Date on which application is made	
Scheme name	
Pension scheme registration number	
Scheme address	

If segregated Please complete a, b, and c

a) Segregated part name/Section name	
b) Pension scheme registration number	
c) Address	

Please state whether you have become aware that the value of the assets of the scheme is less than the amount of the protected liabilities in relation to the scheme and the date on which you became so aware	
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Please state whether or not you obtained advice from the actuary before you became aware that the value of the assets of the scheme is less than the amount of the protected liabilities in relation to the scheme	
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Value of Assets	
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Value of protected liabilities	
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Trustee Details	
Please provide name(s) and address(es) of the trustees of the Scheme	

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Signed on and behalf of the Trustees of [enter pension scheme name]

## Appendix 2: Section 155(3)

Section 40(5)  
Section 49(5) and 49(6)  
Section 54(5) and 54(6)  
Section 56(5) and 56(6)  
Section 133  
Section 134  
Section 137

All references are to the Pensions Act 2004