Consultation on Funding Determinations and amendments to section 151 in the Pension Protection Fund (Miscellaneous Amendments) Regulations 2012

Contents

1. Introduction and Summary

The Pension Protection Fund (Miscellaneous Amendments) Regulations 2012 (the Regulations) are intended to exercise powers conferred by sections 143 and 151 of the Pension Acts 2004, as amended by the Pensions Act 2011.

Changes introduced in the Pensions Act 2011 will:

- make it possible for the PPF to use a funding determination in place of a section 143 valuation; and

- allow a scheme to make an application for reconsideration under section 151 if they are unable to obtain a protected benefits quotation.

The Board proposes to start using the changes introduced by the Regulations as soon as it has had time to consider the responses to this consultation and subsequently published its Statement.

The Board would therefore like to consult on the proposals set out in this document (see sections 2 and 3 below).

The Board would like to receive responses to this consultation by 29 July 2012.

2. Funding Determinations

2.1 Background

It is intended that where a scheme in an assessment period is either very underfunded or very overfunded, the PPF will make a funding determination instead of obtaining a section 143 valuation.

In order for the PPF to make a funding determination it is proposed that an estimate of the protected liabilities and assets be provided at the same effective date that a section 143 valuation would have been prepared (the relevant time).

The proposal is that the protected liabilities be estimated by reference to an existing s179 valuation or where available a suitable alternative actuarial valuation if that will give a better estimate. In estimating the movement between the existing valuation date and the assessment date, some firms may find it easier to value the membership data at the assessment date if their systems have been set up to allow this. In this case a reconciliation between an existing valuation and the estimated protected liabilities and assets will still be required.

Where an existing valuation is going to be used to estimate the protected liabilities it will be required that the effective date of the valuation is no more than 2 years earlier than the relevant time. In addition the liabilities in the valuation will not themselves have been estimated from the liabilities of a prior valuation.

The Board will update the existing valuation using the information described in paragraph 2.3 below.

Where approximations need to be made to arrive at the estimated assets and protected liabilities, the approximations should be made so as to overstate the assets and understate the protected liabilities where the scheme is expected to be underfunded and vice versa for a scheme which is expected to be overfunded.

The assets may be valued by reference to fund manager and bank statements at the relevant time adjusted where necessary, for example, to take account of expected recoveries, annuity policies held as assets or current assets and liabilities which have not yet been settled.

Question 1: Do you consider that it is appropriate to estimate the protected liabilities by reference to an existing valuation for a scheme which is significantly over or underfunded?

Question 2: Do you consider that it is appropriate to estimate the assets without reference to audited accounts for a scheme which is significantly over or underfunded?

2.2 When will a funding determination be used in place of a section 143 valuation?

The PPF will consider whether to make a funding determination or undertake a s143 valuation following a qualifying insolvency. The PPF must have received a section 179 valuation in respect of the scheme entering assessment before consideration will be given to making a funding determination in place of a section 143 valuation. Furthermore, section 179 valuations should have been provided in accordance with the timescales set out in legislation for the purposes of determining PPF levies (no less regularly than every three years).

The Board may choose to make a funding determination when it considers that the scheme's ability to secure benefits at PPF levels of compensation can be determined without a section 143 valuation. Schemes will be assessed on a case by case basis.

Following a qualifying insolvency event, the Board will seek to establish whether a scheme is very overfunded or very underfunded. The scheme actuary or appointed panel actuary will be asked to provide evidence to inform the Board's decision.

For schemes that are expected to be very overfunded, the PPF will seek confirmation that the scheme is likely to be able to buy out its protected liabilities with an insurance company. If suitable assurance cannot be obtained, the PPF will commission a section 143 valuation in the normal way.

The power to make a funding determination does not apply to all multi-employer schemes. It will only apply to multi-employer schemes falling in parts 2,3 and 6 of the Pension Protection Fund (Multi-employer schemes) (Modifications) Regulations 2005, which are single employer sections and last man standing sections of sectionalised schemes and last man standing non-segregating schemes.
The Board will consider making funding determinations for schemes that are already in an assessment period but for which a section 143 valuation had not been commissioned when the Regulations come into force.

Question 3: Are the circumstances under which the PPF proposes to make a funding determination appropriate?

Question 4: Can you provide an estimate of the possible range of the costs that will be saved as a result of providing the information for a funding determination compared to carrying out a section 143 valuation? Please state any assumptions you have used regarding the size and complexity of the scheme.

2.3 Information required by the PPF

The PPF will require the following information to accompany the estimate of the protected liabilities and assets:

- A summary of the main movements from the starting liabilities to the estimated protected liabilities. For example membership movements, benefits paid in the period between an existing valuation and relevant time, change from scheme benefits to PPF compensation, differences in assumptions etc. A description of the purpose of the existing valuation should also be given.

- Actuarial certification that, had a section 143 been carried out, the assets would either have exceeded the protected liabilities or been less than 90% of the protected liabilities.

- Copies of asset statements and a description of the adjustments made to determine the estimated asset value.

- A description of any approximations made in estimating the assets and protected liabilities should be given.

We propose to provide a one-sheet template to capture all the relevant information we require.

Question 5: Is the information being sought appropriate in your opinion to enable the PPF to make a funding determination in place of a section 143 valuation?

Question 6: Within what timeframe do you think the information requested can be provided to the PPF?

Question 7: Please indicate whether you think it will be easier for your firm to update the liabilities from an existing valuation by carrying out a valuation of the actual membership data at the relevant time and reconciling the results with the existing valuation or by rolling forward the existing valuation.

3 Amendments to the rules on reconsideration

3.1 Background

Trustees may apply to the Board for reconsideration under section 151 of the Pensions Act 2004 (a Reconsideration Application) where the s143 valuation or determination showed a funding level of 100% or higher and they can not afford to buy the protected level of benefits in the market.

The current rules on reconsideration require the trustees to obtain a Protected Benefits Quotation in order to make a Reconsideration Application. Information about the current process is available in guidance on the PPF's website. The amendments to the rules will permit trustees to apply for reconsideration where they can show that they were unable to obtain a Protected Benefits Quotation having taken all reasonable steps to obtain one and the Board is satisfied that the value of the assets is less than the amount of the protected liabilities at the reconsideration time. The Board will be required to consider in each case whether in the circumstances the trustees have taken all reasonable steps to obtain a Protected Benefits Quotation and will require information from the trustees about what they have done and why to evaluate whether reasonable steps have been taken. The Board will also need to determine the scheme's assets and protected liabilities through a s152 (10A) valuation or (10C) determination.

3.2 Information required by the PPF

Any application for reconsideration must be made within the authorised period, be in writing and be accompanied by evidence to satisfy the Board that the scheme has taken all reasonable steps to obtain a protected benefits quotation but were unable to do so. It is anticipated that schemes will provide the following information:

- a description by the trustees or managers of the scheme of the steps they have taken to obtain a protected benefits quotation in respect of their scheme;
- including which insurers they have approached for that purpose;
- the date on which any approach was made;
- a copy of any request made by the trustees or managers or the scheme in respect of their application;
- a copy of any refusal given to those trustees or managers in response to such a request; and
- any other relevant evidence.

3.3 Valuation requirements

Schemes that are unable to obtain a protected benefits quotation will be required to provide information to the Board to enable it to determine whether the value of the assets was less than the amount of the protected liabilities at the reconsideration time.

The s152 determination will be based on the original section 143 valuation or Funding Determination, rather than requiring the actuary to conduct a new full actuarial valuation. The results of the valuation must be adjusted using standard actuarial roll-forward methodology.

In advance of carrying out the valuation the actuary will be required to put forward a proposal setting out:

- the date of the valuation; and
- the assumptions to be adopted, where these differ from standard section 143 assumptions and appropriate justification for their use.

As for section 143 and section 156 valuations, the actuary must receive agreement from the Board of the PPF to the use of non-standard assumptions before proceeding with the valuation. The Board reserves the right to call a new valuation under s152 (10A) if it feels it is appropriate.

The movements allowed for between the section 143 valuation and reconsideration valuation will include (but not be limited to):

- member movements
- change in assumptions (e.g. expenses/ demographics/discount rates)
- effect of passage of time
- changes to PPF compensation
- benefits paid

Question 8: Do you think that the proposed changes to section 151 will simplify the process and reduce costs for schemes applying for reconsideration?

Question 9: Do you have any suggestions for other changes that could make this process simpler?

4 Effective date for changes

The consultation closes on 29/07/2012.

The PPF intends to apply the changes as soon as it has had time to consider the responses to this consultation.

5 Summary of consultation questions

The questions that the PPF would be grateful to receive responses to are summarised below

Funding Determinations

Question 1: Do you consider that it is appropriate to estimate the protected liabilities by reference to an existing valuation for a scheme which is significantly over or under funded?

Question 2: Do you consider that it is appropriate to estimate the assets without reference to audited accounts for a scheme which is significantly over or under funded?

Question 3: Are the circumstances under which the PPF proposes to make a funding determination appropriate?

Question 4: Can you provide an estimate of the costs that will be saved as a result of providing the information required for a funding determination to be made compared to carrying out a section 143 valuation? Please state any assumptions you have used regarding the size and complexity of the scheme?

Question 5: Is the information being sought appropriate in your opinion to enable the PPF to make a funding determination in place of a section 143 valuation?

Question 6: Within what timeframe do you think the information requested can be provided to the PPF?

Question 7: Please indicate whether or not you consider it will be easier for your firm to update the liabilities from an existing valuation by carrying out a valuation of the actual membership data at the relevant time and reconciling the results with the existing valuation or by rolling forward the existing valuation.

Reconsiderations under section 151

Question 8: Do you think that the proposed changes to section 151 will simplify the process and reduce costs for schemes applying for reconsideration**.**

Question 9: Do you have any suggestions for other changes that could make this process simpler?

6 Responding to the consultation

The consultation period begins 03/07/12 and will end on 29/07/12. Please ensure that your response reaches us by that date. If you would like further copies of this document it can be found at the Valuation Guidance section of the Pension Protection Fund website at www.pensionprotectionfund.org.uk.

In the event of any queries, please contact:

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Please e-mail responses to FDconsultation@ppf.gsi.gov.uk

Please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

The requirements of the Freedom of Information Act (2000) state that all information contained in the response, including personal information, may be subject to publication or disclosure. By providing personal information for the purpose of the public consultation exercise, it is understood that a respondent consents to its disclosure and publication. If this is not the case, the respondent should limit any personal information which is provided, or remove it completely. If a respondent requests that the information given in response to the consultation be kept confidential, this will only be possible if it is consistent with the Freedom of Information Act (2000) obligations and general law on this issue. Further information about the Freedom of Information Act (2000) can be found on the website of the Ministry of Justice.

The Board will publish a summary of responses on the PPF website at www.pensionprotectionfund.org.uk by the end of July. It will also publish a statement about how it will make funding determinations.

The Board would value any feedback on the effectiveness of this consultation process. If you have any comments then please contact:

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