The response to the July 2012 consultation on Funding Determinations and amendments to section 151 in Miscellaneous Regs

July 2012

1 Introduction

1.1 In July 2012 the Board of the Pension Protection Fund ("the PPF") began a consultation on some of the changes introduced by the Pensions Act 2011, namely Funding Determinations and the revised reconsideration process under section 151 of the 2004 Act. The consultation period lasted 27 days and there were 17 responses to the consultation. A list of the respondents is contained in Appendix 1. The PPF would like to thank all those who took the time to respond, as well as those who provided informal responses to the consultation.

1.2 This document provides a summary of the responses that were given to the consultation with the PPF's comments where appropriate.

2 Overview

2.1 The Pension Protection Fund (Miscellaneous Amendments) Regulations 2012 (the regulations) set out the necessary prescriptions for the amended provisions under section 143, 143A, 151 and 152 to come into operational effect, which[1]:

- makes it possible for the PPF to make 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.

2.2 Respondents mostly welcomed the use of a funding determination instead of obtaining a section 143 valuation for significantly under or overfunded schemes.

2.3 There were, however, some questions about the level of funding that the PPF would consider schemes to be significantly under or overfunded and the funding levels which the scheme or panel actuary (the Actuary) will be asked to certify.

2.4 Respondents were broadly in agreement that the changes to section 151 reconsideration application will improve the current process.

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[1] The Pension Protection Fund (Miscellaneous Amendments) Regulations 2012 (the regulations) have exercised powers conferred by sections 143 and 151 of the Pensions Act 2004, as amended by the Pensions Act 2011.

2.5 Some respondents expressed concerns about what will be deemed reasonable steps by the PPF in their efforts to obtain a protected benefits quotation.

2.6 The consultation document set out nine questions on which we particularly welcomed feedback. Respondents' answers to these questions are summarised in the next section. The PPF's reactions to the responses are set out in italic type.

3 Responses to the nine specific questions raised in the consultation document

Funding determinations

3.1 *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?"

3.1.1 There was general agreement that this approach will be appropriate in certain cases and most respondents welcomed this pragmatic approach. Comments from a small number of respondents highlighed their concerns with the approach given the approximate nature of a roll-forward and inherent data uncertainties. They highlighted the need for PPF guidance setting out the factors that the actuary should allow for when providing the PPF with an estimate of the protected liabilities.

3.1.2 Two respondents suggested that the effective date of the existing valuation be allowed to be up to 3 years earlier than the relevant time instead of 2 years.

3.1.3 Several respondents expressed concern about the reliability of the existing valuation to be used in the roll-forward suggesting that consideration be given to using a valuation that has complied with the relevant Technical Actuarial Standards.

3.1.4 *The PPF will decide which schemes it feels are suitable for making a funding determination. This decision will be based on information already available to the PPF about the latest known funding position and the quality of the scheme data so that any changes which need to be made since the previous valuation can be taken into consideration.*

3.1.5 *The PPF's Statement, which will be issued shortly, will give guidance to actuaries on the factors that should be taken into account when updating a valuation. In general the objective of providing an estimate is to understate the funding level for a scheme which, in the opinion of the PPF, is clearly overfunded and overstate the funding level for a scheme which is clearly underfunded.*

3.1.6 *The PPF has considered whether or not it is appropriate to use a valuation for estimating the protected liabilities where the period between the effective date of the existing valuation and the relevant time was more than 2 years. The PPF considers that it may be appropriate to extend this period to 3 years or such shorter period as it considers appropriate in light of the particular circumstances of a case.*

3.1.7 *The PPF expects that the valuation on which the estimated protected liabilities will be based will be one which has been signed off by an actuary. Subject to this, the PPF believes that reliance can be placed on the actuary providing the estimate to recommend whether the valuation is suitable or not.*

3.2 *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?"

3.2.1 The vast majority of respondents believe it is appropriate to estimate the assets without reference to audited accounts subject to giving careful consideration to net current assets and liabilities, especially where these are significant. Some commented that in their experience the requirement for audited accounts has caused delay in the assessment process.

3.2.2 *In accordance with the PPF's Statement, which will be issued shortly, actuaries will be asked to consider any adjustments that might need to be made to current asset statements. It will be acceptable to understate the asset value for a scheme that is thought to be overfunded and vice-versa.*

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

3.3.1 Responses to this question are similar to those given in question 1. In general, respondents consider it appropriate to make a funding determination provided sufficient regard has been paid to changes that occured since the previous valuation.

3.3.2 A number of respondents noted that their answer depended on the definition of very underfunded or very overfunded to be adopted by the PPF.

3.3.3 *The PPF does not intend to set a rigid policy for deciding which schemes should follow the funding determination and which the existing section 143 valuation route. In making its decision the PPF will take into consideration the expected section 143 result based on the results of the latest section 179 results, the likelihood of any recovery of section 75 debt being made and the size of the scheme.*

The PPF will take a cautious approach when initially selecting schemes for funding determinations but will review its policy in the future in the light of experience in making such determinations .

3.4 *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?"

3.4.1 Many respondents were unable to provide an estimate of the cost savings without having more detail about the certification requirements of the PPF.

3.4.2 It was also pointed out that the cost savings would depend on whether or not the estimated funding level was to be carried out by the PPF's actuarial valuation panel or an actuary close to the scheme.

3.4.3 Where cost savings were given, these ranged from around £2,000 to £15,000 per scheme.

3.4.4 *The PPF will expect actuaries to certify that the funding level is unlikely to exceeed 100% where underfunded and vice versa where overfunded. As mentioned above, the Statement will require actuaries to overstate or understate the estimate of the funding level as appropriate and it is not the intention of the PPF to obtain an accurate estimate of the actual assets and protected liabilities.*

3.4.5 The PPF has no reason to disagree with the level of cost savings indicated by respondents.

3.5 *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?"

3.5.1 Respondents were broadly in agreement that the information sought was appropriate to enable the PPF to make a funding determination in place of a section 143 valuation.

3.5.2 It was pointed out, however, that the appropriateness depended on the PPF's certification requirements.

3.5.3 Some respondents pointed out that more information was required in respect of debt recoveries in estimating the assets.

3.5.4 *The PPF will notify actuaries of the level of section 75 debt, contribution notices, financial support directions, restoration orders or equity stakes to be taken into account in the estimated assets at the time of requesting information for a funding determination.*

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

3.6.1 Most respondents felt that the estimated assets and protected liabilities could be provided within 2-6 weeks of receiving the necessary data.

3.6.2 The PPF has believes that the timeframe indicated by respondents is reasonable.

3.7 ***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?"**

3.7.1 Half of the respondents expected that it will be easier in general to estimate the protected liabilities by rolling forward an existing valuation. One respondent commented that carrying out a valuation of the actual membership data at the relevant time and reconciling the results with an existing valuation can be done just as cheaply and quickly as the roll-forward approach.

3.7.2 The PPF expected that most organisations would find it easier to roll forward an existing valuation but that some organisations might find it easier to carry out a full valuation of the actual membership data.

Reconsideration under section 151

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

3.8.1 The majority of respondents believe the changes to section 151 will both simplify and reduce costs for schemes applying for reconsideration. Two respondents commented that it will simplify the process but not necessarily reduce the cost of application due to the requirement for an updated valuation. Two respondents believe the changes will not have the desired effects.

3.8.2 *The PPF has updated the published information on the reconsideration process alongside this response (see link below). Trustees are asked to provide evidence of their requests for a quotation and any refusal given in response from the insurance companies they have approached. Based on this evidence, and other relevant information, the PPF will then determine whether* *sufficient effort has been made to secure members' benefits outside the PPF*.

http://www.pensionprotectionfund.org.uk/DocumentLibrary/Documents/s151-153_guidance.pdf

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

3.9.1 Five respondents suggested an approach similar to that proposed for funding determinations without the requirement of a protected benefits quotation and/or audited accounts.

3.9.2 Two respondents suggested that the PPF liaise with insurance companies to provide quotes for overfunded schemes on an anonymous basis.

3.9.3 Another suggested that the actuary can express an opinion on the scheme's current funding position as below or over 100% as part of the section 143 report.

3.9.4 Under section 152 (2A) schemes may apply for reconsideration where they can demonstrate that they were unable to obtain a protected benefits quotating having taken all reasonable steps to do so. The requirement to obtain audited accounts for all reconsideration applications is an existing legislative requirement and has not been changed. All applications must therefore be accompanied by audited accounts. Once an application is received, the PPF may ask that a section 152 valuation or estimate of the funding position be carried out under section 152 (10C). The PPF's Statement which will give guidance to actuaries on the calculations that may be required under section s152 will be issued shortly.

4 Other observations made by the respondents

4.1 Respondents generally welcomed moves by the PPF to reduce unnecessary costs incurred during the assessment period.

4.2 It was suggested that the PPF could itself estimate the assets and protected liabilities and seek confirmation from the Trustee that they were not aware of any information that would invalidate the findings of that estimate.

4.3 Another respondent suggested that the use of funding determination be extended to subsequent valuations required by the PPF, such as section 156.

4.4 A few respondents expressed concerns about schemes that are marginally overfunded on a section 143 basis but are unable to obtain a protected benefits quotation for application under section 151.

4.5 Several respondents gave specific examples of schemes that have experienced difficulties in applying for reconsideration under section 151.

4.6 *In response to 4.4 above, entrance into the PPF should only be appropriate for schemes where assets are insufficient to provide better benefits than PPF compensation. The current process for closed schemes will provide a route for schemes to enter the PPF at a later date should market conditions make it impossible for trustees to secure higher than PPF level of benefits for members.*

4.7 In response to 4.5, if the trustee of such schemes decides to make a reconsideration application, then they will need to follow the process set out in the legislation. The PPF has updated its note for trustees on applications for reconsideration and closed scheme status in light of the changes to the legislation. Trustees should contact their Scheme Delivery Associate if they have questions in relation to PPF procedures and processes.

5 Feedback on the consultation

5.1 The PPF would like to thank all those who responded to this consultation. These responses are helpful in influencing the PPF's thinking during the drafting of the final statements which will be released shortly.

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

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Appendix 1 – list of respondents

The following is a list of the organisations that responded to the consulation.

- Association of Pension Lawyers
- Atkin Trustees LTD
- Aon Hewitt Limited
- Barnett Waddingham LLP
- Capita Hartshead Limited
- Capital Cranfield Trustees Limited
- Hymans Robertson LLP
- Legal & General Assurance Society
- Mercer Limited
- Punter Southall Consulting Actuaries
- Spence & Partners Ltd
- The Actuarial Profession
- The Society of Pension Consultants
- Towers Watson Limited
- Wrigleys Solicitors LLP

Additionally there were two individual respondents.