

Pension  
Protection  
Fund

# The 2009/10 Pension Protection Levy Consultation

September 2008

## Foreword

To a great extent, the arrangements for the 2009/10 pension protection levy will be familiar; change from 2008/09 has been kept to a minimum.

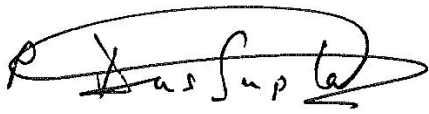
We have, however, sought to learn lessons from our experience with the 2008/09 levy. In particular, I regret the unexpected increase in the levy scaling factor and recognise that this may have caused difficulty for schemes' financial planning, and understated the benefit of risk reduction measures. Changes this year will mean that the levy scaling factor can be published in advance, and we will do so in November. This will give greater certainty for schemes, but means that the amount of levy collected is more uncertain. This is a difficult balance and one we'll think about how to address in the future.

We're also publishing the draft determination, levy estimate and levy scaling factor for 2009/10 with this document to give you an early opportunity to prepare. The deterioration in economic conditions since last year has created tough choices for all of us. For the PPF, both long-term and short-term risk levels have increased, potentially increasing the resources we will need to protect scheme members. We considered whether or not to increase the levy estimate above the indexed £675m we announced last year. On balance, we decided to keep the estimate stable, recognising the financial uncertainty that many schemes and employers are currently facing.

While how we calculate your levy will not change this year, there has been significant behind-the-scenes progress in the collection of scheme information. From November, the Pensions Regulator's Exchange service will be live for certificates for contingent assets, deficit reduction contributions and block transfers. Schemes have until 31 March 2009 to put in place and certify risk-reduction measures and to submit information for the 2010/11 levy. I encourage schemes to begin work as soon as possible.

A consultation document on the levy from 2011/12 will be published during October. That document will build on the August 2007 consultation about how the levy can reflect the long-term risk to the PPF. If 2009/10 and 2010/11 belong to the second generation of the levy, that document will represent our design of the third generation. We hope you will consider it carefully.

Finally, I'd like to thank you all for your role developing the levy so far and I look forward to receiving your responses over the next four weeks.



**Partha Dasgupta**  
**Chief Executive**

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# **Chapter 1: Introduction and Summary of Proposals**

## **1.1 The 2009/10 Pension Protection Levy Consultation Document**

1.1.1 The PPF has consulted extensively on the levy. For more information on the pension protection levy and its development, please see our forthcoming Consultation on the Future Development of the Pension Protection Levy.

### **Purpose**

1.1.2 The proposals in this consultation document are not essentially new. They confirm the policy direction established in the August 2007 consultation, which outlined our proposals for calculating the levy in 2008/09 and 2009/10, and the November 2007 consultation response,<sup>1</sup> which contained firm proposals on policy both specific to the 2008/09 levy year and extending to 2009/10.

1.1.3 The Board does, however, wish to seek views about how some of the policy set in the November 2007 response is carried through to 2009/10, particularly as the same information deadlines apply to both years in many cases, and give clarity to the treatment of this policy in the levy determination.

### **The Board's Determination under section 175(5) of the Pensions Act 2004**

1.1.4 This consultation document is accompanied by a draft of the Board's Determination under section 175(5) of the Pensions Act 2004 ('the determination'), attached as annex C. The draft determination is also covered by this consultation exercise and we would be happy to receive comments on it.

1.1.5 The determination is the legal document that governs how the levy is calculated each year and it cannot be departed from. It therefore takes precedence over any other communications made by the PPF.

### **Consultation timetable**

1.1.6 The Board considers the proposals contained in this document to be firm ones, made in the light of previous consultation, and does not anticipate substantial change. Any comments on this document received by 23 October will, however, be considered. A summary of

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<sup>1</sup> Response to the August 2007 Pension Protection Levy Consultation  
[http://www.pensionprotectionfund.org.uk/levy\\_response\\_doc\\_nov\\_07.pdf](http://www.pensionprotectionfund.org.uk/levy_response_doc_nov_07.pdf)

responses and any changes to the proposals will be published in November 2008, along with the final determination.

## **1.2 Summary of the 2009/10 levy proposals**

1.2.1 The following is a summary of our proposed approach to calculating the 2009/10 pension protection levy. This information is explained in greater detail later in this consultation document.

### **Data deadlines and measurement dates**

1.2.2 The following deadlines apply:

- midnight on 31 March 2008 was the deadline for submission of scheme return data to be used in the 2009/10 levy year;
- 31 March 2008 is the measurement date for underfunding and insolvency risk;
- **5pm** on 31 March 2009 will be the deadline for certification of contingent assets;
- **5pm** on 7 April 2009 will be the deadline for certification of deficit reduction contributions;
- **5pm** on 30 April 2009 will be the deadline for block transfers where the transferring scheme has become ineligible (see page 14).

Please note it is our general policy to enforce deadlines strictly, even where the Board has discretion in the matter, and missing them may have adverse consequences for schemes.

1.2.3 We would particularly like to remind schemes that there is still time to submit contingent assets and deficit reduction contributions, which may reduce your levy bill, for the 2009/10 levy year.

### **Electronic submission of data**

1.2.4 Schemes wishing to certify deficit reduction contributions, contingent assets and any relevant block transfers for 2009/10 will now be able to do this through the Pensions Regulator's Exchange system. This means that schemes are now able to submit all their electronic data at one point and separate certification to the PPF is no longer necessary or possible. Pre-populated pages of Exchange will also make recertification of contingent assets an easier task.

1.2.5 Exchange will continue to be pre-populated with the data submitted by schemes last year. A number of improvements to the system have been made. The next version of Exchange is scheduled to be launched in November 2008. It will not be possible to submit voluntary certificates to the PPF as it was in previous years, unless we make express provision to that effect following the publication of the final levy determination.

## **Levy Estimate**

- 1.2.6 In 2007 we announced that the levy estimate for 2009/10 would be set at £675 million indexed to earnings. Indexation is based on published figures from the Office of National Statistics (ONS) and produces a levy estimate of £700 million.

## **Levy Scaling Factor and Scheme-based Levy Multiplier**

- 1.2.7 The levy scaling factor has been calculated as 2.22, with a scheme-based levy multiplier of 0.000162. The levy scaling factor was calculated against the 2008/09 levy taper boundaries (the scale of funding levels that determines the calculation of a scheme's underfunding risk). We propose that the boundaries remain the same for 2009/10 and the levy cap remains at one per cent of liabilities.

## **Underfunding Risk**

- 1.2.8 There are no changes to the way that underfunding risk is calculated this year. The guidance on deficit reduction contributions and the contents of the certificate itself have been incorporated into the draft determination as annex B to support certification via Exchange, or any other method that the Board makes available.
- 1.2.9 Block transfer certificates are now expected where there has been a transfer of 100 per cent of assets and liabilities, resulting in the transferring scheme becoming ineligible, with a submission deadline of 5pm on 30 April 2009 for the 2009/10 levy year. Where schemes fail to submit certificates under these circumstances, the levy for the receiving scheme will be calculated using the valuations of both schemes involved, but the transferring scheme's assets will be reduced in the transformation. Block transfer certificates for partial transfers submitted after the 2008/09 deadline will not be accepted for use in 2009/10, though they will be expected for 2010/11 and both parts should be entered into Exchange by 5pm on 30 April 2009.

## **Insolvency Risk**

- 1.2.10 There are no changes to the way that insolvency risk is calculated this year. It should be noted, however, that new type A contingent assets (parent and group company guarantees), which can be certified until 5pm on 31 March 2009, will take the 31 March 2008 probability of insolvency for the guarantor, in line with the insolvency measurement date for all other employers.

## **Contingent Assets**

- 1.2.11 The contents of the contingent asset certificates have been incorporated into the draft determination as annex C, to support certification via Exchange, or any other method that the Board makes available after publication of the final 2009/10 determination.
- 1.2.12 Schemes will no longer receive contingent asset recertification reminders from the PPF. The requirements for recertification have also been incorporated into the draft determination and will be supported by Exchange.

## **Interest on late levy payments**

- 1.2.13 It is proposed that the forthcoming Pensions Bill 2008 will allow the PPF to charge interest on late pension protection levy payments. Secondary legislation, likely to come into force in April 2009, would then be required.

## **Closed schemes (schemes with no sponsoring employer)**

- 1.2.14 Usually, when a scheme enters the assessment period following its employer's insolvency, but is subsequently found to be over-funded on a section 179 basis, the scheme will leave assessment and the trustees will then buy out their liabilities in the open market.
- 1.2.15 In the future, there may be a small number of schemes that leave assessment over-funded but are unable to obtain a quote for buy out. They may then be authorised by the PPF to continue as closed schemes, with no sponsoring employer, under Section 153 of the Pensions Act 2004 (the Act). Such schemes would remain eligible for the PPF under these circumstances, and therefore would be liable for the levy.
- 1.2.16 Although these schemes would be overfunded at the date of assessment, the possibility would remain that they could become underfunded in the future; these schemes would therefore pose some underfunding risk to the PPF. However, the level of this underfunding risk would be governed mainly by scheme investment performance since employer contributions and new members, for example, do not apply. Hence underfunding risk as calculated in 2009/10 is not an appropriate measure.
- 1.2.17 In addition to this, it would be a challenge to calculate the insolvency risk element of schemes' risk-based levy as in some cases they may have no employer. Possible options could include using the failure score of their former sponsoring employer (likely to be 1) as at the date

of insolvency risk measurement, the industry average probability of insolvency for their former employer, or the average probability of insolvency for employers with an undetermined industry. However, given that an insolvency event of a scheme's sponsoring employer would no longer trigger potential entry into an assessment period, the Board questions whether an insolvency risk measurement is appropriate at all.

1.2.18 With its underfunding and insolvency risk elements inapplicable, no simple calculation of the risk-based levy is possible. Additionally, charging any risk-based levy to this type of scheme will increase its likelihood of re-entering assessment, and its members requiring compensation payments worth less than the benefits they might receive outside the PPF, which is an undesirable outcome both for members and levy-payers. A risk-based levy that causes the scheme to be underfunded and require compensation would be analogous to an insolvency event. While this highlights that there remains some equivalent form of insolvency risk in the scheme, it would be perverse for the levy to trigger it.

1.2.19 It might be argued that closed scheme status is in fact analogous to, or even an extension of, the assessment period. Indeed, the Board has certain powers over closed schemes under section 155 of the Act, including giving direction regarding investments and expenditure. Making a direct comparison with schemes in assessment, one might therefore argue that closed schemes should not pay any levy at all.

1.2.20 While this would be a simple answer, the Board believes it to controvert the principle of fairness in respect of all schemes. As we have seen above, a closed scheme does represent some risk to the PPF and it would not be fair for it to avoid the levy while a scheme with a strong funding position and sponsoring employer must still pay.

1.2.21 The very strongest of those schemes, those funded to a level above 140 per cent, are liable only for the scheme-based levy on account of their limited risk to the PPF. A scheme-based levy solution would also be attractive for closed schemes: a simple calculation is possible (closed schemes are still required to complete valuations); this simplicity is proportionate to the small number of schemes likely to be affected; it is fair for the schemes to make some contribution to the PPF. The Board therefore proposes that closed schemes pay a scheme-based levy only.

*Q1: Do you agree that closed schemes under section 153 should be charged a scheme-based levy (at the same rate as other schemes) only?*

## **Chapter 2: The Levy Estimate and Levy Scaling Factor for 2009/10**

### **2.1 Introduction**

- 2.1.1 The Board is required to estimate the amount of levy it expects to collect in advance of each levy year. In our August 2007 consultation document, we expressed an intention to retain a stable levy estimate of £675 million, indexed to earnings and subject to any significant change in long-term risk, for the following three years.
- 2.1.2 The scheme-based levy multiplier is used to calculate the scheme-based levy. It is multiplied by each levy-paying scheme's liabilities on a section 179 basis, rolled forward to the measurement date, to ensure that the scheme-based levy is the current required proportion (approximately 20 per cent) of the total levy estimate.
- 2.1.3 The levy scaling factor is used to scale an individual scheme's risk-based levy, based on short-term risk, to ensure that the total risk-based levy calculated is approximately 80 per cent of the total levy estimate.
- 2.1.4 The levy funding parameters determine the way a scheme's underfunding risk is calculated. Above a certain funding level, underfunding is calculated as a fixed percentage of liabilities. The boundaries at which this percentage starts and changes are referred to as the 'levy taper'.

### **2.2 Levy Estimate**

- 2.2.1 In November 2007, the Board confirmed its intention to retain a levy estimate of £675m for both the 2008/09 and 2009/10 levy years. For 2009/10, this would be indexed to earnings and subject to any significant change in long-term risk.
- 2.2.2 As a result of the economic downturn, both long-term and short-term risk have increased over the last quarter and the last year. Economy-wide insolvencies rose quarter-on-quarter during the second quarter of 2008, with a consequent increase in the number of insolvencies of scheme sponsoring employers reported to the PPF via Section 120 notices.
- 2.2.3 As detailed in the monthly PPF 7800 Index, there has also been a trend of deterioration in scheme funding. The aggregate funding position (total assets minus total liabilities) of defined benefit funds is estimated to have been a deficit of £36.7 billion at the end of August 2008, compared to a deficit of £24.1 billion at the end of July 2008. Scheme

funding is worse than it was a year previously, there being a surplus of £59.1 billion in August 2007.

- 2.2.4 After careful consideration of the balance between increased risk, and the importance of stability for schemes and employers, the Board proposes that a levy estimate of £675 million, indexed to earnings in accordance with the manner in which the Secretary of State for Work and Pensions sets the levy ceiling, is appropriate for 2009/10.
- 2.2.5 Under section 177(2) of the Pensions Act 2004, the levy estimate is subject to an upper limit, called the levy ceiling, which is authorised each year by Parliament. The levy ceiling itself increases in line with the general level of earnings to 31 July of the preceding financial year) according to the non-seasonally adjusted whole economy average earning index including bonuses. The 2009/10 ceiling is equal to the 2008/09 ceiling increased in line with the increase in earnings between 1 August 2007 and 31 July 2008.
- 2.2.6 For consistency, the Board considers it appropriate to index the levy estimate using the same measure. This means that the indexed levy estimate increases in proportion to the levy ceiling. This value gives a levy estimate of £700 million for the 2009/10 year. This is the Board's proposed levy estimate.

## 2.3 Levy funding parameters and cap

- 2.3.1 The levy funding categories were revised in 2008/09 to reflect our better understanding of funding volatility, more up-to-date information on the buy-out market and the distribution of schemes across the categories used in 2006/07 and 2007/08. The levy cap was set at one per cent of liabilities to continue to protect the weakest five per cent of schemes.
- 2.3.2 The 2009/10 levy scaling factor has been calculated using the same funding categories and levy cap as in 2008/09. This results in a broadly similar distribution of the levy estimate. The categories have therefore been retained and are as follows:

Table 1: the levy funding categories for 2009/10

<b>Underfunding category</b>	<b>Funding percentage (f):</b>	<b>U as a percentage of liabilities:</b>
A	$f \leq 120$	$121 - f$
B	$120 \leq f < 125$	1
C	$125 \leq f < 130$	0.75
D	$130 \leq f < 135$	0.5
E	$135 \leq f < 140$	0.25
F	$f \geq 140$	0 (zero risk-based levy)

The levy cap also remains at one per cent of liabilities.

## **2.4 Scheme-based levy multiplier**

- 2.4.1 For the 2009/10 levy year the percentage of the pension protection levy that will be made up by the scheme-based element remains unchanged at 20 per cent, approximately £140 million. The Board has made this decision based on the analysis of the levy distribution contained in the August 2007 consultation and November 2007 response, which demonstrated that schemes with low short-term risk tend to underpay the levy against their contribution to long-term risk. As these schemes are often larger, their scheme-based levies will also be larger, which goes some way to addressing this imbalance.
- 2.4.2 In accordance with the formula in annex A, the scheme-based levy multiplier has been calculated as 0.000162. The multiplier will be confirmed in the final determination and is unlikely to differ from this figure.

## **2.5 Levy scaling factor**

- 2.5.1 The Board regrets that there has been significant volatility of the levy scaling factor between levy years and between its indicative and final forms. The scale of the increase between the indicative and final numbers for the 2008/09 levy scaling factor was surprising for the PPF as well as for schemes and the Board recognises the negative impact this had on schemes' financial planning.
- 2.5.2 The decision to bring forward the risk measurement dates by 12 months from 2009/10 will significantly alleviate this problem by allowing the PPF to calculate and publish the final levy scaling factor in advance of the levy year, with no indicative figure being necessary. It does, however, require a number of assumptions to be built in to the levy scaling factor calculation.

### **Assumptions for 2009/10**

- 2.5.3 While the date for underfunding and insolvency risk measurement is 31 March 2008, at the request of levy payers, certification of contingent assets and deficit reduction contributions is permissible until 5pm on 31 March 2009 in respect of contingent assets, and 5pm on 7 April 2009 in respect of deficit reduction contributions. The Board has also confirmed that any scheme in assessment would not be charged a levy from 2008/09, provided that a scheme failure notice under section 122(2) of the Act has been received by the 31 March preceding the beginning of the levy year and become binding before invoicing.

2.5.4 Therefore, certain assumptions need to be factored into the calculation of the levy scaling factor in order to publish it in advance of the levy year. These concern:

- the eligible universe of levy-paying schemes, accounting for new schemes entering the universe and existing schemes leaving the universe due to their entering assessment or becoming ineligible between 1 April 2008 and 31 March 2009;
- new voluntary certificates (contingent assets and deficit reduction contributions) to be submitted by the 31 March and 7 April 2009 deadlines;
- recertification of existing contingent assets by 31 March 2009, and
- appeals made to D&B failure scores as at 31 March 2008, used in the 2008/09 levy.

2.5.5 In considering assumptions for each of these categories, it becomes clear that there is a balance to be struck between providing certainty in financial planning of levy bills for schemes and providing certainty of collection against the levy estimate.

2.5.6 The publication of the proposed levy scaling factor well in advance of the beginning of the levy year allows schemes to plan and budget based on the maximum levy that they might pay with that scaling factor. At the same time, schemes have the opportunity to reduce their share of the levy estimate through contingent assets or deficit reduction contributions.

2.5.7 The adoption of assumptions for the advance calculation of the levy scaling factor exposes the PPF to the possibility of under-collection or over-collection against the levy estimate, should the level of risk-reduction measures and D&B appeals over the next six months deviate significantly from the PPF's experience to date. Advance calculation of the levy therefore alters the balance of uncertainty from schemes towards the PPF's balance sheet.

2.5.8 Despite the difficulty in making definitive predictions, the Board appreciates that there are lessons to be learned from the experience of 2008/09. It has therefore worked with industry consultants and advisors since May 2008 to hear their views on the approach to setting assumptions for the levy scaling factor.

2.5.9 The PPF has calculated assumptions for each of the categories listed above, based on trends to date, and used these to calculate the levy scaling factor. The key assumptions used in the calculation of the levy scaling factor are:

- a reduction in the eligible universe of levy-paying schemes by approximately 100 schemes
- certification of a further £8.6bn of deficit reduction contributions
- certification of contingent assets by an additional 150 schemes
- approximately 700 schemes successfully appealing D&B failure scores as at 31 March 2008.<sup>2</sup>

2.5.10 The 2009/10 levy scaling factor takes a more sophisticated approach to predicting the level of future D&B appeals. This reflects the PPF's experience in determining the final levy scaling factor for 2008/09, where the underpin assumption had a larger effect than expected. The new approach takes account of the improved data we now hold on 2007/08 and 2008/09 appeals, as well as information provided by consultants and advisors in recent months.

### **Calculation of the levy scaling factor**

2.5.11 When the formula in Annex A is applied to the insolvency and underfunding information available for the known universe of eligible schemes and sponsoring employers as at 31 March 2008, a risk-based levy scaling factor of 2.22 is produced. Although the calculation of the levy scaling factor is included in the scope of this consultation, we do not expect there to be any change in this figure, given the fact that it reflects a levy estimate that is in line with the Board's previously stated intentions.

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<sup>2</sup> This estimate is additional to actual appeals already taken into account for the 2008/09 levy scaling factor.

## Chapter 3: Underfunding risk

### 3.1 Introduction

- 3.1.1 Scheme underfunding is calculated based on an assessment of the scheme's assets and protected liabilities (as per section 179 of the Pensions Act 2004) at a consistent date.
- 3.1.2 Almost all schemes were required to submit a section 179 valuation by 31 March 2008. If a section 179 valuation was not submitted, underfunding for the 2008/09 and 2009/10 levy years is calculated according to the most recent MFR valuation included on the scheme return, but with the asset figure calculated in the manner described later in this chapter.
- 3.1.3 The methodology for adapting MFR valuations to estimate liabilities on a section 179 basis, and the formulae for rolling forward section 179 valuation results to a consistent date, are available as part of the draft determination.

### 3.2 Deficit reduction contributions

- 3.2.1 The Board continues to be encouraged by the number of employers making special contributions to reduce their schemes' level of underfunding. The following table shows the deficit reduction contributions taken into account in previous levy years. In 2008/09, they are expected to reduce the levy bills of those schemes that certified them by approximately £61 million in total, compared to £48.6 million in 2007/08.

Table 2: Deficit reduction contributions certified to the PPF, 2006/07 – 2008/09

Levy year	Total Number	Total Value (£million)
2006/07	1260	12,326
2007/08	1911	18,749
2008/09	2082	16,632

- 3.2.2 Deficit reduction contributions made since a scheme's previous valuation will again be recognised in the 2009/10 levy calculation provided they are certified correctly by 5pm on 7 April 2009.
- 3.2.3 We expect certification of deficit reduction contributions to be possible via the Regulator's Exchange system from November 2008. Certification directly to the PPF will no longer be possible. The latest rules for certification have been incorporated into the draft determination. These rules replace the previous guidance.

### **3.3 Block transfer certificates**

3.3.1 As underfunding is measured as at 31 March 2008, we propose that partial block transfers taking place between 1 April 2008 and 31 March 2009 should not be taken into account. Partial block transfers that took place up to 31 March 2008 should only be included where they were certified by the 2008/09 deadline. This will reduce the risk of under or over-collection against the levy estimate, as well as reduce administrative complexity.

3.3.2 It is important, however, for the PPF to be able to trace block transfers where 100 per cent of a scheme's assets and liabilities have been transferred to another scheme or schemes. Should this happen, and the PPF not know the transfer has taken place, those liabilities could become 'lost'; the transferring scheme would no longer be eligible to pay the levy, and the receiving scheme would be invoiced based on its position prior to the transfer. This would result in a loss of levy revenue against the estimate for the PPF and would not be fair to other levy-payers in the longer term.

3.3.3 The Board therefore expects both part A and part B block transfer certificates to be completed in these circumstances. This will allow the PPF to update the information held on the receiving scheme. The deadline for certification of block transfers in respect of 100 per cent of a transferring scheme's assets and liabilities, which took or take place prior to 1 April 2009, will be 5pm on 30 April 2009. As with other certificates, submission will be via Exchange, rather than to the PPF.

3.3.4 Where the PPF becomes aware of a full block transfer after the deadline, it will invoice the receiving scheme for its own liabilities, plus the liabilities of the transferring scheme, in accordance with the calculation described below:

- 1) transform the transferring scheme's assets and liabilities to the measurement date of 31 March 2008
- 2) reduce the assets by the greater of a) 5 per cent and b) 5 per cent per annum for the period from date of transfer to 31 March 2009
- 3) transform the receiving scheme's assets and liabilities to the same date, then
- 4) add together the assets from 2) and 3)
- 5) add together the liabilities from 1) and 3).

Where more than one scheme has received the transferring scheme's assets and liabilities, it will be assumed that this took place in equal proportions.

3.3.5 This is similar to the approach adopted where schemes failed to submit a section 179 valuation by the statutory deadline.

3.3.6 The guidance for block transfers in 2009/10 and 2010/11 will be published in conjunction with the final determination for 2009/10.

*Q2: Do you agree that the proposed approach to block transfers is in the best interest of levy-payers as a whole?*

### **3.4 Section 179 valuations**

3.4.1 31 March 2008 was the statutory deadline for every eligible scheme registered on or before 6 April 2007 to submit an initial section 179 (s179) valuation to the PPF or the Regulator. In November 2007, the Board announced a 'disincentive' to failing to submit the s179 valuation, involving a modification of a scheme's roll-forward calculation for the 2008/09 and 2009/10 levies:

- the section 179 valuation as at 31/10/06 used in the 2007/08 levy invoice calculation that was obtained by converting a scheme's Minimum Funding Requirement (MFR) valuation will be treated as if it had been submitted to the PPF in the usual way
- this will be rolled forward to the calculation date (31 October 2007 for 2008/09 and 31 March 2008 for 2009/10) in accordance with the standard formulae, but
- the PPF will reduce the value of the scheme's assets by 5 per cent for each year between the effective date of the MFR and the calculation date.

3.4.2 This calculation will continue to apply to the small number of schemes that failed to submit a s179 valuation by the deadline. Any new s179 valuations submitted between 1 April 2008 and 31 March 2009 will only be used in 2010/11 levy calculations and thereafter.

## Chapter 4: Insolvency risk

### 4.1 Introduction

4.1.1 The Board of the Pension Protection Fund appointed Dun & Bradstreet (D&B) as its insolvency risk provider for the 2006/07 and 2007/08 levy years in August 2005. The contract was extended for two more levy years in September 2007.

4.1.2 We will use the D&B Failure Score and the associated probability of insolvency of each sponsoring employer as at 31 March 2008 to calculate the risk-based levy payable by a particular scheme for the 2008/09 levy year.

### 4.2 Type A contingent assets

4.2.1 As requested by stakeholders, new contingent assets can be certified until 31 March 2009 for recognition in the 2009/10 levy.

4.2.2 Type A contingent assets use the failure score and associated probability of insolvency of the guarantor to achieve an insolvency risk-switch, where the asset guarantees a funding level of at least 105 per cent on a section 179 basis. The use of 31 March 2008 failure scores for scheme sponsoring employers, but a 31 March 2009 deadline for certification, means there is a potential for mismatch between the date used in the insolvency risk calculation between the group of schemes with a new type A guarantee and those with an existing guarantee or no guarantee at all.

4.2.3 This is not desirable because it would necessitate allowing schemes employers wishing to submit a type A contingent asset being permitted to provide information to D&B up to the 31 March 2009 deadline. This would mean their insolvency risk measurement is based on more recent information than those of existing guarantors and scheme sponsoring employers, which would be unfair.

4.2.4 The Board therefore proposes to use the 31 March 2008 failure score for guarantors of type A contingent assets. This approach itself causes some minor issues. There is a chance that the guarantor will not have a 31 March 2008 failure score because it didn't exist at that time, or there was insufficient information available to D&B before that date. In that case, an industry average probability of insolvency will apply.

*Q3: Do you see this as an obstacle to schemes wishing to submit new type A contingent assets for 2009/10? If so, what alternative approach do you suggest?*

### **4.3 Industry average probabilities of insolvency**

#### **Use of 31 March 2008 industry average probabilities of insolvency**

- 4.3.1 Consistent with the application in the 2008/09 and 2009/10 levies of failure scores as at 31 March 2008, industry average (i.e. median) probabilities of insolvency, applicable to schemes for which D&B had insufficient information to apply a failure score, were also calculated at that date, using the employer data available for the 2008/09 levy scaling factor calculation.
- 4.3.2 However, as some sponsoring employers appeal the application of industry averages and are assigned a failure score, the pool of employers with a failure score in a given industry expands and so the data from which the average is calculated changes.
- 4.3.3 If industry averages were recalculated from this expanded pool of employers, they would inevitably differ from the previous set of averages. Use of these new averages in the 2009/10 levy would result in an employer with no failure score having a probability of insolvency different to that used in the 2008/09 levy. This would be inconsistent with the PPF's policy of using the same insolvency risk information in the 2008/09 and 2009/10 levies, i.e. calculated 12 months before the start of the levy year for the latter as the deadlines for risk measurement are brought forward. It would also be inconsistent with the insolvency risk measurement of those sponsoring employers with a failure score and would result in an employer with no failure score being advantaged or disadvantaged as a result of others' appeals. In order to avoid this situation, the Board proposes to use the industry average probabilities of insolvency calculated as at 31 March 2008, and used for the 2008/09 levy, for the 2009/10 levy.

*Q4: Do you agree that this approach is fair to employers with an industry average probability of insolvency in 2009/10?*

### **4.4 Appeals to D&B failure scores in 2009/10**

- 4.4.1 As the same failure scores and industry average probabilities of insolvency are used in 2008/09 and 2009/10, the receipt of a 2009/10 invoice does not trigger a new right of appeal. Schemes and their sponsoring employers therefore need to raise all grounds of appeal with D&B when making any appeal to the 2008/09 failure score.

## **Chapter 5: Contingent Assets**

### **5.1 Introduction**

- 5.1.1 The Board proposes to take account of the same types of contingent asset arrangements in 2009/10 as in 2008/09.
- 5.1.2 The Board is encouraged that the number of contingent assets certified continues to grow year on year. It is very difficult to assign a direct value to the vast majority of contingent assets. This is because type A contingent assets are expressed as a percentage of scheme liabilities, which are clearly variable over time. Type B and type C contingent assets can be expressed in terms of monetary value but they make up only a small proportion of the total. However, we estimate that the submission of contingent assets has resulted in a saving for those schemes that complied with the rules set out in the determination of approximately £67 million on levy bills in 2008/09.
- 5.1.3 The Board will continue to recognise arrangements put in place in previous levy years and certified by the relevant deadlines, provided schemes re-certify the arrangements for 2009/10. Submission of new contingent assets, and re-certification of existing arrangements, will be possible via Exchange until 5pm on 31 March 2009. Supporting documents will need to be sent to the PPF in hard copy by the same deadline.

### **5.2 Contingent asset certificates**

- 5.2.1 The declarations required to certify a contingent asset – which are almost unchanged from previous years - have been incorporated into the draft determination as annex C. These declarations will be incorporated into the certificates to be made available for submission via Exchange, which will mean schemes can submit them at the same place they submit their data for the 2010/11 levy.

### **5.3 Recertification of contingent assets**

- 5.3.1 Exchange can now also be used for recertification of existing contingent assets. The website page will be pre-populated with the contingent asset information and schemes will be able to simply confirm that nothing has changed – or supply details of changes - and resubmit. The deadline for recertification of existing contingent assets for 2009/10 will be 5pm on 31 March 2009.

## **5.4 Changes to contingent asset criteria**

- 5.4.1 Very minor changes have been made to the contingent asset criteria as a result of experience to date.
- 5.4.2 The requirement for certain entities to be domiciled in the OECD has been extended to include all states of the EU. This applies to guarantors in relation to type A contingent assets, the account bank /custodian in relation to types B(i) and B(iii), and issuers of type C contingent assets.
- 5.4.3 We will now accept a certificate of title in relation to a Type B(ii) contingent asset so long as it is dated not more than seven days prior to the date of the security agreement, rather than seven days prior to the date of certification to the PPF as previously.
- 5.4.4 We have also clarified and expanded some of the wording previously appearing in the contingent asset certificates or the notes to them.

## **Chapter 6: Preparation for the 2010/11 levy and beyond**

### **6.1 The 2010/11 pension protection levy**

6.1.1 The PPF will shortly be publishing proposals to develop the levy formula to take direct account of long-term risk. The Board had initially planned to suggest implementation in 2010/11. However, informal feedback has emphasised the importance of providing adequate time for stakeholders to absorb significant change. Accordingly, we will now propose implementation of changes to the levy formula in 2011/12.

6.1.2 For this reason, the levy for 2010/11 can be expected to be on a similar basis to 2009/10. There will be a consultation on the 2010/11 levy next year, to include the draft determination and the levy scaling factor.

### **6.2 Deadlines for submission of data**

6.2.1 The deadlines for the 2010/11 levy are:

- 5pm on 31 March **2009** for updating Exchange with levy-related information (except where set out below);
- 5pm on 31 March 2009 for providing information to D&B regarding sponsoring employers' failure scores;
- 5pm on 30 April 2009 for block transfer certificates in respect of partial transfers of assets and liabilities;
- 5pm on 31 March **2010** for contingent assets and
- 5pm on 7 April 2010 for deficit reduction contributions;
- 5pm on 30 April 2010 for block transfer certificates in respect of full transfers (transfers of 100 per cent of assets and liabilities).

6.2.2 Submission of certificates for contingent assets, deficit reduction contributions and block transfers will be supported by Exchange.

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

### **6.3 Block transfer certificates**

6.3.1 As in 2009/10, block transfer certificates will be expected where a scheme has transferred 100 per cent of its assets and liabilities into another scheme ("full transfers"). Schemes will be able to submit these

right up until 5pm on 30 April 2010. Notification of transfers until this date will help avoid the loss of levy revenue.

- 6.3.2 Certification will also be expected for material partial transfers (at least the lesser of £1.5 million and 5 per cent of the scheme's asset value as calculated in the last valuation before the first transfer). The PPF's reasoning is that this is proportionate, since if partial transfers are voluntary there is an incentive to report only where the levy bill is reduced by doing so. Other things being equal this would mean other schemes would pay more because of the undercharging of schemes that chose not to report.
- 6.3.3 Schemes will be able to submit these until 5pm on 30 April 2009, 12 months before the start of the levy year. This is in accordance with the PPF's decision to collect scheme information early and measure risk 12 months in advance of the levy year.
- 6.3.4 Where either scheme fails to certify a block transfer, the levy will be calculated for the receiving scheme by rolling-forward the transferring scheme's assets and liabilities, to the underfunding measurement date of 31 March 2009, in a manner similar to that which will apply in 2009/10, described earlier in this document.

*Q5: Do you agree that it is reasonable to expect block transfer certificates to be submitted in respect of all material transfers from 2010/11, given that non-submission could result in other schemes having to pay more?*

## **6.4 Insolvency Risk Provider**

- 6.4.1 D&B has been reappointed as the provider of insolvency risk information to the PPF for the 2010/11 and 2011/12 levy years, subject to contract. The criteria against which they were selected were consulted on in the August 2007 levy consultation.

## **6.5 Future levies**

- 6.5.1 Shortly after the publication of this consultation document, another will follow concerning the levy from 2011/12. It contains significant and wide-ranging proposals on the calculation of the levy and the way bills are distributed. We strongly encourage all schemes, advisors and representative groups to engage fully with that consultation.

## Chapter 7: Responding to this consultation

- 7.1.1 Having consulted on many aspects of the 2009/10 levy in conjunction with our consultation on the 2008/09 levy, we consider the proposals in this document to be fairly firm and we do not anticipate any radical departure from them
- 7.1.2 We will, however, consider your answers to our questions and any comments on this consultation document and the appended draft determination.
- 7.1.3 The deadline for written responses is 5 pm on 23 October 2008.

### How to respond

- 7.1.4 If you would like further copies of this document, it can be found on our website at [www.pensionprotectionfund.org.uk](http://www.pensionprotectionfund.org.uk). Please send all consultation responses to:

Chris Collins  
Head of Levy Policy  
Pension Protection Fund  
Knollys House  
17 Addiscombe Road  
Croydon  
CR0 6SR

Email: [consultation@ppf.gsi.gov.uk](mailto:consultation@ppf.gsi.gov.uk)

- 7.1.5 When responding, 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. If you are responding on behalf of a pension scheme, please include your Pension Schemes Registry (PSR) number.

### Confidentiality and Code of Practice

- 7.1.6 The requirements of the Freedom of Information Act (2000) state all information contained in the response, including personal information, may be subject to publication or disclosure. By providing personal information for the purposes 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 Freedom of Information Act 2000 obligations and general law on this issue.

7.1.7 Queries should be sent to Paul Reynolds at the address below. Further information about the Freedom of Information Act 2000 can be found on the website of the Ministry of Justice at:

<http://www.justice.gov.uk/guidance/guidancefoi.htm>

7.1.8 This consultation is being conducted in line with the Code of Practice on Consultation. The code can be accessed via the website of the Department for Business, Enterprise & Regulatory Reform (BERR) at:

<http://www.berr.gov.uk/files/file44364.pdf>

7.1.9 If you have any comments on the effectiveness of this consultation, please contact:

Paul Reynolds  
Director of Corporate Affairs  
Pension Protection Fund  
Knollys House  
17 Addiscombe Road  
Croydon  
CR0 6SR

E-mail: [paul.reynolds@ppf.gsi.gov.uk](mailto:paul.reynolds@ppf.gsi.gov.uk)

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## Annex A – Formulae for the scheme-based levy multiplier and the risk-based levy scaling factor for 2009/10

### A.1 Scheme-based levy multiplier

A.1.1 For the 2009/10 levy year the percentage of the pension protection levy that will be made up by the scheme-based element (1- R) remains unchanged at 20 per cent.

A.1.2 The scheme-based levy estimate is the Board's estimate of the total amount of scheme-based levy that should be collected for the 2009/10 levy year. This has been calculated as £140 million.

A.1.3 The total liabilities are the same as those used to determine total underfunding risk for the risk based levy scaling factor calculation. When the above formula is applied to estimated section 179 liability information available for the known universe of eligible schemes and sponsoring employers as at 31 March 2008, the scheme-based levy multiplier is 0.000162. The multiplier will be confirmed in the final determination and is unlikely to differ from this figure.

A.1.4 The 2009/10 scheme-based multiplier is calculated using the formula:

$$h \sum_{i=1}^T L_i = (1 - R) \times Q$$

$$h = \frac{(1 - R) \times Q}{\sum_{i=1}^T L_i}$$

Where,

- T = the number of Pension Protection Fund eligible schemes/sections excluding schemes/sections in assessment;
- $\sum_{i=1}^T L_i$  = the sum of s179 liabilities over all eligible schemes;
- Q = the pension protection levy estimate;
- R = the percentage of the pension protection levy that is risk-based; hence (1-R) is the percentage that is scheme-based.

A.1.5 The scheme-based multiplier is the solution,  $h$ , to the linear equation shown above.<sup>3</sup>

A.1.6 In accordance with this formula, the scheme-based levy multiplier has been calculated as 0.000162. The multiplier will be confirmed in the final determination and is unlikely to differ from this figure.

## A.2 Levy scaling factor

A.2.1 The 2009/10 risk-based levy scaling factor will be calculated using the formula:

$$\sum_{i=1}^T \min(U_i \times P_i \times R \times c, K \times L_i) = Q \times R$$

Where,

- $T$  = the number of Pension Protection Fund eligible schemes/sections excluding schemes/sections that are in assessment;
- $U_i$  = the underfunding risk factor (including contingent assets) of the  $i$ th eligible scheme/section;
- $P_i$  = the insolvency risk factor for the  $i$ th eligible scheme/section;
- $L_i$  = the estimated s179 liabilities of  $i$ th eligible scheme/section;
- $Q$  = the pension protection levy estimate;
- $R$  = the percentage of the pension protection levy that is risk-based;
- $K$  = the levy cap expressed as a decimal.

A.2.3 The levy scaling factor is the solution,  $c$ , to the non-linear equation shown above.<sup>4</sup>

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<sup>3</sup> Note that this formula is slightly simplified and does not take account of, among other things, the need to scale up for schemes in respect of which the PPF does not have adequate data when it is calculating the scaling factor and multiplier.

<sup>4</sup> Note that the formula is slightly simplified and does not take account of, among other things, the need to scale up for schemes in respect of which the PPF does not have adequate data when it is calculating the scaling factor and multiplier and the technical criteria for the exclusion of a scheme in assessment from the levy.

- A.2.4 For the 2009/10 levy year the percentage of the pension protection levy that will be made up by the risk-based element (R) remains unchanged at 80 per cent and the levy cap (K) also remains unchanged at one per cent.
- A.2.5 The risk-based levy quantum (R x Q) is the Board's estimate of the amount of risk-based levy that should be collected for the 2009/10 levy year. This has been calculated as £560 million.
- A.2.6 The total risk exposure will be the sum of the product of underfunding risk and insolvency risk as at 31 March 2008 and percentage risk-based, subject to the levy cap, for all schemes.
- A.2.7 Scheme assets and liabilities for the purpose of the underfunding risk calculation will be determined using market information available on 31 March 2008. Insolvency risk will be calculated using insolvency probabilities derived from 31 March 2008 Failure Scores for the known universe of sponsoring employers.
- A.2.8 When this formula is applied to the insolvency and underfunding information available for the known universe of eligible schemes and sponsoring employers as at 31 March 2008, the risk-based levy scaling factor is 2.22. Although the calculation of the levy scaling factor is included in the scope of this consultation, we do not expect the final figure to differ.

## **Annex B - Assumptions for the Levy Scaling Factor 2009/10**

### **B.1 Introduction**

B.1.1 This annex details the process that has been undertaken to calculate the levy scaling factor for 2009/10. In particular, it covers how the required assumptions have been determined and summarises the results of the analysis carried out.

B.1.2 Very broadly, a scheme's levy is calculated as:  $L \times h + U \times P \times R \times c$

Where:

- L is the estimated amount of the scheme's Section 179 liabilities at 31 March 2008
- h is the scheme-based levy multiplier
- U is the underfunding risk of the scheme as at 31 March 2008
- P is the insolvency probability associated with the employer(s) in relation to the scheme as at 31 March 2008
- R is the proportion that is risk-based, and
- c is the levy scaling factor (LSF).

B.1.3 The 2009/10 levy will primarily be based on data supplied by 31 March 2008, which the PPF already has. However, we propose to take into account correctly certified risk-reduction measures for the period up to 31 March 2009. There will also be movements in the levy-paying population over the same period. The PPF therefore has to estimate the various scheme behaviours and changes in data that are expected to have an effect on the levy. The main items that need to be estimated for the levy scaling factor calculation are:

- the number of levy-paying schemes at 1 April 2009 allowing for removals and additions (if any)
- new voluntary certificates (contingent assets and deficit reduction contributions) to be submitted by the 31 March/7 April 2009 deadline and which can result in adjustments to underfunding or to insolvency risk and therefore affect the levy calculation, and
- D&B insolvency probabilities as at 31 March 2008 allowing for any appeals which may be raised.

B.1.4 It takes account of the result of new section 179 valuation assumptions, effective 31 March 2008, and is based a levy cap and tapers that are unchanged from their 2008/09 levels.

B.1.5 Although risk reduction measures will have some effect on the long-term risk faced by the PPF in due course, we still aim to collect £700m in 2009/10. As stated in Chapter 2, the Board had to consider this estimate carefully against a general increase in long-term risk as a result of the economic downturn. Adjustments in respect of the estimated data changes described above are therefore necessary in order to ensure that the PPF collects a total amount as close as possible to the levy estimate.

## B.2 Assumptions for the calculation

B.2.1 The following central assumptions about the number of levy-paying schemes, contingent assets, deficit reduction contributions and changes in D&B insolvency scores have been used to calculate the LSF for the 2009/10 levy year.

### Eligible universe of levy-paying schemes

B.2.2 In summary, our estimate for the change in the number of levy-paying schemes between 1 April 2008 and 31 March 2009 is as follows:

Table B1: Estimated changes in the number of levy-paying schemes:

	Number of schemes
Levy-paying universe at 1 April 2008	7,277
Plus new schemes	0
Less schemes buying out all their liabilities	(11)
Less schemes entering an assessment period	(86)
Estimated levy-paying universe at 1 April 2009	7,180

B.2.3 We propose that no allowance will be made for new levy-paying schemes in 2009/10. Any new eligible defined benefit schemes are unlikely to have acquired significant assets and liabilities by 1 April 2009; new schemes formed by mergers and transfers hold assets and liabilities that are already included in the PPF's database and so have a broadly neutral effect on the calculations.

B.2.4 11 schemes that were in the dataset as at 1 April 2008 have been identified by the PPF and the Pensions Regulator as almost certain to become ineligible through full buy out by 1 April 2009. No allowance will be made for further schemes to complete full buy out negotiations and affect the actual buy out assumptions by the end of the financial year. Under our draft determination for 2009/10, we propose that no

new voluntary block transfer certificates are accepted, other than where the transferring scheme has become ineligible as a result of the transfer. Partial buyouts will therefore have no effect on the levy invoice calculation for 2009/10 and so do not need to be taken into account for the levy scaling factor calculation. Similarly, buy ins do not affect levy calculations.

B.2.5 We estimate that 86 fewer schemes will pay the levy in 2009/10 than in 2008/09. None of these schemes are forecast to be large in terms of members (defined as 5000 members or more), with the distribution among the smaller membership groups being similar to that of schemes that have already commenced an assessment period.

### **New voluntary certificates – contingent assets**

B.2.6 The impact of contingent assets will depend on their value and which schemes put them in place. Using contingent asset data for the last two levy years, we have projected the number of schemes that might put contingent assets in place for 2009/10 and the difference they will make to levy bills.

B.2.7 Contingent assets have reduced the levy collected by a greater amount each year. There were 217 schemes with contingent assets in place for 2007/08 and 389 for 2008/09. We estimate an extra 150 for 2009/10, giving a total of 539. Note that these figures are for schemes with contingent assets and not the total number of contingent assets, which will be higher where schemes apply multiple contingent assets

B.2.8 We have used the valid certificates we had as at 31 March 2008 and estimated their effect on the 2009/10 levy collection. We have then averaged this difference over seven liability groups and applied factors based on the assumed level of 539 contingent assets to estimate the impact of new contingent assets on schemes' risk-based levies.

B.2.9 Those schemes that would receive the greatest reduction in risk-based levy from a contingent asset, for example because their funding levels decreased between October 2007 and March 2008, are more likely to put one in place. We have therefore further increased the estimated reduction in levy based on our historical observations by 10 per cent to allow for this behaviour.

B.2.10 Our method for adjustment on account of contingent assets is to apply a reduction factor to each scheme's risk-based levy calculated without the inclusion of any contingent assets. The reduction factors are set out in the following table:

Table B2: Contingent asset reduction factors

Liability group based on a scheme's liabilities	Reduction in risk-based levy collected for contingent assets in place	
	for 2008/09	estimated for 2009/10
Less than £10m	2.7%	5.6%
Greater than or equal to £10m and less than £50m	8.3%	15.4%
Greater than or equal to £50m and less than £100m	11.6%	21.4%
Greater than or equal to £100m and less than £200m	10.2%	19.4%
Greater than or equal to £200m and less than £500m	9.5%	15.8%
Greater than or equal to £500m and less than £1,000m	11.8%	20.0%
Greater than or equal to £1,000m	15.3%	19.8%

## **New voluntary certificates – deficit reduction contributions**

B.2.11 Allowances are needed for deficit reduction contributions certified by 7 April 2008 and for new certificates received by the PPF before 5pm on 7 April 2009.

B.2.12 The value of new deficit reduction contributions has been determined by assuming that recovery plans target 110 per cent of section 179 liabilities over an eight year period and that 10 per cent of that target comes from assumed asset out-performance, the balance being contributions from the sponsor for which only 75 per cent submit certificates. The estimated total value of deficit reduction contributions for 2009/10 is £25.2 billion, compared with £16.6 billion for the 2008/09 levy year. The reason for the increase is that the same section 179 data is being used for 2008/09 as for 2009/10 so existing certificates either remain in place or are supplemented by a new (higher) deficit reduction contribution.

## **Change in D&B insolvency probabilities**

B.2.13 The probability of insolvency used in a scheme's levy invoice calculation may, as a result of a successful appeal, be different to that originally supplied by D&B as at 31 March 2008. Appeals to D&B take two forms: employers appeal either their failure score, based on data available publicly at the relevant deadline - and normally used by D&B in the course of business - not being used, or the validity of their DUNS number (i.e. where D&B has assessed the wrong company, either as a result of scheme return data being inadequate or the possibility of

multiple matches). A successful appeal of either type can result in a revised failure score.

B.2.14 While insolvency probabilities are determined for each employer, our analysis looks at the number of schemes with successful appeals and their impact on scheme insolvency probabilities.

B.2.15 Our initial estimate for the number of schemes that will successfully appeal their sponsoring employers' 31 March 2008 failure scores is 396. This estimate combines the actual number of schemes making successful appeals in the period 1 April 2008 to 31 July 2008 (26) and the expected number that will occur after 31 July 2008 (370). This latter figure has been calculated in line with the expected volume of 2007/08 appeals after 31 July 2007 and takes into account the fact that appeals for that year are still in progress. The 2006/07 year has been used to estimate the pattern of 2007/08 appeals. The volume of schemes that have (to 31 July 2008) been affected by a successful D&B appeal from at least one of their employers is summarised in the following table:

Table B3: volume of D&B failure score appeals by levy year

	2006/07	2007/08	2008/09
<b>Before 1 August</b>	<b>28</b>	<b>192</b>	<b>26</b>
<b>After 31 July</b>	<b>451</b>	<b>335</b>	not known
<b>Total observed</b>	<b>479</b>	<b>527</b>	26
<b>Expected future</b>	-	<b>33</b>	370
<b>Total expected</b>	<b>479</b>	<b>560</b>	396

B.2.16 We have then refined our estimate of future appeals to allow for the pattern of appeals for 2008/09 to differ from previous years as a result of the change in the failure score table, the increase in LSF for 2008/09 compared with previous years and the increased number of participating employers. Our methodology of averaging the impact of appeals across all schemes understates the impact on levy collected resulting from the fact that it is those schemes that will benefit the most that tend to appeal. We have, therefore, further increased our estimated number of appeals to allow for this. Our estimate for successful appeals post-31 July 2008 increases to 700 schemes, giving 726 schemes in total for 2008/09.

B.2.17 We have used the distribution of successful 2007/08 failure score appeals by scheme size and the average resulting reduction in

probability of insolvency to allocate the 700 expected future appeals across the liability groups.

Table B4: distribution of expected failure score appeals by liability group

Liability group based on a scheme's liabilities at 31 March 2008	2007/08 Appeals Distribution	Number of Schemes forecast to have successful appeals post-July 2008	Average reduction to scheme insolvency probability arising from successful D&B appeals
Less than £10m	21%	147	60%
Greater than or equal to £10m and less than £50m	34%	242	60%
Greater than or equal to £50m and less than £100m	17%	118	50%
Greater than or equal to £100m and less than £200m	10%	67	40%
Greater than or equal to £200m and less than £500m	6%	44	40%
Greater than or equal to £500m and less than £1,000m	7%	46	40%
Greater than or equal to £1,000m	5%	36	40%
Total	100%	700	

B.2.18 As we do not know which schemes will experience successful appeals in future, we have spread the impact of appeals evenly across each of the liability groups. These average reductions in insolvency probabilities are then used in the LSF calculation.

Table B5: average expected percentage reduction in insolvency probability by liability group

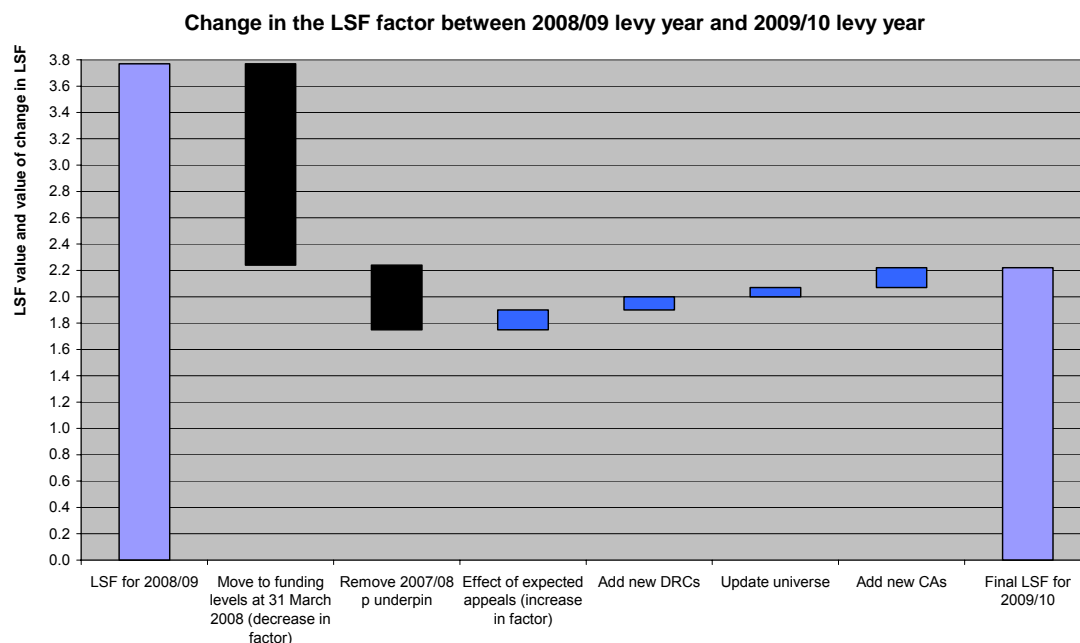
Liability group based on a scheme's liabilities at 31 March 2008	Total schemes in group	Assumed reduction to P score – applied to every scheme in group
Less than £10m	3,289	2.7%
Greater than or equal to £10m and less than £50m	2,219	6.6%
Greater than or equal to £50m and less than £100m	616	9.6%
Greater than or equal to £100m and less than £200m	425	6.3%
Greater than or equal to £200m and less than £500m	327	5.4%
Greater than or equal to £500m and less than £1,000m	157	11.7%
Greater than or equal to £1,000m	147	9.8%
Total	7,180	

B.2.19 The insolvency probabilities of those 26 schemes already observed as having been subject to successful appeal in 2008/09 have been revised explicitly.

### B.3 Reconciliation of the 2008/09 and 2009/10 levy scaling factors

B.3.1 The following chart attributes the change in levy scaling factor between levy years 2008/09 and 2009/10 to the various factors and assumptions made:

Chart B6: reconciliation of the 2008/09 and 2009/10 levy scaling factors



B.3.2 The most significant factor in the reduction of the scaling factor is the decline in scheme funding between October 2007 and March 2008. The second significant influence is the adoption of a more sophisticated approach to estimating the impact of changes to D&B failure scores following appeals: removing the “2007/08 p underpin” (which replaced any probability of insolvency that was worse in 2008/09 than 2007/08 with the 2007/08 equivalent) in favour of a measure that more empirically seeks to predict the expected effect of appeals.

Table B7: reconciliation of the 2008/09 and 2009/10 levy scaling factors

	Change	LSF
Levy scaling factor (LSF) for 2008/09		<b>3.77</b>
Move funding levels to 31 March 2008 <b>Underfunding is measured at 31 October 2007 for 2008/09 and 31 March 2008 for 2009/10</b>	<b>-1.53</b>	<b>2.24</b>
Remove 2007/08 probability of insolvency underpin <b>For 2007/08 the allowance for future D&amp;B appeals was that schemes with lower insolvency probabilities at March 2007 would appeal their March 2008 probabilities down to the 2007 level. A different approach is taken for 2009/10 (see below).</b>	<b>-0.49</b>	<b>1.75</b>
Allow for expected D&B appeals <b>Allowance for future appeals of 31 March 2008 D&amp;B insolvency probabilities</b>	<b>0.15</b>	<b>1.9</b>
Add new deficit reduction contributions <b>Allowance for new deficit reduction contributions certified by 7 April 2009</b>	<b>0.10</b>	<b>2.00</b>
Update universe of levy paying-schemes <b>Change in schemes eligible to pay the levy between 1 April 2008 and 1 April 2009</b>	<b>0.07</b>	<b>2.07</b>
Add new contingent assets <b>Allowance for new contingent asset certificates to be submitted by 7 April 2009</b>	<b>0.15</b>	<b>2.22</b>
Levy scaling factor for 2009/10		<b>2.22</b>

**Annex C – The Board’s draft Determination under  
Section 175(5) of the Pensions Act 2004 in respect of  
the financial year 1 April 2009 – 31 March 2010**

# **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 2009 – 31 March 2010**

**CONSULTATION DRAFT: 25 SEPTEMBER 2008**

## Introduction

Section 175(5) of the Pensions Act 2004 requires the Board of the Pension Protection Fund (the **Board**), before the beginning of each financial year, to determine in respect of that year:

- (a) the factors by reference to which the pension protection levies are to be assessed;
- (b) the time or times by reference to which those factors are to be assessed;
- (c) the rate of the levies; and
- (d) the time or times during the year when the levies, or any instalment of levy, becomes payable.

The approved form of the 2009/10 determination is attached as pages 3-20 of this document. The Appendices and Annexes may be accessed via the links on page 21.

## **Determination by the Board 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 2009 to 31 March 2010:

- (1) That 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, are to be as set out in the Schedule to this determination;
- (2) That the levies in respect of a scheme are to become payable on the earliest of the following dates: 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 this Schedule provides for a revised notification to be issued, the date upon which that person is sent a revised notification); the date on which the scheme ceases to be an eligible scheme; or 31 March 2010.

### **SCHEDULE**

#### **Part 1 – general**

1. The scheme-based levy and the risk-based levy in respect of a scheme shall be calculated in accordance with Part 2 and Part 3 respectively of this Schedule, subject to the modifications contained in Part 4 of this Schedule in the cases to which those modifications apply. Where this Schedule refers, in whatever language, to something which is to be done or decided by the Board, then any necessary action or decision may be taken on behalf of the Board either by the Chief Executive of the Board or by such member of the Board's staff as he may appoint for the purpose.
2. The matters referred to in this Schedule shall be assessed, measured, quantified or estimated at such dates and in such manner as is provided for below. In the absence of such provision, it is intended that this Schedule shall be applied in accordance with the factual position as it existed at midnight on 31 March 2008. All references to dates and times in this Schedule relate to Greenwich Mean Time or, at the times when it is in force, British Summer Time. For the avoidance of doubt, references to midnight on a day are to midnight at the end of that day.
3. References in this Schedule to the *Act* are to the Pensions Act 2004. Unless the context otherwise requires, terms used in this Schedule bear the same meaning as in the *Act*. References to *defined benefit members* of a scheme shall be taken to mean members of that scheme who are entitled to defined benefits under that scheme. References to *pension credit members* of a scheme shall be taken to mean individuals who have rights under a scheme attributable to a pension credit and 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. References to the *scheme maintenance system* are to the system maintained by the Pensions Regulator for the online submission of scheme return and other information by or on behalf of pension schemes, also known as “Exchange”. References to the *scheme actuary* are to the actuary within the meaning of section 179(2) of the *Act*.

4. Where this Schedule refers to certain information having been provided on or before a certain time/date, the information shall be treated as having been so provided if but only if the Board is satisfied that:

(a) save only as provided by subparagraphs (b) and (c) below, that the information has been submitted to the appropriate part of the *scheme maintenance system*.

(b) in the case of hard copy documentation required for submission of contingent assets (for the avoidance of doubt not including certificates in respect of contingent assets), the documentation has, on or before the time/date in question, 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.

(c) in a case where on or after the date of final publication of this determination the Board has expressly stipulated on its website a different method of provision of information for the purposes of the 2009/10 levy year to those methods set out at paragraphs (a) or (b) above (whether as an alternative or a replacement to those methods), the information has been received in accordance with that method on or before the time/date in question.

For the avoidance of doubt, delivery by fax is not permissible. Save where this Schedule specifically provides otherwise, the deadline for any information provided to the Board otherwise than pursuant to a specific request or requirement is midnight on 31 March 2008. Without prejudice to paragraph 6 and paragraph 12 below, the Board may at its discretion take account of information provided after any applicable deadline but only in circumstances where it appears to the Board that:

(a) The information was despatched at an appropriate time, but was delayed in the course of post or otherwise; or

- (b) The provider of the information was prevented from meeting the deadline by the temporary inaccessibility of the Board's website or the *scheme maintenance system*, or the interruption of electronic communications, or other like cause, and the information was provided as soon as reasonably practicable thereafter.
5. It is intended that the provisions contained in this Schedule should in all cases permit the calculation of the amount of the levies in respect of a scheme. However, in the event that any situation arises for which the Schedule fails to make the provision required for a calculation to be performed, the Board hereby determines that the calculation of the levies shall be performed in such manner as, in the opinion of the Board, is reasonably practicable and best gives effect in that situation to the general approach laid down by this Schedule. This paragraph shall also apply in any case where the Board is unable to obtain some item of information which would normally be required for the application of this Schedule in accordance with its terms.
6. Nothing in the Board's determination or this Schedule shall prevent the Board from reviewing the amount of the levies calculated in respect of a scheme where it subsequently appears to the Board that the information upon which the calculation was based was incorrect in a material respect, or that a notification required by or under a certificate in relation to contingent assets has not been duly given, or that a certificate or declaration given for the purposes of this Schedule was improperly given or contained information which was incorrect in a material respect. Further, in calculating the levies in respect of a scheme the Board may disregard any such certificate or declaration if the Board believes that it has been improperly given, and may similarly disregard any information in the certificate or declaration, or in any notification or return, which is believed to be incorrect. For the avoidance of doubt, information is not incorrect for this purpose 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 this Schedule to be applied differently, and the Board is in any case under no obligation to review the amount of the levies merely because a scheme has been disadvantaged by the failure of those acting on its behalf to supply correct information at the proper time<sup>5</sup>.
7. In the case of a scheme which is divided into sections (defined in the Pension Protection Fund (Multi-employer Schemes) (Modification)

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<sup>5</sup> NOTE – This note is provided for information as to the manner in which the Board is likely to exercise the power described in paragraph 6. The note does not form part of the Determination, but has been approved by the Board when considering the Determination. The Board does not anticipate that this power of review will normally be exercised so as to correct validated data (as defined in paragraph 8(a) of the Schedule) held on the *scheme maintenance system* as at midnight on 31 March 2008 or other relevant deadline. However, the Board may take such steps in appropriate cases, including (without limiting the exercise of the Board's discretion) any case in which a scheme would otherwise be advantaged by the submission of inaccurate information.

Regulations 2005 as a segregated scheme), each such section shall (except where this Schedule expressly or by implication requires otherwise) be treated as if it were a separate scheme for the purposes of this Schedule. Similarly where a *segregated part* (as defined in parts 4, 5, 7 & 8 of the same Regulations) of a scheme has been created on or before 31 March 2009, each of the segregated part(s) and the remainder of the scheme shall (except where this Schedule expressly or by implication requires otherwise) be treated as if it were a separate scheme for the purposes of this Schedule. References to *schemes* shall be construed accordingly.

8. Where this Schedule indicates that the Board should use *relevant scheme return data*, the Board will take account of the following information.

(a) Where the scheme concerned has either:

- (i) no later than midnight on 31 March 2008, submitted a scheme return via the *scheme maintenance system* in accordance with sections 63-65 of the *Act*; or
- (ii) been sent a scheme return notice requiring it to submit a scheme return via the *scheme maintenance system*, and the return date for that scheme return falls on or before 31 March 2008 (whether or not the scheme has so submitted a scheme return by that date);

then the Board shall take into account the *validated data* held on the *scheme maintenance system* as at midnight on 31 March 2008. For these purposes *validated data* shall mean the data held on the system at the point of the most recent certification (whether by way of scheme return or scheme maintenance certification) through the system on behalf of the scheme or, where no such certification has ever been made on behalf of the scheme, the data with which the system was pre-populated when it was first made available to the scheme.

(b) Where the scheme concerned has for the first time been sent a scheme return notice requiring it to submit a scheme return and the return date falls between 1 April 2008 and 31 March 2009 (inclusive) and the scheme has, no later than 5pm on 31 March 2009 submitted a scheme return via the *scheme maintenance system* in accordance with sections 63-65 of the *Act*, then the Board shall take into account the validated data held on the *scheme maintenance system* as at 5pm on 31 March 2009.

(c) In all other cases the Board shall take into account the most recently submitted equivalent information provided to the Board by or on behalf of the scheme by no later than midnight on 31 March 2008.

9. References in this Schedule to a *section 179 valuation* are to the results of an actuarial valuation of the scheme carried out in a manner which is in accordance with section 179 of the *Act* and regulations and relevant guidance made and issued under that section and certified by the *scheme actuary*, the results of which have been provided by or on behalf of the trustees or managers of the scheme in accordance with the provisions of paragraphs 4 and 8 of this Schedule, whether that valuation has been so carried out and the results so provided as a matter of legal obligation or otherwise. References in the preceding sentence to the results of the valuation are to those data items required to be completed in the relevant section of the *scheme maintenance system* or other scheme return as the case may be. Where there is more than one valuation satisfying the requirements of this paragraph, the Board shall use the valuation with the latest effective date falling on or before the relevant deadline for submission of information for the purposes of calculating the levies. In the event of any discrepancy between valuation data as at the same date supplied to the Board via the *scheme maintenance system* and any other means, the validated data (as defined in paragraph 8(a) and (b)) held on the *scheme maintenance system* as at midnight on 31 March 2008 shall prevail.
10. References in this Schedule to the value or amount of the assets or the protected liabilities of a scheme shall be understood as follows but subject to paragraphs 27, 40, 41 and 42 below:
- (a) Where there is a section 179 valuation, the reference is to the value or amount of the assets or protected liabilities shown in that valuation, but adjusted in a manner which in the view of the Board gives effect to the approach set out in Appendix 1 to this Schedule and results in the scheme's assets and its liabilities being consistently treated for these purposes.
  - (b) Where there is no section 179 valuation, the reference is to the estimated value or amount of the assets or liabilities of the scheme shown in the Minimum Funding Requirement valuation data supplied as *relevant scheme return data*, but adjusted in a manner which in the view of the Board gives effect to the approach set out in Appendix 2 to this Schedule and results in the scheme's assets and its liabilities being consistently treated for these purposes.
  - (c) This sub-paragraph shall apply where a *segregated part or parts* of a scheme has been created by the operation of an option or requirement to segregate on or before 31 March 2009 (whether or not such segregated part has transferred to the PPF), but there is no section 179 valuation calculated by reference only to the *segregated part* and/or the remainder of the scheme. In such circumstances the Board shall estimate all relevant data in relation to any segregated part by multiplying the equivalent data for the entire scheme by a fraction, the numerator of which is equal to the number of members in relation to which the employer for that

segregated part is the employer, and the denominator of which is equal to the total number of members in the entire scheme. Similarly the Board shall estimate the relevant data in relation to the remainder of the scheme by multiplying the equivalent data for the entire scheme by a fraction, the numerator of which is equal to the total number of members in relation to which any employer that is not related to any *segregated part* is the employer (including for the avoidance of doubt any member not formally attributed to any current employer), and the denominator of which is equal to the total number of members in the entire scheme. The second sentence of paragraph 35 shall apply when determining the number of members of a scheme of whom an employer is the employer. For the avoidance of doubt, where a segregated part has been created on or before 31 March 2009 by virtue of a qualifying insolvency event, such that the segregated part has entered a PPF assessment period, but there is no section 179 valuation for the whole scheme, then the approach set out in this paragraph shall be applied in conjunction with paragraph (b) above (use of Minimum Funding Requirement data adjusted in accordance with Appendix 2) in order to estimate the assets and liabilities of the *segregated part* and the remainder of the scheme.

11. For the purposes of this Schedule, the employer or employers in relation to a scheme shall be taken to be such undertaking or undertakings as have been notified as such in *relevant scheme return data* or pursuant to Section 191 of the *Act*.
12. The Board may, at any time prior to the calculation or any recalculation of the levy in respect of a scheme, take such steps as it thinks fit to obtain further or amended information for the purposes of that calculation or recalculation. But the Board is under no obligation to take such steps where information has not been provided to the Board on or before any applicable deadline prescribed in this Determination, and will not do so merely because a scheme has been disadvantaged by the failure of those acting on its behalf to supply information at the proper time or in the proper manner<sup>6</sup>.
13. If, at the time of calculation or any recalculation of the levy in respect of a scheme, any information necessary for such calculation has not been provided in the manner or format or at the time anticipated by this Determination, then the Board may instead use equivalent information

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<sup>6</sup> NOTE – This note is provided for information as to the manner in which the Board is likely to exercise the power described in paragraph 12. It does not form part of the Determination, but has been approved by the Board when considering the Determination. The Board does not anticipate that this power to obtain information will normally be exercised so as to amend validated data (as defined in paragraph 8(a) of the Schedule) held on the *scheme maintenance system* as at midnight on 31 March 2008 or other relevant deadline. However, the Board may take such steps in appropriate cases, including (without limiting the exercise of the Board's discretion) any case in which a scheme would otherwise be advantaged by the submission of inaccurate information.

provided in a different manner or format or at a different time. But the Board is under no obligation to use such equivalent information, and will not do so merely because a scheme has been disadvantaged by the failure of those acting on its behalf to supply information at the proper time or in the proper manner.

14. In performing the calculations required by this Determination:

- (a) The Board shall round all monetary figures to the nearest penny at each stage of the calculation, save for the final amounts of the scheme-based levy and the risk-based levy which shall each be rounded to the nearest pound; and
- (b) The Board shall round all figures representing an assumed probability of insolvency 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 assumed insolvency probabilities and to (ii) the product of the weighted average insolvency probability and a scaling factor based on scheme structure in accordance with paragraph 38 or 39.
- (c) Any value of .5 shall be rounded up.

15. In the event of any inconsistency between this Schedule, the Appendices and/or the Annexes to this determination, the following order of priority shall prevail:

- (a) The Schedule to the determination;
- (b) The Appendices to the determination (in the order in which they appear);
- (c) The Annexes to the determination (in the order in which they appear).

In determining whether it is satisfied as to any matter set out in the Determination, the Board will take account of any guidance which it has published (including guidance in the form of "Frequently Asked Questions").

## Part 2 – the scheme-based levy

16. Subject to paragraphs 44-46 below, the scheme-based levy in respect of a scheme shall be:

$$L \times h$$

17. L shall be the amount of the scheme's protected liabilities. h, the *scheme-based levy multiplier* shall be 0.000162

## Part 3 - the risk-based levy

18. Subject to paragraphs 20, 29, 33 and 44-46 below, the risk-based levy in respect of a scheme shall be:

$$U \times P \times R \times c$$

19. U shall be the underfunding of the scheme, and P shall be the insolvency probability associated with the employer(s) in relation to the scheme, in each case calculated in accordance with the remainder of this Part 3 and/or Part 4 of this Schedule, as applicable. R shall be the proportion of the pension protection levies intended to be risk-based, which for the 2009/10 levy year shall be 0.8. c, the *risk-based levy scaling factor* shall be 2.22.

20. Subject to paragraph 45 in no case shall the risk-based levy in respect of a scheme exceed K, the *levy cap*, multiplied by that scheme's protected liabilities. For the 2009/10 levy year, K shall be 0.01.

21. Where the value of a scheme's assets is less than 120% of the amount of the scheme's protected liabilities, U shall be the amount obtained by subtracting the value of the scheme's assets from the product of multiplying the amount of the scheme's protected liabilities by 1.21.

22. Where the value of a scheme's assets is equal to or greater than 120% but less than 125% of the amount of the scheme's protected liabilities, U shall be 1% of such protected liabilities.

23. Where the value of a scheme's assets is equal to or greater than 125% but less than 130% of the amount of the scheme's protected liabilities, U shall be 0.75% of such protected liabilities.

24. Where the value of a scheme's assets is equal to or greater than 130% but less than 135% of the amount of the scheme's protected liabilities, U shall be 0.50% of such protected liabilities.

25. Where the value of a scheme's assets is equal to or greater than 135% but less than 140% of the amount of the scheme's protected liabilities, U shall be 0.25% of such protected liabilities.

26. U shall be 0 (zero) in all cases where the value of the scheme's assets is equal to or greater than 140% of the amount of the scheme's protected liabilities.

27. For the purposes of paragraphs 21 to 26 inclusive, all references to the value of the assets of a scheme shall include *deficit-reduction contributions* (if any) to the extent set out in paragraph 28.

28. This paragraph applies where, on or before 5pm on 7 April 2009, there is provided in accordance with the relevant provisions of paragraph 4 of this Schedule, a certificate given by the *scheme actuary*, containing the information specified in, and calculated in accordance with the rules set out in, Annex B attached to this Schedule (or, where the certificate has been provided before the publication of this determination, in accordance with the relevant guidance published by the Board and in force at the time the certificate is provided,) which confirms that a *deficit-reduction contribution* or contributions has been made since the date to which the section 179 or, as the case may be, Minimum Funding Requirement valuation referred to in paragraph 10 above (*the previous valuation*) relates. Where this paragraph applies, provided that the valuation referred to in the certificate is the same valuation as the Board is required to use under paragraph 10 above, then for the purposes of this Schedule the value of the assets of the scheme shall be increased by the aggregate amount of that contribution or contributions. For this purpose, a deficit-reduction contribution is the whole or any part of a contribution made by or on behalf of the employer or any employee in relation to the scheme (including by HM Revenue and Customs in respect of age-related National Insurance rebates) which:

(a) Has been received, irrevocably and in full, by the trustees or managers of the scheme before the *scheme actuary's* certificate is signed and not later than 31 March 2009; and

(b) Is not a contribution made on account of –

- (i) The cost of accrual of scheme benefits;
- (ii) The expenses of administering the scheme or investment management expenses; or
- (iii) The cost of augmentations of benefits granted or expected to be granted after the date to which the previous valuation relates; or
- (iv) Any benefits or transfers paid out of the scheme between the end-date of the audited accounts used for the purposes of the previous valuation and, if later, the valuation date

(for which purposes the costs referred to in sub-paragraphs (i) and (iii) above shall be calculated on the basis required for a section 179 valuation).

Where in relation to the same scheme more than one certificate in relation to deficit-reduction contributions has been provided to the Board (irrespective of when provided), only the most recent such certificate shall (provided it satisfies the other requirements for recognition set out in this Determination) be taken into account.

29. This paragraph applies where, on or before 5pm on 31 March 2009, there is provided in accordance with the relevant provisions of paragraph 4 of this Schedule:

- (a) a certificate containing the information set out in such part of Annex C attached to this Schedule as is appropriate, which certifies that the scheme benefits from one or more contingent assets within the meaning of Appendix 4 to this Schedule; and
- (b) the relevant required hard copy documents as set out in Annex C attached to this Schedule.

Where this paragraph applies then the risk-based levy for the scheme shall be determined in the manner set out in Appendix 4. The Board shall not take into account certificates in relation to contingent assets which relate to a previous levy year when calculating the risk-based levy for the period 1 April 2009 – 31 March 2010.

30. P (the insolvency probability associated with the employer(s) in relation to the scheme) shall be:

- (a) In the case of a scheme with a single employer, an amount equal to the Pension Protection Fund assumed probability of insolvency for that employer determined in accordance with paragraphs 31 and 32 below; and
- (b) In the case of a scheme with more than one employer, an amount calculated in accordance with paragraphs 35 to 39 below;

provided that if such amount exceeds 0.15, then P shall be taken to be 0.15.

31. The Pension Protection Fund assumed probability of insolvency for an employer shall be the assumed probability associated with the Failure Score which applies to that employer, as shown in Appendix 3 to this Schedule, or a figure determined in accordance with paragraphs 32(b)-(d) below.

32. The Failure Score which applies to an employer shall be the failure score which Dun & Bradstreet UK Ltd (*DBUK*) informs the Board that it has assigned to that employer. For the avoidance of doubt, the failure scores to be provided to the Board are to be the normal failure scores which were or would have been assigned to that employer by *DBUK* in the ordinary course of its business on and as at 31 March 2008, based on data provided to *DBUK* on or before 30 March 2008, save only that –

- (a) The Board has instructed *DBUK* that the failure scores provided to the Board should be those which would be assigned to the employer if there were to be disregarded any rule or practice whereby *DBUK* normally limits the maximum failure score obtainable by a company where it is a subsidiary of another company and that parent company is regarded as being at severe risk of insolvency;
- (b) In the case of employers to which *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 failure score or local equivalent or risk indicator, the Board has instructed *DBUK* to provide it with the failure score or local equivalent (if any) assigned to such employers by that relevant associated undertaking on the same basis as set out above, or in the absence of such a failure score or equivalent, with the risk indicator assigned to the employer in question. In such cases the assumed probability of insolvency associated with that failure score or risk indicator will be such as the Board has been advised by *DBUK* is appropriate for the purposes of achieving equivalence with Appendix 3 to this Schedule.
- (c) In the case of an employer in relation to a multi-employer scheme in relation to which there are at least 10 employers, and where the procedure set out above 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), then the Pension Protection Fund assumed probability of insolvency for such an employer for whom no failure score or risk indicator has been produced shall be the average (mean) Pension Protection Fund assumed probability of insolvency of the other employers in relation to that scheme in respect of whom failure scores or risk indicators have been provided.
- (d) In a case where the procedures set out above do not produce a failure score or risk indicator for a particular employer on and as at 31 March 2008, the Pension Protection Fund assumed probability of insolvency for that employer will be based upon the assignment of that employer to whatever industry group appears most appropriate, using for this purpose the first two digits of the four digit 1972 Standard Industry Classification codes. If the Board is provided with a three digit 1972 Standard Industry Classification code in

respect of an employer, the first digit of that code, preceded by a zero, shall be used. The Pension Protection Fund assumed probability of insolvency for that employer shall be the probability which *DBUK* notifies to the Board as being the median Pension Protection Fund assumed probability of insolvency for all UK-domiciled employers within that industry group in respect of whom it has provided the Board with failure scores for the purposes of the 2008/09 levy year. Where the Board either:

- (i) is unable to determine the most appropriate Standard Industry Classification 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,

it may assign that employer to an “undetermined” code. The Pension Protection Fund assumed probability of insolvency for an employer assigned to the “undetermined” code shall be the probability which *DBUK* notifies to the Board as being the median Pension Protection Fund assumed probability of insolvency 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 2008/09 levy year. For the purposes of the preceding three sentences, (i) such medians shall be based on the same set of probability data as used by the Board for the purposes of calculating the scaling factor as set out in paragraph 49 of its determination under s175(5) of the *Act* in respect of the financial year 1 April 2008 – 31 March 2009, and (ii) 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 probability has been applied in accordance with subparagraph 32(c) above.

(e) This sub-paragraph applies in any case where *DBUK* informs the Board that it has decided, following representations made to it by or on behalf of the relevant trustees or managers or employer, or following a request by the Board, that either:

- (i) the failure score assigned to an employer on and as at 31 March 2008, or other measure assigned in accordance with sub-paragraph (b) above, was either too high or too low because it was based upon information which, on and as at 31 March 2008, was incorrect or incomplete by comparison with the information which should normally have been taken into account by *DBUK* in assigning a failure score at that date; or

- (ii) that the procedures set out in sub-paragraphs (c) or (d) above produced an incorrect result or a different procedure should have been applied,

(whether because information which should normally have been available to, and would normally have been taken into account by, *DBUK* at that date was not available to *DBUK*, or because such information was available to *DBUK* but was nonetheless not taken into account in assigning the failure score).

In a case to which this sub-paragraph 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 on and as at 31 March 2008. For these purposes, the Board shall only be obliged to take into account a change to a failure score (or other measure) if it results from representations made to *DBUK* by or on behalf of the relevant trustees or managers or employer not later than 28 days after the date shown on the notification of the pension protection levies (for the purposes of the 2008/09 risk-based levy or, if earlier, the 2009/10 risk-based levy) and if the relevant applicant has also complied with any other relevant deadlines throughout *DBUK*'s appeal process as may be stipulated by *DBUK*. The Board shall not take into account any change to the failure score resulting from a request by the Board unless that change to the failure score (or other measure) is made no later than 31 March 2010. In a case to which this sub-paragraph applies the Board will where necessary issue a revised notification of the amount of the levies in respect of the scheme;

#### **Part 4 – modifications**

##### ***Closed Schemes***

- 33. This paragraph applies where a scheme is authorised by the Board under section 153 of the *Act* to continue as a closed scheme. In a case to which this paragraph applies, the risk-based levy shall be zero.

##### ***Revised levy invoices***

- 34. In any case where the Board issues a revised notification of the amount of the levies in respect of a scheme, that notification shall take account of any amount already paid pursuant to a previous notification.

##### ***Insolvency Risk for Multi-employer schemes***

- 35. Paragraphs 36 to 39 below apply to the calculation of the risk-based levy in respect of multi-employer schemes, and references in those paragraphs to the *Regulations* are to the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005. Where reference is made to

the number of members of a scheme of whom a person is the employer, that is to be determined by reference to the total number of active, deferred, pensioner and pension credit *defined benefit members* of that scheme and in relation to whom that person is (or is deemed to be) the employer in relation to the scheme, as notified in *relevant scheme return data*.

36. Which of paragraphs 37 to 39 below is to be applied to a multi-employer scheme is to be determined in accordance with *relevant scheme return data*.
37. In the case of a scheme the rules of which include a requirement or discretion to segregate on cessation of participation of an employer, an assumed probability of insolvency (PP) shall be separately determined for each of the employers in relation to the scheme in accordance with paragraphs 31 and 32 above, and P shall be taken to be the weighted average of PP for each employer, where the weightings are equal to the number of members in relation to whom each employer is the employer, divided by the total number of members.
38. In the case of a scheme the rules of which do not include a requirement or discretion to segregate on cessation of participation of an employer and to which paragraph 39 below does not apply, P shall be 0.9 multiplied by the weighted average of PP for each employer in relation to the scheme, determined in the same manner as set out in paragraph 37 above.
39. This paragraph applies to a scheme the rules of which do not include a requirement or discretion to segregate on cessation of participation of an employer and which is stated in *relevant scheme return data* to be a scheme established as a centralised scheme for non-associated employers, and in relation to which the Board has, if requested by the Board, received satisfactory evidence in support of that statement prior to the calculation of the levies for that scheme. In the case of a scheme to which this paragraph applies, P shall be the weighted average of PP for each employer in relation to the scheme (determined in the same manner as set out in paragraph 37 above), multiplied by the largest number of members of the scheme in relation to whom any one employer is the employer, and divided by the total number of members of the scheme.

### ***New schemes***

40. This paragraph applies where a scheme (referred to in this paragraph as a *new scheme*) becomes an eligible scheme on or after 1 April 2009. In a case to which this paragraph applies:
- (a) The amount of the scheme-based levy and the risk-based levy in respect of the new scheme shall be the product of multiplying, respectively, the amounts shown in paragraphs 16 and 18 above by N divided by 365 where N is the number of days during the financial year for which the new scheme is an eligible scheme;

- (b) References in this Schedule and Appendices and Annexes to 31 March 2008 or 31 March 2009, as the case may be, shall be read as references to the first date on which the new scheme was an eligible scheme, save that where reference is made to information or documents being provided by a particular date, such references shall be treated as requiring the information or documents to be provided not later than 28 days after the scheme becomes an eligible scheme, or by such later date as the Board shall require if it calls for information or documents to be provided to it;
- (c) Where there is no valuation falling within paragraph 10 above, the Board may obtain from the trustees or managers of the new scheme such information as will allow the Board to make an equivalent determination of the value or amount of the assets or protected liabilities of the scheme. Where the Board considers that no such information is conveniently available in respect of a new scheme, and that it is unlikely that the scheme is materially underfunded at the relevant time, then the Board may determine that the rate of the scheme-based levy and/or the rate of the risk-based levy shall be nil;
- (d) If the Board is satisfied that the new scheme is the successor to the rights and liabilities of a scheme which was an eligible scheme on 1 April 2009 (the *predecessor scheme*), or to some substantial part of the rights and liabilities of such a scheme, that 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 that the levies in respect of the predecessor scheme either have been paid or will be promptly paid, then the Board may determine that the levies in respect of the new scheme shall be nil.
- (e) For the avoidance of doubt, the calculation of P for a new scheme will be based on the failure score or other score assigned in accordance with sub-paragraphs 32(b)-(d) above that was or would have been assigned to the new scheme's employer(s) by *DBUK* in the ordinary course of its business on and as at 31 March 2008 and P will otherwise be calculated in accordance with paragraphs 31, 32 and 35 – 39 of this Schedule, save that, if the employer(s) notified in accordance with subparagraph 40(b) above did not exist as at 31 March 2008, the probability of insolvency of those employer(s) will be calculated in accordance with the provisions of subparagraphs 32(b) to 32(d) above.

### ***Schemes not yet required to file a scheme return***

41. This paragraph applies where a scheme became an eligible scheme on or before 1 April 2009 but has not by 5pm on 31 March 2009 been required by legislation or by the Pensions Regulator to complete a scheme return, with the result that there is no valuation falling within paragraph 10 above.

In such a case the Board may proceed in the like manner as is set out in paragraph 40(c) above.

### ***Scheme transfers***

42. This paragraph applies where, on any date or dates prior to 1 April 2009, an eligible scheme (the *transferring scheme*) has transferred all of its assets and liabilities to one or more other eligible schemes (the *receiving scheme(s)*) and the *transferring scheme* was not an eligible scheme on 1 April 2009, but any such transfer or transfers is not reflected in the valuation falling within paragraph 10 for the *receiving scheme(s)*. In a case to which this paragraph applies, the trustees or managers of the *transferring scheme* and the *receiving scheme(s)* shall be expected by 5pm on 30 April 2009, to provide the information specified in and calculated in accordance with the provisions set out in Annex A attached to this Schedule so as to allow the Board to make what is in its view an appropriate determination of the value or amount of the assets or protected liabilities of the *receiving scheme* at 31 March 2008, in substitution for the valuation falling within paragraph 10 above. Where that information has not been provided by the relevant deadline, the Board shall make a determination of the value or amount of the assets and protected liabilities of the *receiving scheme(s)* at 31 March 2008 in accordance with the methodology set out in section 2 of Appendix 2A to this Schedule, in substitution for the valuation falling within paragraph 10 above and shall be entitled to invoice, or re-invoice, as the case may be based on that methodology. The Board shall not otherwise be obliged to take into account any transfers of assets and liabilities between schemes, save where it was required to do so under the terms of its determination under section 175(5) of the *Act* in relation to the financial years 2007/08 and 2008/09.

### ***Partially guaranteed schemes***

43. This paragraph applies to a partially guaranteed scheme as defined in The Pension Protection Fund (Partially Guaranteed Schemes) (Modification) Regulations 2005. In a case to which this paragraph applies the Board shall where it judges it necessary obtain from the trustees or managers of the 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 of the scheme, as defined in those Regulations, in substitution for the valuation falling within paragraph 10 above. The Board may also, in calculating the levies for a partially guaranteed scheme, apply the provisions of this Schedule 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 of the scheme had been a separate scheme.

### ***Schemes in assessment***

44. This paragraph applies to a scheme in relation to which:

- (i) no later than midnight on 31 March 2009:
  - a. the Board has received a scheme failure notice issued under Section 122(2)(a) of the *Act*;
  - b. the Board has issued such a notice pursuant to Section 124 of the *Act*; or
  - c. the Board has issued a scheme failure notice under Section 130(2) of the *Act*; and
- (ii) that scheme failure notice has become binding in accordance with Section 125(1) or, as the case may be, 130(6) of the *Act* prior to the calculation or recalculation of the levies for the scheme concerned; and
- (iii) the Board has not, prior to the calculation or recalculation of the levies for the scheme concerned, received a withdrawal notice issued under Section 122(2)(b) of the *Act*, or issued a withdrawal notice under Section 130(3) of the *Act*, indicating that the scheme has been rescued.

In a case to which this paragraph applies:

- (a) The scheme-based levy and the risk-based levy in respect of the scheme shall, subject to the following subparagraphs and paragraph 45, be zero.
- (b) If, after the calculation of the levies in respect of the scheme, a withdrawal notice is issued under Section 122(2)(b) or 130(3) of the *Act* indicating that the scheme has been rescued, and that withdrawal notice becomes binding in accordance with Section 125(1) or, as the case may be, Section 130(6) of the *Act* on or before 31 March 2010, then the scheme-based levy and the risk-based levy shall be recalculated in accordance with the remainder of this Schedule and shall become payable upon the withdrawal notice becoming binding.
- (c) For the purposes of any recalculation of the levies in accordance with subparagraph (b) above, the assets and liabilities of the scheme shall, notwithstanding that there was no section 179 valuation by 31 March 2008, and provided that a section 179 valuation or a valuation prepared in accordance with section 143 of the *Act* and any regulations and guidance made under that section (excluding regulation 7(4)(a) of the Pension Protection Fund (Valuation) Regulations 2005) (a *section 143 valuation*) is subsequently provided within such time limit as the Board may reasonably require, be calculated in

accordance with paragraph 10(a) and not paragraph 10(b), but, in the case of a *section 143 valuation* taking the *section 143 valuation* in substitution for the *section 179 valuation* mentioned in paragraph 10(a).

- (d) For the purposes of any recalculation of the levies in accordance with subparagraph (b) above, if a person has assumed the former employer's pension liabilities under the scheme as described in Regulation 9(1)(a)(ii) of the Pension Protection Fund (Entry Rules) Regulations 2005, then the insolvency probability of that person, as at 31 March 2008 (howsoever calculated in accordance with paragraph 32), shall be substituted in place of the insolvency probability of the employer that suffered the insolvency event.

45. This paragraph applies to a scheme:

- (a) which paid no risk-based levy in a previous financial year as a result of provisions in the Board's determination under s175 (5) in respect of a previous financial year equivalent to those set out in paragraph 44; and
- (b) In respect of which, a withdrawal notice becomes binding in accordance with Section 125 (1) or, as the case may be, Section 130(6) of the Act between 1 April 2009 and 31 March 2010.

In a case to which this paragraph applies, then the scheme-based levy and the risk-based levy shall be recalculated as follows:

- (i) Subject to sub-paragraphs (ii), (iii) and (iv) below the scheme-based levy and the risk-based levy shall be increased by amounts equal to the scheme-based levy and risk-based levy that would have been paid by the scheme in each of the relevant financial years had the scheme never entered an assessment period.
- (ii) For the purposes of any recalculations of the levies in accordance with subparagraph (i) above, the assets and liabilities of the scheme shall, notwithstanding that there was no section 179 valuation by 31 March 2008, or 2009, as the case may be, and provided that a *section 179 valuation* or *section 143 valuation* is subsequently provided within such time limit as the Board may reasonably require, be calculated in accordance with paragraph 10(a) and not paragraph 10(b) (or the equivalent provisions) in the determination under s175 (5) in the relevant financial year, but taking the *section 143 valuation* in substitution for the *section 179 valuation* mentioned in paragraph 10(a).

- (iii) For the purposes of any recalculation of the levies in accordance with subparagraph (ii) above, if a person has assumed the former employer's pension liabilities under the scheme as described in Regulation 9 (1) (a) (ii) of the Pension Protection Fund (Entry Rules) Regulations 2005, then the insolvency probability of that person (howsoever calculated in accordance with paragraph 32 above), as at the last business day before 1 April in the relevant financial year, shall be substituted in place of the insolvency probability of the employer that suffered the insolvency event.
- (iv) Paragraph 20 (application of the levy cap) shall not apply to limit the aggregate amount of the risk-based levy after the application of subparagraph (i) above, but shall apply to limit the amount of the risk-based levy calculated in accordance with the remainder of this Schedule prior to the application of subparagraph (i).

46. In the case of a multi-employer scheme, the Board may apply paragraphs 44 and 45 with such modifications as appear to it appropriate for the purpose of ensuring that zero levies are applied to a scheme or part of a scheme which has been the subject of a binding scheme failure notice but not of a subsequent binding withdrawal notice; that appropriate levies are charged to the remainder (if any) of the scheme, and that where a scheme or part of a scheme has been the subject of a binding scheme failure notice but then of a binding withdrawal notice, levies are applied to that scheme or part of a scheme in a manner that reflects the position following that withdrawal notice. Such modifications may make special provision amongst other matters for a case in which a segregated part of a scheme (as defined in Part 4, 5, 7 or 8 of the Pension Protection Fund (Multi-employer Schemes)(Modification) Regulations 2005) has been created by virtue of an insolvency event in relation to an employer. For the purposes of this power to apply paragraph 44 of the Schedule with modifications, the service of a non-segregation notice in accordance with those regulations may be treated as equivalent to the service of a withdrawal notice.

## **Links to Appendices and Annexes**

### **Appendix 1**

Formulae for transforming section 179 valuation results to a section 179 basis as at  
31  
March 2008

[http://www.pensionprotectionfund.org.uk/draft\\_0910\\_determination\\_appendix\\_1.pdf](http://www.pensionprotectionfund.org.uk/draft_0910_determination_appendix_1.pdf)

### **Appendix 2**

Valuation methodology where s.179 valuation not filed by deadline

[http://www.pensionprotectionfund.org.uk/draft\\_0910\\_determination\\_appendix\\_2.pdf](http://www.pensionprotectionfund.org.uk/draft_0910_determination_appendix_2.pdf)

### **Appendix 2A**

Methodology for schemes which received a transfer of total assets and liabilities of another scheme prior to 1 April 2009 but did not formally notify the Board by 5pm on 30 April 2009

[http://www.pensionprotectionfund.org.uk/draft\\_0910\\_determination\\_appendix\\_2a.pdf](http://www.pensionprotectionfund.org.uk/draft_0910_determination_appendix_2a.pdf)

### **Appendix 3**

PPF assumed probability of insolvency based on failure score (UK employers)

[http://www.pensionprotectionfund.org.uk/draft\\_0910\\_determination\\_appendix\\_3.pdf](http://www.pensionprotectionfund.org.uk/draft_0910_determination_appendix_3.pdf)

### **Appendix 4**

Contingent assets

[http://www.pensionprotectionfund.org.uk/draft\\_0910\\_determination\\_appendix\\_4.pdf](http://www.pensionprotectionfund.org.uk/draft_0910_determination_appendix_4.pdf)

### **Annex A**

Requirements in respect of block transfer certificates

[http://www.pensionprotectionfund.org.uk/draft\\_0910\\_determination\\_annex\\_a.pdf](http://www.pensionprotectionfund.org.uk/draft_0910_determination_annex_a.pdf)

### **Annex B**

Requirements in respect of Deficit-Reduction Contributions

[http://www.pensionprotectionfund.org.uk/draft\\_0910\\_determination\\_annex\\_b.pdf](http://www.pensionprotectionfund.org.uk/draft_0910_determination_annex_b.pdf)

### **Annex C**

Requirements in respect of Contingent Assets

[http://www.pensionprotectionfund.org.uk/draft\\_0910\\_determination\\_annex\\_c.pdf](http://www.pensionprotectionfund.org.uk/draft_0910_determination_annex_c.pdf)

**Annexes D – F**

Pension Protection Fund required forms of contingent asset agreement  
All Pension Protection Fund required forms of contingent asset agreement  
may be accessed at:

[http://www.pensionprotectionfund.org.uk/index/pension\\_protection\\_levy-2/voluntary\\_certificates/contingent\\_asset\\_certificates.htm](http://www.pensionprotectionfund.org.uk/index/pension_protection_levy-2/voluntary_certificates/contingent_asset_certificates.htm)

**Annex G**

Amendment and replacement conditions

[http://www.pensionprotectionfund.org.uk/draft\\_0910\\_determination\\_annex\\_g.pdf](http://www.pensionprotectionfund.org.uk/draft_0910_determination_annex_g.pdf)

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