

OVERFUNDED SCHEMES

Applications for Reconsideration and Closed Scheme Authorisation

Background

This document is intended to provide guidance for trustees when making an application for reconsideration under section 151 and/or an application for closed scheme status under section 153 of the Pensions Act 2004 (the **Act**). It is not intended to provide an overview of every aspect of the relevant legislation. Trustees should seek advice from their own legal and actuarial advisers when making applications for reconsideration and/or closed scheme status. Whilst the PPF cannot give legal advice, it is willing to consider draft applications to check if they are in the correct form where such a request is made sufficiently in advance of the deadline. Trustees should liaise with their scheme caseworker if they wish to submit their application in draft.

Where a scheme's binding section 143 (entry) valuation shows that it was over 100% funded on a section 143 basis so that the PPF is not required to assume responsibility for the scheme, the trustees of that scheme:

- **may** apply for reconsideration under section 151 of the Act (a **Reconsideration Application**); and
- **must** apply for authority to continue as a closed scheme where they are unable to obtain a full buy-out quotation (a **Closed Scheme Application**).

Deadline for Reconsideration and Closed Scheme Applications

Both applications **must** be made within six months of the receipt by the trustees of the binding scheme failure notice¹ or the binding of the s143 valuation² (whichever is later). This is referred to as the **Authorised Period**.

For example if the trustees received the binding scheme failure notice on 22 May and received the binding section 143 valuation 1 June, the last day of the authorised period would be 30 November.

Applications must be made within this period. The PPF does not have the discretion to accept late applications in any circumstances.

Reconsideration Applications

Where a scheme is overfunded on a section 143 basis the trustees **may** make a **Reconsideration Application**.

The application must be made within the **Authorised Period**

The application must be made in writing and must be accompanied by:

¹ This is the letter labelled as the s.125 notice

² This is an enclosure to the letter labelled as the s.145 notice

- (a) a protected benefits quotation (**PBQ**); and
- (b) audited scheme accounts.

Broadly, a **PBQ**³ is a quotation for one or more annuities which would provide, in respect of each member, PPF-level benefits or full scheme benefits (whichever can be secured by the trustees at the lower cost for that member).

The exact content of any insurer's offer to write business may vary as between insurer but it would be expected that the quotation is a complete proposal as to the terms and cost of the insurer providing annuities on the appropriate basis for each individual.

It must be capable of acceptance by the trustees i.e. the insurer is willing to write the business. An indicative costing for providing the benefits will not constitute a **PBQ**.

In some cases, insurance companies may offer to quote on a basis different to those described above. However, a quotation on a different basis or a costing on the basis of the **PBQ** requirements with an offer to write business on different terms will not constitute a **PBQ**. The PPF does not have the power to accept a **Reconsideration Application** where there is no **PBQ**.

Trustees of schemes with a provision in the scheme rules that allows them to pay for a quotation may do so. The offer to pay for the quotation might provide a solution to the problem of obtaining quotations that go beyond an insurance company's normal terms where the insurance company is concerned that no business will result from the quotation.

Please note that if it is not possible to obtain a quotation based on PPF-level benefits then it is not sufficient to obtain only a quotation on a buy-out basis. The legislation defines a **PBQ** as a quotation or quotations for PPF-level benefits or full scheme benefits,, whichever benefits can be secured at the lower cost in the case of each member.

Please note that the above list is not intended to be an exhaustive list of points for the trustees to consider in relation to a **PBQ**. The trustees should have recourse to their own advisers when obtaining a **PBQ** and carry out the appropriate due diligence on any quotation issued to them

If schemes cannot obtain a **PBQ** then a section 151 application will not succeed.

Audited Scheme Accounts

The accounts must start with the date of the last audited scheme accounts and end with any day in the 6 months preceding the date on which the application is made.

³ Defined in s.151(8)

The schedule to the Pension Protection Fund (Entry Rules) Regulations 2005 sets out the detailed requirements for the content of the accounts.

Appendix 1 contains an application form setting out the requirements in more detail.

Section 153 – Closed Scheme Applications

Where the trustees are unable to obtain a full buy-out quotation for the purposes of section 153, they must, within the **Authorised Period**, apply to continue as a closed scheme under section 153 of the Act.

The application process is similar to that under section 151 and, indeed, may be made at the same time as a section 151 application.

Amongst other things, (see Appendix 2) the application must be accompanied by evidence that the trustees were unable to obtain a full buy-out quotation. This must usually be evidenced by a refusal on the part of any insurance company approached to quote (copies of e-mails from providers stating this will suffice). With regard to obtaining a full buy-out quote, the legislation requires the trustees to take reasonable steps to obtain that quote. What is reasonable in the context of a particular situation must be considered objectively but there is no prescriptive test of reasonableness. This is something which trustees may wish to take advice on in the light of the particular circumstances of the scheme. The trustees must be able to explain why they consider that they have taken all reasonable steps.

Where the PPF receives a section 153 application that complies with all of the necessary requirements (see Appendix 2), it **must** authorise the scheme to continue as a closed scheme.

Where the PPF authorises a scheme to continue as a closed scheme, the scheme will no longer be in an assessment period and it will be required to wind up. However, where a scheme is authorised to continue as a closed scheme it is recognised by closed scheme status that the steps that the trustees can take to wind up the scheme will be restricted.

Whilst the scheme is operating as a closed scheme, the trustees must obtain actuarial valuations of the scheme under section 156 of the Act. The first such valuation must be carried out either:

- within 3 years after the effective date of the section 143 (entry) valuation; or
- where the scheme was not authorised as a closed scheme within 3 years of the effective date of the section 143 (entry) valuation within 15 months of the **determination date**.

The “determination date” is the date immediately after the period for the review of the section 153 decision has expired or (if the decision was reviewed, reconsidered and then referred to the PPF Ombudsman) the date immediately after that review

process has completed. This is also referred to as when the section 153 decision has become binding.

Subsequent section 156 valuations must be carried out within three-year intervals afterwards.

What happens if both application(s) fail?

If an application for reconsideration under s151, or an application to continue as a closed scheme under s153, fails, then the scheme in question must wind up (or continue to wind up if wind-up was triggered before the assessment date).

Reconsideration Application decisions and Closed Scheme Authorisation decisions are reviewable matters.

More general information about the Reviews process is available on the PPF's website. Please see the Complaint Concerns Booklet in the Document Library.

You can also find an application form to request a review in this section of the website. Please see the Application Review form in the Document Library.

Any application for a review of these decisions **must be made within 28 days of the date of the decision letter**. This deadline can not be extended.

Application for Reconsideration under section 151⁴

Pension scheme registration number	
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Scheme name	
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Segregated part name/Section name (delete as applicable)	
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Scheme address	
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Employer's name	
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Employer's address	
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Trustee Details	
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Please provide name(s) and address(es) of the trustees of the Scheme	
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Date binding scheme failure notice received (s125 notice)	
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Date binding valuation notice received (s145 notice)	
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I enclose a copy of the protected benefits quotation[s] which has/have been obtained
Y/N

Date of quotation	
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Liability commencement date*	
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* this date must match the end date for the audited accounts

I enclose a copy of the audited scheme accounts required under s151 Y/N

Accounting period	
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Cost quoted in the protected benefits quotation	
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Value of the assets of the scheme adjusted to take into account any outstanding liabilities of the scheme which are not covered by the protected benefits quotation which accompanies	
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⁴ See regulation 24 of the Pension Protection Fund (Entry Rules) Regulations and section 151 of the Pensions Act 2004

the application	
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Estimated cost of winding the scheme up	
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Date this application was sent to the PPF	
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Application for Authorisation to continue as a closed scheme⁵

Pension scheme registration number	
Scheme name	
Segregated part name/Section name (delete as applicable)	
Scheme address	
Trustee Details	
Please provide name(s) and address(es) of the trustees of the Scheme	

Describe steps taken to of the steps they have taken to obtain a full buy-out quotation

Please complete the table below with the details of any person the trustees have approached to obtain a full buy-out quotation and when the approach was made

Name	Address	Date of approach	Tab in evidence bundle

I have enclosed copies of the requests made by the trustees of the scheme in respect of which the application is made for a full buy-out quotation in respect of that scheme and any refusal received in response to such a request.

Y/N

⁵ Regulation 2 of the Pension Protection Fund (Closed Schemes) Regulations 2007

Date of application

Signed