

January 2010

The Pensions
Regulator 

Consultation on revised guidance

Winding up: avoiding delays

Good practice guidelines

Our regulatory guidance is designed primarily to be viewed online. This is a print version of draft updates to the guidance originally issued in Summer 2008.

www.thepensionsregulator.gov.uk

Winding up: avoiding delays

This guidance provides suggestions of good practice to help trustees and others meet the two-year time frame in relation to **winding up occupational pension schemes**.

It concentrates on common, complex areas that can delay the wind-up, rather than looking at each activity involved in the process.

The guidance is also relevant to trustees of live schemes as it is good practice to ensure a scheme is well administered whilst ongoing, regardless of whether winding up is being considered.

Our *Trustee toolkit* also provides information on the wind-up process and the PPF. The PPF and FAS also publish good practice guidelines which can be found here:

Key points

- The regulator expects that schemes already winding up at June 2008 should complete at least the key activities as soon as possible and no later than June 2010, and schemes commencing winding up following publication of this guidance in June 2008 should complete at least the key activities within two years.
- The guidance is aimed at those with some experience or knowledge of the wind-up process – trustees, administrators, insurers and professional advisers.
- We advise those with limited knowledge or experience to complete the winding-up modules on the *Trustee toolkit* first.
- To avoid unreasonable delays we encourage trustees to adopt a pragmatic and proportionate approach, where appropriate, whilst working in line with the provisions of the trust deed and rules, their fiduciary duties and any legislative requirements.
- Where not directed under Section 231a of Pensions Act 2004 we encourage parties to have a project plan in place in order to ensure that the two-year time frame can be achieved.

We are aware that the reconciliation of contracted out liabilities is a time consuming task and advise that surrendering the contracting out certificate and beginning the reconciliation process are among the first activities undertaken in the wind-up process.

Responding to the consultation

Responses may be made in either of the following ways:

By email to: **windingupguidance@thepensionsregulator.gov.uk**

(Preferably documents should be in MS Word format)

By post to:

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c/o Regulatory policy and programmes

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We may need to share the feedback you send us within our own organisation or with other Government bodies. We may also publish this feedback as part of our response to the consultation. If you wish your comments to remain anonymous, please state this explicitly in your response. If you wish your response to be kept confidential, please make this known and we will take the necessary steps to meet your request.

However, please be aware that, should we receive a formal request under Freedom of Information legislation, we may be required to make your response available. When responding, please advise whether you are responding as an individual or on behalf of an organisation (and if the latter, which organisation).

Closing date

This consultation document was published on **5 February 2010**. The closing date for responses to this consultation is **5 May 2010**.

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Introduction

This guidance outlines suggestions of 'good practice' to enable at least the key activities of a defined benefit (DB), defined contribution (DC) or hybrid occupational pension scheme to be completed as soon as reasonably practical and certainly within two years.

The key activities for DB schemes are:

- serving a debt on the employer;
securing pensioner benefits;
identifying the individual remaining (non-pensioners) share of assets and obtaining terms from an insurer to secure a guaranteed pension;
conducting a final actuarial valuation;
issuing option letters to non-pensioners or details of insured benefits, as appropriate.

The key activities for DC schemes are:

- Receipt or recovery of all member/employer contributions due from the employer.
- Establishing that all pensioner members have annuity policies set up in their own name providing the correct scheme benefits.
- Production and sign off of final accounts accounting for and reconciling all assets/cash held in trustee bank accounts and investment manager/provider accounts.
- Establishing that all other beneficiaries have been identified, fund values determined, secured and statements issued.

The two-year time frame is in line with the Pensions Regulator's (the 'regulator') expectations set out in the statement *'The regulation of schemes in wind-up and in a Pension Protection Fund (PPF) assessment period'*.

We've produced this guidance after seeking views from industry specialists, administrators and insurers on the complex issues that can delay wind-up and on which they would find guidance helpful. We have not set out every activity or consideration required in the wind-up process.

This 'good practice' guidance is illustrative and it may be that a different approach is appropriate for each scheme. Parties should, therefore, consider the guidance in relation to their own scheme. Trustees remain ultimately responsible for decisions taken during a scheme wind-up.

Areas and considerations covered

- PPF/FAS lead on enquiries
- Administration
- Planning a scheme wind-up
 - Project planning
 - Accountable person
 - Communication
 - Reporting to the regulator
- Conduct of outgoing administrators: handing over schemes in wind-up
- Data cleansing
- Member tracing
- Surrendering the contracting out certificate
- Reconciling contracted out liabilities
- Member option exercises
- Schemes without a trustee
- Buying out annuities

The guidance is aimed at parties who have some experience or knowledge of the wind-up process (trustees, administrators, insurers and professional advisers). It's vital that all parties work together to ensure the speedy progression of tasks and appropriate decision making.

As well as being helpful for new scheme wind-ups, we expect that schemes already in wind-up can benefit. We acknowledge that these schemes will already be undertaking some of the tasks involved but that this guidance will help, for example in identifying where tricky issues can arise and by outlining possible solutions in how to deal with them.

Ongoing schemes

It's also aimed at parties involved in the management and administration of an ongoing scheme. For example, for live schemes consideration should be given to activities such as regular member tracing and data cleansing exercises to ensure that records are as accurate as possible.

This means that if the scheme faces wind-up in the future, unnecessary delays are avoided.

Trustee toolkit

For those trustees with little knowledge of scheme wind-up (lay trustees and less experienced professional trustees) e-learning modules are available. The modules cover the considerations and tasks required during the wind-up process for DB schemes (with and without a solvent employer) and DC schemes.

Trustees should work through the relevant learning module at: www.trusteetoolkit.com before considering the good practice guidance outlined here.

Relevant organisations

Although this guidance sets out the regulator's approach, similar approaches are taken by:

- the Pension Protection Fund (PPF), in relation to schemes passing through an assessment period; and
- the Department for Work and Pensions (DWP) and the PPF (as scheme manager for FAS) in relation to schemes qualifying for the Financial Assistance Scheme (FAS),

unless otherwise stated.

The PPF has produced good practice guidance specifically for trustees in relation to schemes in an assessment period, available on the PPF website.

The FAS provides regular trustee updates and good practice guidelines for qualifying schemes.

General approach

We acknowledge that there may be more than one approach to each of the issues outlined that provides an acceptable solution. The best approach will depend on the characteristics and funding position of the individual scheme.

In general, we consider it ‘good practice’ that trustees consider applying pragmatic and proportionate approaches, where appropriate, whilst operating in accordance with the provisions of their trust deed and rules, their fiduciary duties and any legislative requirements.

This should ensure effective and efficient management of the scheme through wind-up and, in turn, enable at least the key activities to be completed as soon as reasonably practical and within two years.

It will also help guard against excessive costs, particularly if decisions are based on an analysis of the costs of implementing the approach versus the benefits to members of doing so. Trustees should always ensure they maximise the security of members’ benefits and should aim to obtain the best value for money.

It is not the role of the regulator to act as a quasi-trustee and advise parties on decisions they should make – nor to provide approval of a specific course of action. This guidance, along with the statement, is designed to give parties an indication of what we would consider reasonable in certain circumstances.

We will take a good deal of comfort that parties have acted reasonably where they can demonstrate proper consideration of this guidance, where appropriate to do so, that enables a two-year time frame to be achieved.

However, it should be borne in mind that taking account of this guidance does not hinder the regulator’s discretion to take action where unreasonable delays continue, and that we consider there are few exceptions to the two-year deadline.

Trustees' liability

We understand there may be some tensions between trustees taking pragmatic and proportionate decisions and the need for them to guard against future legal challenge and personal liability claims.

We therefore draw trustees’ attention to s61 of the Trustee Act 1925. This means that where trustees have made a decision which is subsequently challenged on the basis of trust, the court has the power to relieve trustees of liability for the breach where it is satisfied it is proper to do so and that they consider trustees have acted honestly and reasonably.

We would expect the trustee’s legal adviser to provide appropriate advice on this point.

Trustees may also wish to consider taking out individual indemnity insurance.

Unavoidable delays

As a general rule, we would not consider any of the issues outlined in this guidance as acceptable reasons for delays in the wind-up process.

However, we do acknowledge that, in some cases, there may be issues which do cause unavoidable delays, for example:

- scheme specific legal issues, which involve court actions;
- industry wide legal issues, which involve court actions underway;
- when early wind-up is not in the members' best interests, for example because of early redemption charges on a particular investment policy;
- *when obtaining terms to securing of members benefits with an insurer is evidenced as being impractical. (we would expect there to be documented evidence of the difficulties encountered and the plan to keep the matter under close scrutiny to ensure benefits are secured as soon as possible)*
- when further distributions of funds on employer insolvency are expected (although we will expect trustees to have progressed the other preceding aspects of the wind-up prior to the final allocation of monies to members in this circumstance); and
- when there is an outstanding member complaint in respect of a particular scheme with the Pensions Ombudsman.

Where parties come up against such obstacles they should contact the regulator through the usual reporting requirements for schemes in wind-up (s72a of the Pensions Act 1995), providing an explanation of the issue.

We will be proportionate when considering the merits of each case before deciding on the most appropriate course of action. Although reporting under s72a is a trustee duty, we recognise that it's often delegated to a third party.

Management of the progress of the appropriate tasks for FAS will be provided by the PPF (as FAS scheme manager). FAS schemes which may not currently conclude the completion of the key activities until after legislation allows are expected to have progressed the other preceding aspects of the wind up pending the transfer of the scheme to FAS at the date to be agreed with FAS.

Good practice guidelines

PPF/FAS lead on cases/enquiries

There has been a recent operational change in that any cases or enquiries that are in progress at the regulator for schemes being actively managed through transition and/or assessment are be passed to PPF/FAS for stewardship.

PPF/FAS caseworkers will ensure that the matters cited in the case/enquiry are reviewed and incorporated into the project plan for transition.

If there is a wider regulatory issue then the matter will not pass to FAS for stewardship. Moreover, the FAS caseworker will continue to refer breaches of law or other matters that fall within the exclusive remit of the regulator back to the regulator.

Administration

The regulator is committed to raising the standards of pension administration – and good administration is key in reducing the time schemes take to wind up.

Where a scheme has been well administered prior to wind-up, we expect that few of the issues outlined in this guidance should continue to give cause for delays during wind-up.

We consider it good practice that relevant parties address administration issues as a matter of course whilst the scheme is ongoing. This will also help avoid creating unreasonable delays should the scheme wind-up. ‘Good practice’ would include, for example:

- ensuring member records are completed to a standard such that the quality of the data is not a cause of delay in the wind-up process – for example by including regular existence checks;
- carrying out a data audit, including checking to ensure the right benefits are being paid to the right people, as well as ensuring the records of deferred members are up to date; and
- ensuring robust documentation is available, for example trustee minutes recording rule changes and decisions taken, in line with the statutory requirements, and putting scheme changes into the deed as soon as possible (in addition to any other requirement under the governing scheme documentation).

Trustees should also consider putting in place robust administration contracts and/or service level agreements (SLAs) with service providers and professional advisers. The SLAs should cover quality and accuracy as well as timeliness in the required services. To help parties consider their requirements, the Pension Management Institute’s model administration agreement provides an example.

Ensuring the scheme is well administered, whether wind-up is being considered or not, should be regarded as the norm for parties managing pension schemes. This should include undertaking regular reconciliation exercises (see the regulator's record-keeping guidance at <http://www.thepensionsregulator.gov.uk/pdf/record-keeping-con-doc-2010.pdf>) HMRC provide the following services with regard to the contracted-out part of members' benefits:

- Accrued Guaranteed Minimum Pension Liability Service (AGLS)
- Contracted Out Contributions/Earnings Information Service (COCIS)
- Dealing with any contracted out queries prior to wind up will reduce the amount of time spent reconciling GMP liabilities during the two year target.

Further information can be found on the HMRC website at:
<http://www.hmrc.gov.uk/nic/coeg-pension-scheme.htm>

This is likely to involve an upfront cost for some schemes. However, we do not consider this an increased burden on schemes, rather an advancement of costs that would otherwise be incurred in wind-up to business as usual.

We stress the importance of good administration in ongoing schemes as it's more likely that trustees will be in a better position to make administrative improvements whilst the scheme is ongoing and has a solvent sponsoring employer.

Planning a scheme wind-up

Project planning

The regulator considers that good planning is key to an efficient wind-up. Where a project plan is put in place it is more likely to speed up the wind-up process. For example a plan can help parties identify and address problems at the earliest opportunity, thereby reducing future delays, and costs, of an extended wind-up. It should also reflect the nature, complexity and type of the scheme.

Trustees should note that, where a scheme begins to wind up during a recovery plan period, they are required to prepare a winding-up plan as soon as reasonably practicable under s231A of the Pensions Act 2004.

A well planned wind-up can address some of the difficulties involved in the wind-up process, by:

- providing clarity and overcoming confusion over division of responsibilities, by having good communication channels and regular reporting in place;
- setting out in advance the tasks to be completed, specifying which tasks are dependent upon the completion of others, and identifying the priorities and sequencing of what needs to be done, and when;
- establishing the budget available to allow the wind up tasks to be carried out cost effectively and in accordance with the schemes ability to fund such costs.
- ensuring that tasks are undertaken concurrently wherever practical;
- ensuring an appreciation of the complexities involved, so that delays do not occur while options are considered; and
- ensuring contingency planning is considered.

Rather than producing a generic plan – which may not be appropriate for all schemes – we have provided a chart outlining the main tasks in the wind-up process and highlight when in the process they should be considered in order to meet the two-year timeframe. The chart will help parties develop their own scheme plans by allowing them to take into account the relevant characteristics of their scheme and available resources.

To ensure the wind-up process is planned to meet a two-year timeframe, trustees should:

- take steps to ensure a project plan is in place at the earliest opportunity, for example:
 - for new wind-ups, to allow for completion of at least the key activities within a two-year timeframe; and
 - for existing wind-ups, to allow for the remaining steps to be completed as soon as possible and certainly within a two-year period from the publication of the June 2008 guidance;
- ensure the project plan is fit for purpose and includes appropriate internal controls, for example to ensure risks are identified to allow for mitigation: our guidance on Internal controls may help: Regulatory guidance/Subject listing/Internal controls.

Accountable person

Parties involved in a scheme wind-up should be clear about who is managing the process and driving it forward.

Appointing someone to act as project manager who is accountable to the trustees for delivering the plan for the wind-up often assists in speeding up the process. We are aware that such an appointment is already common practice by many professional trustees.

We would regard it as ‘good practice’ for trustees to consider appointing a person to act as project manager to drive the wind-up process forward. This could be a member of the trustee board or a project management professional.

In doing so the cost of such an appointment should be balanced with the benefits that a wind-up within a two-year timeframe brings.

Where an appointment is made, the person appointed should:

- have a clear remit which is communicated to all the relevant parties;
- be given sufficient authority by the trustees to drive forward the wind-up where this is appropriate and permitted under trust rules (for example on delegating administrative decisions, authorising expenditure), thereby enabling accountability for its progression; and
- be required to report on progress, and issues arising, to trustees and, where appropriate, other relevant parties including members.

It should be borne in mind, however, that even if decisions are delegated, the trustee board remains responsible for the scheme wind-up and decisions made during the process.

Communication

Timely, prompt and relevant communication during the wind-up process is also of key importance to ensure it can be completed speedily.

Early communication between all parties is vital to ensure that initial project plans accurately reflect the timescales of work being undertaken and by whom.

It's important, as well as being good practice, that parties – including the trustee board – meet regularly to ensure a common understanding of issues, enable effective decision making and achieve progress thereby supporting an efficient and well managed wind-up. Without regular meetings timetables can slip, for example, because of delays in decision making.

Some of these communication activities should be included in any project plan, for example:

- for insured schemes: trustees should ensure there are clear lines of communication in place with the appropriate individual(s) dealing with the scheme within the insurer's discontinuance team(s); and
- for non-insured schemes: trustees should ensure there are clear lines of communication in place with the appropriate individual(s) dealing with the scheme administration, whether it is an in-house pensions manager or a third-party administrator.

Trustees must also comply with their statutory disclosure responsibilities (The Occupational Pension Schemes (Disclosure of Information) Regulations 1996 – SI No 1655) in relation to regular communication with members about the scheme wind-up. These responsibilities should be included in any project plan.

When a scheme is in wind-up it's an uncertain time for members. Therefore, we would regard it as good practice for trustees to actively consider whether more regular communication with members is appropriate to ensure they are kept up to date with developments.

Regular contact could also reduce the number of member enquiries that have to be dealt with during the wind-up.

Reporting to the regulator

Trustees (or any party to whom they delegate this action) are required to inform the regulator about a scheme wind-up. To inform us a scheme has started to wind up or that the wind-up has been completed please update your scheme details via *Exchange*.

If you've recently completed your scheme return then you'll already be familiar with *Exchange*. Simply go to *Exchange* and log on using the same email address and password that you used to complete your scheme return. This will take you straight through to your scheme details and the new scheme options available. Please contact us if you don't currently have access to your scheme's details.

Section 72A wind-up reports are available to update on *Exchange*.

The PPF/FAS caseworker will guide trustees on the appropriate level of reporting for PPF and FAS schemes.

These regulatory reporting requirements should be included in any project plan.

Notwithstanding these reporting requirements, we aim to ensure the information we collect helps to prevent parties from providing duplicate information and incurring avoidable costs.

We do this by, for example:

- reviewing the information requested and ensuring it is relevant and necessary; and
- sharing relevant information with other bodies, where appropriate.
- In particular in relation to the scheme return we will not take action for failure to complete it in the following circumstances:
- for DB and hybrid schemes – a scheme return received by the trustee after the scheme commenced wind-up need not be completed if wind-up is completed by the following 31 March;
- for DC schemes – a scheme return received by the trustee after the scheme commenced wind-up need not be completed if the scheme completes wind-up within three months of the receipt of the scheme return.

It's important in both cases that the trustee informs the regulator that the scheme has completed wind-up. Of course, if the wind-up should be delayed beyond the aforementioned timescales then the trustees should complete the scheme return as soon as possible.

Conduct of outgoing administrators: handing over schemes in wind-up

Trustees own the information held by administrators in relation to the scheme and its members, for example benefit calculations and member files.

However, delays to wind-up can occur if there is no contractual arrangement in place to ensure an effective and efficient transition period where there is a change of administrator. One aspect of the transition should be to capture important scheme knowledge so as to alleviate delays in the process.

For ongoing schemes, delays can be mitigated by the inclusion of a handover process in any contract and SLA between trustees and service provider.

The requirements set out in the contract should allow for a smooth transition between administrators in the event of a change of administrator, and should include issues such as:

- a handover plan, including time frame for recourse to the previous administrator;
- confirmation of information ownership (including member records, backing benefit calculations);
- costs of handover, ensuring they are reasonable;
- data format requirements, as charges and delays may be incurred if re-formatting is required and has not been catered for in advance;
- an arbitration clause; and
- a process for dealing with a breakdown in relationship between parties.

Data cleansing

The wind-up process usually highlights deficiencies and errors in the scheme data and will usually necessitate a data cleansing exercise.

The extent to which data cleansing is required will vary according to each scheme and whether any data cleansing activities had been carried out prior to winding-up.

For the sake of brevity, we include uncertainty over the benefit provision within the overarching term 'data cleansing'.

We are aware of the concerns parties have if they do not take adequate steps to verify data as, for example, they may become liable to members for any reduced pension or they may be the subject of a member complaint to the Pensions Ombudsman.

It is the trustees' duty to ensure members receive the correct level of benefits. They should therefore consider, along with their advisers (including administrators), the appropriate level of data cleansing and benefit audit required taking into account the impact of the exercise on members and the level of their benefits.

As this can be a time consuming exercise it should be considered at an early stage in the process.

The following activities should be considered as part of the data cleansing exercise:

- the use of automated data validation routines to check the consistency of one piece of data against another, as well as highlighting missing data;
- comparisons of the various trust deed and rules provisions against historic administrative calculation procedures to highlight potential anomalies; and
- ensuring that communications, both formal and informal, from trustees or other relevant parties remind members to notify:
 - any changes in personal details; and
 - where there is any disagreement with the data in annual communications.

For ongoing schemes, it is less often recognised that the quality of member records is vitally important as, for example, they form the basis of the actuarial valuation. In severe cases, data errors may also impact on investment strategy. Therefore, to avoid poor quality data, trustees should consider making an upfront investment to rectify any data issues and then carry out data review exercises on a regular basis.

Such investment would be rewarded should the scheme enter wind-up or, if ongoing, if a bulk transfer exercise were undertaken.

Example

On a data audit the payroll records and administration records were compared. For this 2,000 member scheme there were 200 extra records.

There was no alignment, and no annual reconciliations had been made between the scheme and the separate employer payroll.

The data audit revealed that a scheme was paying one pensioner £500 per annum too much. The total cost saved by the scheme paid for the data audit.

The regulator has issued guidance on record-keeping which can be found at:
<http://www.thepensionsregulator.gov.uk/pdf/RecordKeepingPDF.pdf>

Member tracing

Decisions on the extent to which member tracing should be performed during wind-up should be made taking account of the trustees' duty to ensure that members receive the correct level of benefits when they fall due.

To ensure the appropriate approach is taken, trustees may wish to consult their service providers and professional advisers on how to achieve the best results for their particular scheme, taking into account the costs of each option as against the benefits to the members.

Any prior action and the quality of the scheme data should also be taken into account.

For example, if any recent member tracing activity has been carried out to update member records it may be appropriate to consider tracing only those members who have not responded to letters or other contacts from the pension scheme, as there would be a degree of confidence that all others have been traced.

Example

A scheme with a high proportion of untraced members, about 50 out of a 200 member scheme.

Initial tracing activity reduces the number of untraced members to only five, at a cost of approximately £25 per head. Tracing the remaining five members (who all have trivial benefits in the scheme) is expected to cost an additional £50-£100 per head.

The trustees need to consider whether the additional costs of tracing the remaining five members is a good use of the scheme's resources.

There are a number of tracing tools and methods that can be used. The most common are:

- consulting the wider membership and former employer/ trustee if appropriate, asking if they can help trace members;
- advertising in appropriate local and national newspapers – for example, using local press around former employer locations;
- using the DWP pension tracing service to help trace members (this may be particularly useful for tracing deferred members)
- use of the National Fraud Initiative;
- use of a professional tracing agency
- use of online directory enquiries to attempt a trace, for example using 192.com; and
- use of social networking sites

Trustees may, before a scheme winds up, place statutory notices in relevant publications, for example local newspapers, trade journals as well as the London and/or Edinburgh Gazette, to put members on notice that the scheme is in wind-up and that they should provide details if they believe they have benefits within the scheme which have been overlooked.

Using this route can also provide a degree of protection to trustees in demonstrating their effort to trace members. See s27 of the Trustee Act 1925.

Where there are members who have not been traced, trustees should ensure each member's benefit is secured, for example with an insurance company, even though the member may never materialise. This action provides protection to both members and trustees.

For ongoing schemes, consideration should be given to including member tracing exercises as part of any regular data cleansing activities.

Surrendering the contracting-out certificate

Surrendering a scheme contracting out certificate is a crucial necessary step for reconciling any contracted out liability during scheme wind-up. This applies equally to defined benefit and defined contribution schemes.

Delays have been attributed to:

- confusion over the process of surrendering the certificates, as notices should be served on employees before surrender is possible;
- the employer incorrectly assuming that they do not have to surrender the contracting out certificate;
- inaccurate completion of the surrender form;
- the fact that the employer is insolvent by the time the certificate is surrendered – although this may be unavoidable as it could be the reason for the scheme winding up; and
- in respect of DC schemes, the Pension Schemes Service (PSS) not holding the correct participating employer details.

Trustees and employers should ensure this is one of the first actions to be carried out in the wind-up process. The relevant form to surrender a contracting out certificate is the APSS155 form entitled 'Election to vary a contracting out or appropriate scheme certificate' and can be found on the PSS website. This form is used when there are changes that affect the contracting out certificate and therefore there are some sections that will not be applicable. If you have any queries on completing the form please contact the helpline on 0845 600 2622; if the form is completed incorrectly or has not been duly signed it will be returned and this will cause unnecessary delay.

If the contracting out certificate can be cancelled (as the employer is insolvent and there are no employees to consult regarding changing the terms of their employment) the form does not need to be completed but you must still contact PSS.

Until the contracting out certificate is surrendered or cancelled, it is not possible to commence full reconciliation of contracted out liabilities.

Reconciling contracted-out liabilities

One of the main issues that has been outlined as causing delays in wind-up is in reconciling, with NISPI (National Insurance Services to Pensions Industry), pension scheme data on the following:

- membership lists; and
- the Guaranteed Minimum Pension (GMP) or protected rights amounts themselves, between those held by the scheme and those held by NISPI. A discrepancy in the level of contracted out liability held between the two sets of member records can occur because of a difference in, for example:
 - the start and end dates of the contracting out period; or
 - the level of contracted out earnings that have been recorded.

We are aware that reconciliation of these liabilities can be a time-consuming task, and we stress that it should be commenced at the very beginning of the wind-up process as there are likely to be impacts on other tasks required during the wind up.

We strongly advise early contact with NISPI to discuss timescales and key individuals who will help the scheme through the reconciliation process including helping the scheme to utilise the shared workspace facility where appropriate: <http://www.hmrc.gov.uk/shared-workspace/index.htm>

All reasonable steps to correctly calculate GMPs, or protected rights if appropriate, and to reconcile membership lists should be taken after consideration of the most proportionate approach that provides the best value for money to the members.

Consideration should be given to:

- working with NISPI on deciding on action in relation to individual entitlement where member lists held by the scheme and NISPI differ – in these cases a proportionate approach should be considered; and
- deciding upon a tolerance level that is appropriate for both the size of scheme membership and the calculation of the GMPs or protected rights.
- Both of the above can be considered when undertaking tripartite meetings between trustees, service providers/insurers and NISPI customer account managers. This will enable efficient resolution of any reconciliation issues and should include the benefits of using the shared workspace facility.

For ongoing schemes consideration should be given to:

- the benefits of undertaking reconciliation exercises prior to the point at which a scheme winds up, using the free services available through HMRC, which should aid confidence that member records are correct and reduce the number of queries to NISPI if the scheme subsequently winds up. These services are CICOS and AGLS
- ensuring that all state scheme premiums (SSPs) have been correctly recorded and paid. This should include, where necessary, liaison with NISPI to ensure that any overpayments (including duplicate payments) are agreed and returned for inclusion in the scheme's assets, if appropriate; and
- ensuring bulk and individual transfers are recorded, particularly with NISPI.

Further information is available in the Termination of Contracted-out manual CA 14 at: <http://www.hmrc.gov.uk/pdfs/nico/ca14.pdf>

The regulator is investigating in conjunction with HMRC and NISPI how the process of reconciliation can be further improved.

Member option exercises

Most schemes provide members with options on how they can take their pension rights as one of the final stages of winding up. Where options are offered, members have up to three months to inform the trustees what they want to do, although in reality this can take longer as members request more time to allow them to receive quotes and advice.

Legislation also makes it clear that some methods of discharge require member consent and others do not (see s74 of the Pensions Act 1995 and regulation 7 of the Occupational Pension Schemes (Winding Up) Regulations 1996 (SI 1996 No. 3126)).

For example, trustees are not required to provide members with options where deferred annuities are bought. However, trustees should ensure that benefit options should be preserved in the new policy – for example in relation to members who wish to take transfers or early retirement.

Where trustees take this action they should still observe the statutory disclosure requirements in relation to wind-up, for example, ensuring members are made fully aware of the position and that they continue to have the same benefits as before, including any early retirement and transfer options.

We do not endorse any particular approach. However, where timing is of the essence, for example where the two-year timeframe might be in jeopardy, trustees should identify what they are required, and not required, to do and take the most appropriate course of action for their members.

Once arrangements have been made for securing the members' benefits, the scheme administrator should notify NISPI by completing the appropriate schedules. More information is available in the Cessation of Contracted-out Pension Schemes Manual CA15 at: <http://www.hmrc.gov.uk/leaflets/ca15.pdf>

Schemes without a trustee

Where there is no trustee in place (for example where the corporate trustee company is dissolved or all the trustees have resigned) then the regulator has the power to appoint a trustee.

In order for the regulator to make such an appointment we need to be satisfied that:

- the occupational pension scheme is established under trust;
- the appointment is necessary and falls within our powers to appoint a trustee; and
- we have an understanding of the type of appointment and level of work required so that the trustees on our register can provide a realistic tender.

The regulator operates a tender process to ensure the most appropriate independent trustee appointment is matched to the scheme.

In order to ensure the independent trustee is effective and providing value for money, we are proactive in ensuring that, for schemes in wind-up, an appropriate plan is in place to meet the time frame and budgets are managed effectively.

For more information, contact our trustee services team at:
trustee.services@thepensionsregulator.gov.uk

Where a party, for example an insurer, is responsible for a number of schemes, none of which has a trustee, we are able to appoint a trustee to take responsibility for all these schemes on a bulk portfolio basis. This also helps to keep costs low.

In order to appoint an independent trustee the insurer should make an application, in writing, to our trustee services team, providing the following information:

- scheme name;
- member name;
- employer name;
- where there is more than one policy per scheme these should be batched together to enable the appointment of the same trustee to the batch of policies;
- policy number;
- fund value;
- type of scheme (if all of the same type, for example, contracted in money purchase, this could be stated at the top of each page of schemes); and
- copy of trust deed and rules.

Application forms are available on our website:

Appointing a Trustee form:

<http://www.thepensionsregulator.gov.uk/pdf/appointingTrustee.pdf>

Application to be appointed as a trustee scheme member:

<http://www.thepensionsregulator.gov.uk/pdf/T4trusteeschememember2006.pdf>

Application to be appointed as a third-party trustee:

<http://www.thepensionsregulator.gov.uk/pdf/T5thirdpartytrustee2006.pdf>

Buying out annuities

To avoid unnecessary delay the following should be borne in mind:

- trustees should ensure they know what type of annuity is required and seek competitive quotes (within a similar time frame) to ensure the best deal for members is obtained;
- all information required for an annuity quote should be supplied to the insurer;
- trustees, or other relevant parties, should agree a timescale with the insurer in which they must provide the annuity quotes;
- plans should be put in place for dealing with quotes when they are returned, for example ensuring deadlines are agreed for accepting quotes and setting up mail merge to members; and
- once quotes are accepted, the insurer should be provided with all the information needed to administer the annuity, such as BCE3 Certificates.
- Schemes that qualify for FAS are not currently permitted to purchase annuities unless:
- they entered a 'binding commitment' to purchase annuities on or before 26 September 2007; or
- an application is made in writing to the FAS operational unit and permission to purchase annuities is granted.

Details of what constitutes a binding commitment, and the relevant application form, are available from the PPF as FAS scheme manager. Where parties are unsure of what action should be taken they should discuss it with their FAS caseworker.

Annex 1

Key changes to our policy document *Winding up: avoiding delays*

This document highlights the substantive changes from the policy document *Winding up – avoiding delays* published by the Pensions Regulator during 2008.

For clarity in reading this document and referring to the relevant paragraph, a set of bullet points on a page is taken as a paragraph. Also, one sentence in isolation is also taken as a paragraph.

Location of changes

Page	Paragraph	Bullet point	Summary of change
2	9	5	Added 'Where not directed under section 231a of the Pensions Act 2004'
4			Added all bullet points under 'Key activities for DC schemes are'
5	2	1	Added 'PPF/FAS lead on enquiries'
5	2		Removed bullet point on GMP equalisation
6	3	2	Added 'and the PPF (as scheme manager for FAS)'
8		4	Added bullet point 4 under 'Unavoidable delays'
8			Added entire final paragraph
9			Added paragraphs 1 – 3
10	1		Added all text and bullet points from 'This should include' to end of paragraph
10	7	1	Added 'providing clarity and overcoming confusion' to bullet point 1
10	7	3	Added entire 3 rd bullet point
13	1		Added 'The PPF/FAS caseworker will guide trustees on the appropriate level of reporting for PPF and FAS schemes'

15	6		Added 'The regulator has issued guidance on record-keeping which can be found ...'
15	7		Under Member tracing, added "...when they fall due' in first sentence
7	3 & 4		Added all of paragraphs 3 and 4 from 'Trustees and employers should ensure...' to '...but you must still contact PSS.'
18	1		Added '... as there are likely to be impacts on other tasks required during the wind up' to end of paragraph 1
18	4	1	Added 'working with NISPI ...'
18	7		Added the entire last paragraph 'The regulator is investigating ...'
21	2		Added '...PPF and FAS as scheme manager.' to last paragraph