

# Consultation document

*Document 1:*

**The regulation of schemes in wind-up and in a Pension Protection Fund assessment period:** A statement by the Pensions Regulator, the Pension Protection Fund and the Department for Work and Pensions in respect of the Financial Assistance Scheme

*Document 2:*

**Avoiding delays in winding up pension schemes:** Good practice guidelines from the Pensions Regulator

**3 March 2008**

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## Introduction

The Pensions Regulator ('the regulator'), the Pension Protection Fund (PPF) and the Department for Work and Pensions in respect of the Financial Assistance Scheme (FAS) fully support Government aims of reducing the time occupational pension schemes take to wind up or pass through a Pension Protection Fund (PPF) assessment period, as this will:

- ensure scheme assets are maximised, and levy payments reduced, by not incurring the costs of lengthy wind-up or passage through a PPF assessment period; and
- provide members with certainty from the earliest opportunity, for schemes winding up, about the benefits they will receive.

References to schemes in wind-up include those qualifying for FAS.

All three organisations are aware of the importance of a unified voice. We are committed to working together to ensure our approach to common issues is aligned, and supports parties involved in the management and administration of schemes during wind-up, applying for assistance through FAS or passing through a PPF assessment period.

To this end we have produced a tripartite regulatory statement. This sets out our respective expectations; how we will provide support; and when and how we will intervene.

We also recognise the value to parties of accessible, practical guidance to help them achieve the Government's aims. While some parties already demonstrate good practice in winding up pension schemes and completing the PPF assessment period, we are acutely aware that too many take a disproportionate amount of time to complete the activities involved. Our aim is to assist parties in minimising such delays.

The regulator has therefore produced guidance which provides good practice guidelines on the common, more difficult issues that may cause delay during the wind-up process. This has been developed after seeking views from industry on the issues where guidance from the regulator was considered to be most helpful. The regulator's good practice guidance is attached as part of this consultation.

The PPF is currently developing good practice guidance tailored specifically to cover schemes in a PPF assessment period, and this will be published in due course.

## **Approach to developing the tripartite regulatory statement**

The regulator, PPF and DWP in respect of FAS have a shared interest in ensuring that scheme wind-ups and passage through PPF is completed in a timely manner. Together we have produced the attached statement setting out a co-ordinated approach and commitment to the three organisations working together, where appropriate, in order to support parties in meeting our respective expectations. These are:

- for schemes outside the PPF already winding up – at least the key activities are completed as soon as practically possible, and certainly within a two-year period from the publication of these documents;
- for schemes outside the PPF commencing wind-up from now, for example defined contribution (DC) and defined benefit (DB) schemes where the employer is solvent – at least the key activities are completed within a two-year period;
- for schemes that qualify for FAS – they should be in a position to transfer all residual assets and membership data as soon as legislation is in place and certainly within two years;
- for schemes in a PPF assessment period – parties should put in place the necessary arrangements to ensure swift passage through assessment, as it is likely to last for a minimum of one year, and trustees are expected to have completed all tasks as soon as reasonably practicable within the following twelve months; and
- that trustees of ongoing schemes should consider the steps that could be taken to facilitate a more expedient process in the event that their scheme were to wind up.

The statement is aimed at all parties involved in scheme wind-up and in schemes passing through a PPF assessment period (e.g. trustees, administrators, insurers and professional advisers). It applies to all types of occupational pension scheme, whether DB, DC or hybrid.

## **Approach to developing the regulator's good practice guidance on avoiding delays in wind-up**

This guidance is aimed at all occupational pension schemes, DB, DC or hybrid, either already in wind-up or those that might wind up in the future, although the type of scheme should be borne in mind when considering whether an approach is suitable.

It has been developed taking into account views from a number of pensions experts (including lawyers, trustees, insurers, administrators and actuaries) as well as common issues raised during the consultation following the DWP review in relation to speeding up winding-up. In addition the regulator visited a number of administrators and insurers to discuss their wind-up portfolio and sought information on the most common delays to wind-up.

This good practice guidance is intended to support parties (for example trustees, administrators, insurers and professional advisers) in speeding up the wind-up process by providing good practice guidelines which will enable efficient decision making. It also highlights where efficiencies in administration of an ongoing scheme could help avoid delays where a scheme might wind up in the future. It is designed to help parties deal with tricky issues. It is not specifically targeted at lay or less experienced trustees who may need guidance on the actual wind-up process; the regulator's e-learning module covering scheme wind-up is more appropriate in these circumstances.

The guidance is only indicative and we acknowledge that some parties may have other solutions to address the issues involved. To some extent we rely on industry to provide us with examples of good practice that we can share, and the guidance should therefore be regarded as a living document. It will be updated on a regular basis to ensure it continues to support parties to speed up the wind-up process. It will be a web-based document although downloadable in PDF format.

### **Common issues**

The main common issues cited to us, and where it is appropriate that the regulator provides guidance, are included in the attached good practice guidance document.

There were two specific issues highlighted which the regulator feels should be addressed here. These are that the regulator should:

- implement a 'clearance process' for winding up issues providing approval for trustee decisions; and
- consider using its powers more frequently.

## **Clearance process**

Some parties suggested that the regulator should consider implementing a process which would involve trustees seeking approval from the regulator on their proposed approach of dealing with a particular winding up issue for their scheme. For example this might be to avoid incurring legal fees involved in getting a court decision. Such a process would also provide some indemnity for the trustees from any future liability to members.

The regulator's view is that it is not one of our regulatory functions to provide this type of clearance. We remain of the view that it is ultimately the trustees' duty to ensure decisions are made in the best interests of members, taking into account the information they have on the scheme and advice received from their professional advisers. We do not consider it appropriate for the regulator to approve such decisions by trustees as that would undermine trustees' responsibility for wind-up.

The regulator does operate an existing statutory and voluntary clearance process whereby parties can obtain assurance that based on the information provided the regulator will not, in respect of certain events, use its anti-avoidance powers to issue, to the applicants for clearance, either Contribution Notices or Financial Support Directions in relation to a defined benefit occupational pension scheme.

## **Use of powers**

Views were expressed that it was not evident that the regulator was using its powers to best effect to help parties speed up the wind-up process, for example, directing parties to take action to speed up the wind-up process. The tripartite regulatory statement sets out a new approach that outlines our expectations for scheme wind ups and clarifies the powers that we are most likely to use. This approach includes issuing directions to parties where we consider there has been an unreasonable delay, and makes it clear that this will be one of the principal enforcement powers we can use.

## **How to respond to the consultation**

We would welcome feedback on the attached documents in general, but are particularly interested in comments on the following areas:

### **Regulatory statement**

1. Have you any other suggestions on how the regulator, PPF and DWP in respect of FAS can work together so as to ensure approaches are aligned in a way that contributes to speeding up wind-ups and schemes passing through an assessment period?
2. Do you agree with the exceptions we have specified for schemes winding up? If you consider there to be a case for further exceptions, what is the evidence for this?

3. Are there any other issues you would like to see addressed?

### **Good practice guidance**

1. Is the structure and layout logical and easy to navigate?
2. Do you think the key issues that cause delays to wind-ups have been identified? If not, please provide details of other issues you think should be included and explain the difficulties you have faced, providing good practice examples where possible.
3. Do you think the good practice guidelines outlined will help you deal with the issues efficiently? Are you aware of any other guidelines that should be included?

When considering your views on the good practice guidance, please bear in mind that it is intended to be a dynamic document and that it will be updated on a regular basis.

### **Responses**

Responses may be made in either of the following ways:

- by e-mail to [guidance@thepensionsregulator.gov.uk](mailto:guidance@thepensionsregulator.gov.uk);
- by post to The Pensions Regulator, Napier House, Trafalgar Place, Brighton BN1 4DW.

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 discussion paper. 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).

We would be grateful for any comments that you may have by 15 April 2008.