SQUIRE PATTON BOGGS

# Pension Protection Fund Levy 2020/21

## Headlines and Deadlines

January 2020

On 16 December 2019, the Pension Protection Fund (PPF) published its rules governing the calculation of levies for the 2020/21 levy year.

The levy estimate is £620 million (up from the £575 million that was invoiced during this year). The PPF Board will maintain a levy scaling factor of 0.48 and scheme-based levy multiplier of 0.000021.

This is the final year of the third triennium, which means that the PPF has not made any significant changes to its levy rules. The guidance in relation to Type A contingent assets, and in particular guarantor strength reports, has been tweaked. There is a new definition for "small accounts" and the PPF has considered the impact of guaranteed minimum pension (GMP) equalisation on insolvency risk scores and section 179 valuations.

We provide more information on the key areas of change below, together with this year's deadlines.

**This is only a summary. Trustees and employers who rely on a levy reduction method are advised to check the revised rules and assess the actions they need to take, noting that it will take time to obtain advice, update valuations (where necessary) and finalise documentation. This is particularly the case if an existing Type B contingent asset (security over cash, real estate or securities), which was not recertified for 2019/20, is being certified for 2020/21 and it includes an element of a fixed liability cap. Re-execution will be required and should be carried out in February, in order to ensure timescales can be met for the 2020/21 levy year. Legal advice should be obtained at an early stage.** You can find more information on the PPF 2020/21 levy page.

## Contingent Asset Agreements

### Re-execution of Contingent Asset Agreements

By way of reminder, since the 2019/20 levy year, certain types of Type A (guarantee) and Type B contingent asset agreements must be in the PPF's standard form issued in January 2018, otherwise the PPF will not take them into account for levy calculation purposes. The types of contingent assets caught by this requirement are those with a liability cap of a fixed amount or a cap that is the lower of a fixed amount and fluctuating liabilities. This is important to bear in mind if trustees did not recertify such a contingent asset in respect of levy year 2019/20, but they now wish to recertify it this year (2020/21). In such a case, it will be necessary to **re-execute** the contingent asset in the 2018 standard form. There are timing practicalities with the re-execution of Type B real estate assets, in particular, because the existing security will need to be released before the new security can be entered into and it will be necessary to register security over property with HM Land Registry before a legal opinion can be obtained. We recommend starting the process as soon as possible if re-execution is required.

On the re-execution of an existing contingent asset agreement in the 2018 format, the same documents that would have been submitted on a **new certification** will need to be submitted to the PPF.

### Guarantor Strength Reports

The Type A contingent asset guidance relating to guarantees has been amended in relation to guarantor strength reports. A guarantor strength report is required where the estimated levy saving as a result of a Type A contingent asset is expected to be £100,000 or more. The factors that advisers are expected to take into account when producing a guarantor strength report have been expanded, although advisers are now expected to take an overarching "holistic" approach.

If trustees voluntarily submit a guarantor strength report to the PPF where the estimated levy saving is less than £100,000, the requirements for a guarantor strength report set out in the guidance will apply.

### Guarantor-employers

Where the guarantor is also a scheme employer, any guarantor strength report must highlight the extent of any reduction in recovery of the guarantor's own section 75 debt as a result of there being a call upon the guarantee. The calculation of the realisable recovery amount that the trustees certify should reflect the net benefit of the arrangement, not simply the expected proceeds from the guarantee.

### Service Companies

The provisions relating to service companies as employers have been updated in the Type A contingent asset guidance. Where the employer whose obligations are being guaranteed is a service company, the certified realisable recovery amount should take account of the relationship between the solvency/insolvency of the guarantor and the employer. In particular, the likelihood of the insolvency of one entity triggering the insolvency of the other entity should be considered.

## Definition of Small Accounts

The definition of small accounts has been amended to give the PPF the discretion to direct Experian to regard accounts as "full accounts" where treating them as small accounts would not appropriately reflect the nature of the accounts for scoring purposes. The PPF has confirmed in its policy statement that affected schemes will be notified where the employer changes scorecard as a result of this amendment.

## GMP Equalisation

### Company Accounts

As part of the consultation process, the PPF considered whether any adjustment should be made to take account of the one-off charge for GMP equalisation costs in company accounts. The focus was on those cases (which the PPF believes to be in the minority) where the costs result in a pre-tax loss rather than a pre-tax profit. The PPF has said that it will allow employers 28 days from the publication of mean scores (expected in early July) to request an adjustment, providing all of the following conditions apply:

- A specific amount can be identified in the accounts used to calculate one or more monthly scores that solely relates to a GMP equalisation adjustment
- Allowing the adjustment would result in the company being viewed as reporting a pre-tax profit rather than a loss
- Allowing the adjustment would result in a change of mean score to a levy band with a lower levy rate

### Section 179 Valuations

The PPF has reiterated that section 179 valuations with effective dates of December 2018 or later should include an assessment of the impact of GMP equalisation. Where GMP equalisation has not yet been implemented, actuaries may use their best estimate and calculate an interim allowance.

## Deadlines

The PPF has set its key deadlines as follows:

| Documents | Deadlines |
|---|---|
| Scheme return to be submitted on Exchange | By midnight on 31 March 2020 |
| Guarantor strength reports (where relevant) to be completed | By midnight on 31 March 2020 |
| Contingent asset certificates to be submitted on Exchange | By midnight on 31 March 2020 |
| Hard copy contingent asset documents (where required) (including guarantor strength reports) to be posted/delivered to the PPF | By 5 p.m. on 1 April 2020 |
| ABC certificates to be sent to the PPF by email | By midnight on 31 March 2020 |
| Mortgage exclusion (officers') certificates and supporting evidence to be sent to Experian by email | By midnight on 31 March 2020 |
| Accounting standard change certificate to be sent to Experian by email | By midnight on 31 March 2020 |
| Special category employer applications (and confirmation of no change) to be sent to the PPF by email | By midnight on 31 March 2020 |
| Self-submit data to Dun & Bradstreet (D&B) for use in generating scores for April 2020 (usually any self-submitted data needs to be received by D&B the month before scores are generated | By 30 April 2020 (note that the exact time is not specified, so assume 5 p.m. to be on the safe side) |
| Deficit reduction contribution certificates to be submitted on Exchange | By 5 p.m. on 30 April 2020 |
| Exempt transfer applications with supporting evidence to be sent to the PPF by email | By 5 p.m. on 30 April 2020 |
| Certification of full block transfers to be completed on Exchange or sent to the PPF (in limited circumstances) | By 5 p.m. on 30 June 2020 |

Please note that the **PPF's procedural requirements are stringent and its deadlines are firm**. Trustees and employers who rely on a levy reduction method are advised to check the 2020/21 rules and assess the actions they need to take and to seek advice at an early stage, especially if they need to re-execute a Type B contingent asset involving security over property.

## 2021/22 Insolvency Risk Methodology

The PPF has opened its consultation on its 2021/22 insolvency risk methodology.

D&B is taking over from Experian in respect of levy years 2021/22 onwards. D&B collates and manages data differently from Experian, which means that some employers will see an increase in their levy payment. This is particularly so for those employers who are marked on scorecard 1 (larger employers). D&B has reviewed historic data and considers that scorecard 1 has been under-predicting insolvencies. The good news is that D&B has already set up an online portal and employers can view their insolvency risk scores. Employers are being encouraged to engage with D&B early in the process if they wish to try to ensure consistency of levy banding. D&B offers a webchat facility, as well as online query options.

Consultation closes on 11 February 2020.

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For further information, please contact Clifford Sims or your usual contact in our Pensions team.







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