

Frequently Asked Questions (FAQs)

These answers to Frequently Asked Questions are provided to help employers and their advisors understand the Trustee's proposal on how to calculate section 75 employer debts. It is not intended as a substitute for specific advice. The application of section 75 employer debt legislation is a complex area. Employers should seek independent professional advice to understand how the Trustee's proposal might impact their business.

Will the Trustee extend the consultation period beyond 30 April?

The Trustee will accept responses to the consultation until Sunday 13 May 2018. The Trustee cannot extend the consultation process beyond 13 May without impacting the next stage of the process.

Can I get an estimate of my company's debt?

The Trustee cannot provide individual employer debt estimates until the consultation has ended, and the calculation methodology agreed. It would not be a sensible use of the Scheme's resources to calculate and provide debt estimates before this time because the calculation methodology may change.

Where can I get help if I'm not a member of a trade association?

The Trustee can provide information to employers. However, employer debt legislation is complex, and employers should seek professional advice on how the legislation might affect their own business.

Will the Trustee facilitate the sharing of employer contact details?

The Trustee feels it would be better for employers and their representative organisations to coordinate the sharing of employer contact details. The Trustee will consider any proposal to assist with this.

Has the Trustee contacted every employer affected by section 75 employer debt?

The Trustee has written to *all* employers affected by employer debt using the latest known address held by the administration team. However, the Trustee is concerned that some employers affected by section 75 employer debt may not appreciate the serious financial implications it could have on their business. Employer debt communications are marked **'Important information – please read'** and are sent by recorded delivery. All affected employers were invited to attend information events held across the UK during March 2018.

Do changes in a company's legal status affect an employer debt?

Yes, it is very important that you tell us about any changes in the legal structure of your business while you have participated in the Scheme. Business changes before September 2005 (when the employer debt legislation changed) are also relevant and could reduce the employer debt due if your company has a trigger event after September 2005.

What process will the Trustee follow to collect employer debts?

The Trustee still needs to agree a process to calculate and collect employer debts that have already been triggered. When considering the process, the Trustee will take into account employer views collected during the consultation period.

When will the Trustee issue debt notices?

During February 2018, the Trustee wrote to all employers that may need to pay a section 75 employer debt to consult about the proposed calculation method. This includes employers that have already had a trigger event and current participating employers that may have a trigger event in the future.

The employer consultation will run until 11 May 2018, following which the Trustee will review all feedback received and agree a final calculation method. The Trustee will then be able to instruct the Scheme Actuary to begin her calculations.

It is unlikely that debt notices will be issued before early 2019 because the Trustee cannot instruct the Scheme Actuary to begin calculating section 75 employer debts until a calculation method has been agreed.

Will I get a debt estimate even if my company hasn't had a trigger event?

The Trustee still needs to agree whether to provide employer debt estimates to all participating employers to allow them to understand their possible employer debt exposure. However, while there is no statutory requirement to do so, the Trustee feels it may be helpful to issue debt estimates to the Scheme's contributing employers on request. Employers should take professional advice to understand how receipt of a debt estimate could affect their business.

Will employers be informed when 'Condition I' is used?

Yes, the Trustee does intend to advise employers where Condition I is being used.

In employer debt legislation Condition I allows the Trustee to decide not to calculate or pursue an employer debt where the cost relative to the likely recovery would be disproportionate.

How will the Trustee determine what is disproportionate?

The Trustee will consider on a case by case basis all the expected costs of calculating and pursuing an employer debt such as professional advisor fees (actuarial, covenant, audit and legal), administration and debt collection costs. The Trustee will compare the expected cost against the likely recovery. The Trustee will calculate and pursue employer debts where the likely recovery exceeds the expected cost.

Could this make my business insolvent?

Possibly, depending on the individual employer's circumstances.

The examples that Scheme Actuary has provided, both in the February 2018 and April 2016 consultation documents, illustrate the potential scale of section 75 employer debts. In light of this it is important to seek professional advice and where applicable consider whether any easements might help.

What are my options if I can't afford to pay an employer debt?

Please get in touch with the administration team if you receive an employer debt notice which you cannot afford to pay as there are a number of easements which could help. For example:

- It may be possible to put in place a flexible apportionment arrangement to transfer the pension liabilities to a different business that is currently participating in the Scheme.
- It may be possible to pay the employer debt in instalments.
- From April 2018, it may be possible to request a deferred debt arrangement.

Please provide information about the historical FAA test case.

An easement called a 'Flexible Apportionment Arrangement' (FAA) was introduced by legislation on 27 January 2012. Some employers that triggered an employer debt before this date have asked the Trustee to agree to an FAA. The legislation is silent on whether an FAA can be used for employer debts triggered before 27 January 2012. The Trustee has taken legal advice on this and submitted a test FAA case to the Pensions Regulator. The Trustee has not yet heard back from the Pensions Regulator.

Will the Trustee consider a Deferred Debt Arrangement for a trigger event before 6 April 2018?

The Trustee is taking legal advice on how the new deferred debt regulations will apply to the Scheme.

Will the Trustee allow for employer debts triggered but not collected?

No. Counsel has advised that the Trustee must use the audited Scheme asset value on the trigger date with no allowance for any section 75 employer debts that may subsequently be recovered.

Will the Trustee take my house away?

If you are or have been an unincorporated business while you participated in the Scheme you should take professional advice to discuss options that may be available to mitigate the impact of employer debt legislation on you and your business. For example, easements exist to help employers:

- Flexibly apportion an employer debt from one employer to a different employer (such as an incorporated company). This is called a 'Flexible Apportionment Arrangement' (FAA).
- Defer payment of an employer debt that would otherwise be triggered (available from 6 April 2018).
- Request a period of grace either if your last employee is about to cease to participate or within 3 months of your last employee ceasing to participate and in either case you expect to put a new employee into the Scheme in the next 12 months.

The Trustee has agreed to requests for a Flexible Apportionment Arrangement (FAA) from unincorporated businesses.

Will the Trustee still collect employer debts if an employer legally challenges the Trustee?

If an employer makes a claim against the Trustee, the Trustee will continue to pursue employer debts in accordance with the legal advice received. Any legal challenge will run in parallel. As the Trustee intends to carry out the process in accordance with statutory requirements and in accordance with Counsel's advice, it would be hoped that no such claim would arise.

How good is the Scheme's data?

The consultation document mentions orphaned liability in respect of another business where employment history is incomplete. The Scheme data is very good, it is just extremely difficult and costly to extract from the administration system. The principal area of concern about the data relates to beneficiaries receiving a pension after a member dies, where it hasn't always been possible to link back to a member record with employment history. The Scheme Actuary and the administration team are working to link this type of pension back to a member so that the member's employment history can be used.

Can I be provided a membership list?

The Scheme's administration system is member-centric so a plumbing operative can easily see the combined value of their different periods of pensionable service with different employers throughout their career. The Scheme's design pools cost and risk, which provides small plumbing businesses access to a cost effective defined benefit pension scheme that would otherwise not be possible. Historically, the way the Scheme has recorded member data has meant it has been extremely difficult to extract membership reports for individual employers.

The administration team is able to provide a membership list to employers. However, at present only names and not pension credits can be provided for pensioner members.

How much is the Scheme's orphan liability?

The Scheme Actuary has not done a recent analysis of the Scheme's orphan liability. However, as at 5 April 2014, 35% of the Scheme liability was in respect of employers who left the Scheme prior to September 2005 when employer debts were £nil under the then legislation. 15% of the Scheme liability as at 5 April 2014 was in respect of employers who left between September 2005 and 5 April 2014.

How will the Trustee treat transfers into the Scheme?

Legislation requires that where a transfer-in was received by the Scheme while a member was in pensionable service with a particular employer, the Trustee should attribute the transferred-in liability to that employer. The legislation is very technical and complex in cases where a transfer-in was received by the Scheme whilst a member was not employed by a participating employer. Following analysis, the Trustee has discovered that around 60 transfers into the Scheme totalling around £1 million took place between September 2005 and April 2017 for members not employed by a participating employer. In these cases, the Trustee proposes to treat transfers in as follows:

- Where the Trustee knows the member's last employer before the transfer-in was received by the Scheme, the Trustee will attribute the transferred-in liability to that employer.
- If the Trustee does not know the member's last employer before the transfer-in was received, the transferred-in liability will be treated as an orphan liability.

Legislation requires that employers be consulted on the allocation of transferred-in liabilities for transfers into the Scheme whilst a member was not employed by a participating employer. The Trustee would welcome any feedback on the proposed approach.

Has the Trustee considered compromising debts to prevent employers becoming insolvent?

The Trustee recognises that members benefits are best protected through ongoing support from solvent employers.

Existing regulations give trustees some flexibility to compromise employer debts (i.e. accept an amount less than the full employer debt) but only if the Scheme is funded above PPF levels. The Plumbing Scheme is not fully funded on the PPF measure, so the Trustee cannot compromise an employer debt.

Could the PPF take on the orphan liabilities?

The Government has said it would not be appropriate for the Pension Protection Fund (the “PPF”) to take on the Scheme’s orphan liabilities because the PPF is funded through levies paid by all occupational pension schemes, which would not be fair.

Did the Trustee have a statutory duty to inform employers about any section 75 employer debt?

The Trustee’s duty is to act in the best interests of the Scheme members. The Trustee’s duty is not to represent or advise employers on their participation in pension arrangements or to inform employers about any obligations that may arise under statute from time to time. It would represent a conflict of interest for the Trustee to advise employers of their obligations.

Has the Trustee carried out an independent review of the professional advice its received about section 75 employer debt?

The Trustee has taken legal advice from two leading UK law firms and two QCs (senior lawyers) at considerable expense.

Is the Scheme still achieving the objective it was set up for?

Yes. The Scheme was set up to provide a secure and affordable pension arrangement for employees working in the plumbing and mechanical services industry. On an ongoing basis, the Scheme has sufficient assets to pay all the member benefits that have been promised.

Was the Scheme set up to fail as a ‘Last Man Standing’ Scheme?

The Plumbing Scheme was set up at a time when pensions legislation was very different to today. According to the Pensions Regulator, there are nearly 1000 last man standing pension schemes in the UK. Over the years new regulations have been enacted to protect member benefits, some of which have had unintended consequences on the Plumbing Scheme.

How can I register a complaint against the Scheme?

The Scheme has an employer complaints procedure [here](#). Employers not satisfied with the way their complaint is handled by the Scheme can escalate their complaint to Pensions Ombudsman. The final option is to go to a court of law.

How can I contact the Pensions Regulator about the Scheme?

The Pensions Regulator has a dedicated email address for queries relating to the Plumbing & Mechanical Services (UK) Industry Pension Scheme:

plumb&mechserv_C95260165@tpr.gov.uk

What is the Trustee lobbying government to change?

The Trustee has lobbied for changes to the employer debt legislation to find a fairer way of dealing with the Scheme's orphan liability and to provide help for unincorporated employers who could be personally liable for an employer debt. In a recent White Paper, the Government says that having considered all the evidence there is insufficient justification to warrant amending the employer debt calculation because any changes could significantly weaken the security of members' benefit and increase the risk of schemes with high levels of orphan liabilities transferring to the Pension Protection Fund (PPF).

www.gov.uk/government/uploads/system/uploads/attachment_data/file/691286/protecting-defined-benefit-pension-schemes.pdf

What is the all-party Parliamentary 'Employer debt' group?

An all-party parliamentary group of MPs at Westminster has been set up to lobby for changes to the employer debt regulations. Pete Wishart MP (Perth & North Perthshire) leads the group. We understand that any MP with constituents affected by employer debt can join the group.

Why is there such a big deficit in the Scheme?

There are different ways to measure how well funded a pension scheme is. The Trustee is required by the Scheme's Rules and legislation to regularly check that the Scheme has enough money to pay all the members' benefits on an ongoing Technical Provisions basis. The Trustee reports on the Scheme's financial position in the annual report it sends to members and employers every autumn. At every formal actuarial valuation, the Scheme has been fully funded on the Technical Provisions basis. The Trustee monitors the Scheme's ongoing funding position at every quarterly board meeting.

A different and very conservative way of measuring a pension scheme's position is to look at the buy-out basis, which is the funding position section 75 employer debt legislation says the Trustee must use to calculate employer debts. The buy-out basis looks at how much it would cost to buy annuities from an insurance company for all the Scheme's members. The Scheme, like most UK pension schemes, has always had a deficit on the buy-out basis because this is a very expensive way to measure pension liabilities. There is no obligation for the Trustee to fund the Scheme on a buy-out basis.

When you hear there is a deficit in the Scheme on the buy-basis, this can sound alarming. However, the Scheme's buy-out deficit is a hypothetical position until such time as the 3 constituent organisations decide to wind up the Scheme and annuities are bought for all the Scheme's members (which there are no plans to do). The buy-out deficit becomes relevant at the point an employer wishes to cease its involvement with the Scheme because it must pay an employer debt to cover its share of the Scheme's buy-out deficit and a share of the Scheme's orphan liabilities.

How might the Scheme's 'buy-out' shortfall change over time?

An employer debt is the employer's share of the Scheme's 'buy-out' shortfall when the employer ceases to participate. The buy-out shortfall is the difference between the value of the Scheme's assets and the expected cost of buying annuities for all the Scheme's members. The buy-out shortfall changes daily as it is affected by many factors including investment market conditions, the assumptions the Scheme Actuary uses and the Scheme's membership.

Will the Trustee carry out further Buy-Ins?

During 2017, the Trustee completed a 'Buy-In' with Legal & General. This involved exchanging nearly £570 million of the Scheme's assets for a bulk annuity policy. The Buy-In means that every month Legal & General pays the Scheme exactly what it needs to pay the pensioner and beneficiary members covered by the policy. The Trustee owns the bulk annuity policy and remains responsible for paying pensions.

The Trustee felt it was appropriate to do a Buy-In because it removes all the longevity, investment, interest rate and inflation risk from the Scheme for the pensioners covered by the policy. The Trustee will continue to monitor all its options to manage and mitigate risk in the Scheme and will take action where it is appropriate to do so, which may include carrying out further Buy-Ins in the future.

Will the Trustee share preliminary valuation results with employers?

The Trustee has an established process of agreeing actuarial valuations with the Scheme's constituent organisations - the APHC, SNIPEF and Unite the Union. However, a summary of the preliminary results and assumptions used for the 2017 actuarial valuation is available to employers on request. Please [contact us](#).

Has the Trustee considered adopting CPI instead of RPI?

In 2010, the Government announced that from April 2011 the minimum level of statutory pension increases that pension schemes must pay before and after a member's retirement would be calculated using the Consumer Prices Index (CPI) instead of the Retail Prices Index (RPI). Historically, CPI has generally been lower than RPI.

In April 2011, the Scheme switched from using RPI to CPI to calculate increases to pensions in payment because the Scheme Rules say pension increases in payment should be in line with regulations.

Before a member retires the Scheme Rules require pension credits earned after 5 April 2004 to increase annually using RPI for all benefit scales except the 2017 Scale. Benefits earned on the 2017 Scale increase before and after retirement using CPI, which is partly why the contributions for the 2017 Scale are lower than the other benefit scales.

In practice, the way insurance companies price CPI-linked pensions mean there would only be a small reduction in the 'buy out' cost (which is used to calculate employer debts) if the Scheme's benefits were linked to CPI rather than RPI.