

PPF contingent assets: key changes for the 2018/19 levy year

The Pension Protection Fund (PPF) has published revised guidance on contingent assets and updated standard form contingent asset agreements. Schemes putting in place a new contingent asset or re-certifying an existing one should note that some significant changes have been made to the PPF's rules on whether a contingent asset will be taken into account by the PPF in calculating the levy for the 2018/19 levy year.

What is a contingent asset?

A contingent asset is an asset that is not immediately available to the trustees of a pension scheme but which will become available if one or more specified events occur. Common events in which the contingent asset becomes available are the scheme's employer becoming insolvent or the scheme failing to meet a specified funding level. They provide additional security for a pension scheme without requiring an immediate cash payment from the employer.

Benefits of a contingent asset

Contingent assets can benefit sponsoring employers and trustees by reducing contribution obligations, increasing scheme security and (if prescribed requirements are met) reducing the PPF levy.

Reducing the PPF levy

A contingent asset will reduce the PPF levy if it is put in place using one of the PPF's standard form documents and is re-certified with the PPF each levy year, so that it is recognised by the PPF in the levy calculation.

In order to be recognised by the PPF in calculating the levy for the 2018/19 levy year, an existing contingent asset must be re-certified by midnight on 31 March 2018. Note, however, that this deadline is shortened where there is a requirement to obtain a Guarantor Strength Report (see below).

What is new?

Some key changes have been made to the PPF's rules on whether a contingent asset will be taken into account by the PPF in calculating the levy for the 2018/19 levy year:

New standard form contingent asset agreements

If you are putting in place a group company guarantee (Type A) or security over assets (Type B) contingent asset, the PPF has published new standard form agreements. These standard form agreements must be used for new contingent asset agreements entered into on or after 18 January 2018, in order for the contingent asset to reduce the PPF levy for the 2018/19 levy year.

An existing contingent asset, entered into before 18 January 2018, is not required to be re-executed in the new standard form.

Guarantor Strength Report

This is a notable change. For the 2018/19 levy year onwards, where:

- a group company guarantee (Type A) contingent asset is first certified or is re-certified; and
- recognition by the PPF of the contingent asset is likely to result in a reduction in the PPF levy of £100,000 or more;

the trustees must certify that they have obtained, before 31 March each year, a Guarantor Strength Report. The purpose of the report is to justify how, in the event of the employer's insolvency, the guarantor could meet the 'realisable recovery' in full.

The '**realisable recovery**' is a fixed sum that the trustees are required to certify that they are reasonably satisfied the guarantor can meet, having taken account of the likely impact of the immediate insolvency of the employer.

The Guarantor Strength Report must be provided by a professional adviser (usually an employer covenant adviser experienced in insolvency and pensions). The PPF has provided a non-exhaustive list of the issues that they expect to be covered in the report. These include whether the guarantor would still be able to trade after the disposal of assets required to meet the guarantee; the impact of the employer's insolvency on the use of group cash pooling arrangements and unused finance facilities and whether the insolvency could have any impact on the ability of the group to move cash around to satisfy the guarantee claim. These are detailed points and there will need to be significant exchanges of financial information between the guarantor and the professional adviser in preparing the report. It is important for schemes to act now where a Guarantor Strength Report is required, in order to allow sufficient time for the report to be prepared and considered by the trustees before they certify the realisable recovery.

If a scheme is close to the £100,000 threshold, trustees should note that the PPF guidance states that it would be sensible to obtain a report and the PPF expects to place particular focus on any such schemes that have not obtained a report.

For the 2018/19 levy year, a hard copy of the Guarantor Strength Report must be submitted to the PPF **before 5pm on 29 March 2018**, otherwise the contingent asset will not be taken into account by the PPF in calculating the levy.

Looking ahead: re-execution for 2019/20 levy year

Looking ahead, an existing PPF group company guarantee (Type A) or security over assets (Type B) contingent asset with a fixed cap will need to be re-executed on one of the new standard forms for the 2019/20 levy year. No action is required in relation to an existing guarantee with a floating cap (covering, for example, a percentage of PPF liabilities or the full employer debt liability), which will remain valid for future levy calculations.

Action points

Immediate

Schemes putting in place a new contingent asset or re-certifying an existing one for the 2018/19 levy year should take action as soon as possible.

1

New PPF contingent asset:

If put in place on or after 18 January 2018, one of the new standard form agreements must be used.

If it is a group company guarantee, the trustees must obtain a Guarantor Strength Report (see above), if required, to support the realisable recovery that they certify. A hard copy of the Guarantor Strength Report must be submitted to the PPF.

Ensure that required hard-copy paperwork is received by the PPF **by 5pm on 29 March 2018** if you wish the contingent asset to be taken into account by the PPF in calculating the levy for the 2018/19 levy year.

2

Existing PPF contingent asset:

Ensure that it is re-certified with the PPF **by midnight on 31 March 2018** in order to be taken into account by the PPF in calculating the levy for the 2018/19 levy year.

If it is a group company guarantee, the trustees must obtain a Guarantor Strength Report (see above), if required, to support the realisable recovery that they certify. A hard copy of the Guarantor Strength Report must be submitted to the PPF **before 5pm on 29 March 2018**. Trustees should note that this shortens the deadline for re-certification and should act now to obtain a Guarantor Strength Report, if one is required.

Looking ahead: 2019/20 levy year

If a scheme has an existing group company guarantee (Type A) or security over assets (Type B) contingent asset with a fixed cap, start planning now for it to be re-executed on one of the new standard forms in advance of the 2019/20 levy year. It will not otherwise be recognised by the PPF in the levy calculation for that levy year.

For assistance putting in place a new contingent asset or help re-certifying or re-executing an existing one, please get in touch.



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