

GN4: Insolvency of Employers: Safeguard of Pension Scheme Contributions

Classification

Recommended Practice.

MEMBERS ARE REMINDED THAT THEY MUST ALWAYS COMPLY WITH THE PROFESSIONAL CONDUCT STANDARDS (PCS) AND THAT GUIDANCE NOTES IMPOSE ADDITIONAL REQUIREMENTS UNDER SPECIFIC CIRCUMSTANCES

Application

Any actuary required to provide an actuarial certificate to the Department of Trade and Industry of the liability for payment from the National Insurance Fund to a salary-related occupational pension scheme.

Legislation or Authority

Pension Schemes Act 1993 (c.48) ('the Act'). Sections 123 and 124. (as amended).

Employment Rights Act 1996 (c.18). Section 230.

Department of Trade and Industry. Insolvency of Employers: Safeguard of Pension Scheme Contributions. IL2 (Rev 1), 2001.

Northern Ireland has its own body of law relating to pensions and, in relation to Northern Ireland, references to the Great Britain legislation contained in this Guidance Note should be read as including references to the corresponding Northern Ireland legislation. Appendix 1 shows Northern Ireland legislation corresponding to the Great Britain legislation mentioned in this Guidance Note.

Author

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Status

Approved under Due Process (Technical Amendment).

<i>Version</i>	<i>Effective from</i>
1.0	01.06.77
1.1	01.08.84
1.2	01.09.90
2.0	01.02.96
2.1	01.08.96
2.2	01.08.98
2.3	01.05.00
2.4	15.12.03

Adopted by BAS on 19.05.06

Ceased to apply from 30.11.08

1. If an insolvent employer (as defined in section 123 of the Act) has failed to pay some employer or employee contributions into an occupational or personal pension scheme it is possible to apply for certain payments to be made from the National Insurance Fund to the scheme. Section 124 of the Act sets out the payments that can be made. Those in relation to a salary-related occupational pension scheme require an actuarial certificate (form RP16). The actuary must either certify that the eligible unpaid employer contributions will be used in whole to meet the scheme's liability for expenses and benefits on dissolution or certify the part of such contributions required for this purpose.
2. Attention is drawn to the leaflet IL2 issued by the Department of Trade and Industry. There is some doubt as to the precise interpretation of the legislation providing for the payment of outstanding employer's contributions. In relation to the actuarial certificate both the Act and the leaflet, refer to a singular "liability of the scheme on dissolution" whereas the funds normally have to be used to meet liabilities according to a prescribed list of priorities. The certificate has been worded in such a way that the actuary can sign it without giving any view on the meaning of the Act.
3. The object appears to be to secure for scheme members benefits under the scheme that have been placed in jeopardy because contributions due have not been paid. Any liabilities ranking higher than or equal to benefits for scheme members should therefore be taken into account. However the sum certified should not include any amount that either must or could be used under discretionary powers to provide benefits for scheme members additional to those that have accrued or any amount that would be available for liabilities ranking lower than benefits for scheme members. In the majority of cases it should be possible to complete the certificate without extensive computation.
4. The legislation does not prescribe how the benefits should be valued. The actuary should consider the interests of both the scheme members and the National Insurance Fund. Among the valuation methods that might be used are cash equivalents or the cost of buying-out in the insurance market.
5. An actuary asked to provide a certificate in a situation where another actuary holds an appointment as Scheme Actuary should consult the Scheme Actuary before signing the certificate to ensure that all relevant factors of which the Scheme Actuary is aware are taken into account.
6. Dissolution expenses are specifically mentioned in the actuarial certificate. Actuarial fees for giving the certificate, which would, under the dissolution clause, be paid out of the assets of the scheme should be taken into account when signing the certificate.

Appendix 1: Northern Ireland Legislation

GB Provision

NI Provision

Pension Schemes Act 1993. Sections 123 and 124

Pension Schemes (Northern Ireland) Act 1993. Sections 119 and 120

Employment Rights Act 1996. Section 230

Article 3 of the Employment Rights (Northern Ireland) Order 1996. (SI 1996/1919 (N.I.16))