

GN3: Certain Certificates for Contracting-out

Classification

Practice Standard

Legislation or Authority

Pension Schemes Act 1993 (c.48). Section 9(2B) (c) (i) [as inserted by Section 136(3) of the Pensions Act 1995] and Section 53 [as amended by paragraph 48 of Schedule 5 to the Pensions Act 1995].

Pensions Act 1995 (c.26). Section 47(1)(b) and Section 73(3).

Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).

The Occupational Pension Schemes (Contracting-out) Regulations 1996. SI 1996/1172.

The Occupational Pension Schemes (Minimum Funding Requirement and Actuarial Valuations) Regulations 1996. SI 1996/1536.

The Occupational Pension Schemes (Contracting-out) Amendment Regulations 1996. SI 1996/1577.

The Occupational Pension Schemes (Mixed Benefit Contracted-out Schemes) Regulations 1996. SI 1996/1977.

The Occupational Pension Schemes (Winding Up) Regulations 1996. SI 1996/3126.

The Occupational Pension Schemes (Investment) Regulations 1996. SI 1996/3127.

The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1997. SI 1997/786.

The Occupational Pension Schemes (Reference Scheme and Miscellaneous Amendments) Regulations 1997. SI 1997/819.

The Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No.2) Regulations 1997. SI 1997/3038.

Inland Revenue. *Termination of contracted-out employment manual for: salary related pension schemes and salary related parts of mixed benefits schemes.* CA14. April 1999.

Inland Revenue. *Contracted-out guidance for: salary related pension schemes and salary related overseas schemes.* CA14C. April 1999.

Inland Revenue. *Cessation of contracted-out pension scheme manual.* CA15. April 1999.

Inland Revenue. *Contracted-out guidance for mixed benefit pension schemes and mixed benefit overseas schemes.* CA14E. April 1999.

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. The Appendix shows Northern Ireland legislation equivalent to the Great Britain legislation mentioned in this Guidance Note.

Application

Any actuary responsible for signing a certificate indicating the sufficiency of scheme resources for the Inland Revenue.

The guidance in these notes has been issued with the concurrence of the Secretary of State for Social Security and the Department of Health and Social Services for Northern Ireland (DHSS (NI)).

Author

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Status

Approved under Due Process.

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1.0	01.10.77
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2.0	01.04.88
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3.0	10.03.97
3.1	01.07.97
3.2	01.07.99
3.3	01.11.99

1 Introduction

- 1.1 The Inland Revenue has, under section 9(2B)(c)(i) and Section 53 of the Pension Schemes Act 1993, responsibility for satisfying itself about the sufficiency of resources of pension schemes which hold contracted-out rights. The Contracted-out Employments Group (COEG), part of the National Insurance Contributions Office, administers the functions on behalf of the Inland Revenue. The COEG is monitoring for a transitional period (6 April 1997 to 5 April 2007) the funding levels of contracted-out salary-related schemes, salary-related parts of mixed benefit schemes, schemes that meet regulation 2 of SI 1996/1577 and schemes that have ceased to contract out but continue to hold salary-related contracted-out rights.
- 1.2 In its technical guidance notes, the COEG has indicated that, for purposes of monitoring the sufficiency of scheme resources, it will rely on certificates

signed by actuaries. Currently there are three Certificates - Certificate T, Supplementary Certificate A and Certificate C. This Guidance Note has been prepared to assist actuaries in the signing of such certificates; the Guidance Note supplements and does not supersede the information given in the COEG guidance.

2 Level of Responsibility

- 2.1 Only the Scheme Actuary (with certain exceptions where the provisions of s47(1)(b) of the Pensions Act 1995 do not apply) may sign these certificates. The duties and responsibilities of the Scheme Actuary are set out in GN29.

3 Particular Considerations

- 3.1 Attention is drawn to the following particular considerations (the list should not be taken to be exhaustive).
- 3.1.1 The actuary signing a certificate is in a special position in that as well as the normal responsibilities to trustees or the employer he or she has responsibilities and obligations laid on him or her by virtue of this certificate. For example an employer may wish to contract out but may have strong reasons for wishing to contribute to the pension scheme at a rate which the actuary considers to be inadequate for this purpose even though it would be acceptable if benefits were not promised to the extent to which they have to be promised in contracted-out schemes. The actuary's professional duty requires him or her to make it clear that he or she will be unable to sign the required certificate unless contributions are made at a higher rate.
- 3.1.2 The certificates relate to the position in the event of the winding-up of the scheme, so that the actuary must have particular regard to the transitional priority order (for Supplementary Certificate A and Certificate T when 1(b) applies this is set out in Section 73(3) of the Pensions Act 1995 as modified by Regulation 3 of the Occupational Pension Schemes (Winding Up) Regulations 1996) and to the effect on the priority class of benefits of the following:
- (i) Advances in the priority class of certain benefits will normally take place during the currency of the certificate. For example when employed members retire, their rights may, in most cases, increase in priority by becoming pensions in payment. Also, increases in the amount of benefits in the priority class may arise from inflation.
 - (ii) The winding-up of a scheme may well result from the insolvency of the employer. When such an event becomes imminent, scheme members, employers, and trustees might take actions or exercise options which they would otherwise have no occasion to take or exercise. If the exercise of such options is subject to the consent of the trustees or the employer and the exercise might invalidate the actuary's certificate, the actuary should take particular care to warn the trustees or employer in advance and to emphasise the need for early consultation. Where the exercise of options is not subject to

the consent of the trustees or the employer (eg if some members have a unilateral right to immediate early retirement pensions on dismissal), a higher contribution rate would normally be appropriate. The actuary should also consider the critical level at which the exercise of such options not requiring consent might cause the certificate to be invalidated, with a view to ensuring that he or she is alerted as quickly as possible by the trustees to this possibility.

- (iii) Expenses of winding-up a scheme, including possible costs arising from the appointment of an independent trustee.

3.1.3 The actuary should bear in mind the necessity to make whatever enquiries he or she considers appropriate in order to be satisfied that he or she has been supplied with all the relevant data and with information concerning changes likely to materialise in future, as well as those already effective, in membership, remuneration, early retirement policy, augmentations of benefits, etc. However, the actuary need not allow for possible drastic changes which are not currently envisaged by the trustees or employer and which would not be in keeping with recent experience.

3.1.4 In signing a Certificate T (when paragraph 1(b) of that certificate applies) a Supplementary Certificate A or a Certificate C, the actuary must interpret the words “likely in the normal course of events”.

- (i) Although the winding-up of a scheme is usually regarded as an abnormal event, the wording of the certificate requires that the ‘normal course of events’ must be qualified by the assumption that a winding-up will actually take place (or, in the case of a scheme to which a Certificate C applies, it will be completed within three years).
- (ii) ‘events’ includes events external to the scheme, eg economic and financial developments.
- (iii) The meaning which the actuary attaches to the words ‘likely in the normal course of events’ should comprehend a prudent view of the future without taking into account every conceivable unfavourable development. The actuary should regard these words as excluding the possibility of events which he or she cannot possibly be expected to have allowed for in a conservative approach.

3.1.5 The actuary is not under a duty to monitor the progress of the scheme after he or she has signed a certificate. However, there is a statutory requirement on trustees to provide actuaries with information which could be of financial significance. Employers are obliged by the Occupational Pension Schemes (Contracting-out) Regulations 1996 to supply a new actuarial certificate to the COEG where the existing certificate is invalidated, or, where this is not possible, to notify the COEG that the scheme no longer meets the contracting-out conditions. The actuary who is notified of the occurrence or possible occurrence of significant events during the currency of a certificate must consider whether the certificate might be invalidated and, if necessary, advise

the employer of the need to conduct a new investigation. If such investigation shows that the certificate is invalidated, the actuary should complete a new certificate or, if unable to provide such a certificate, inform the COEG of the circumstances.

- 3.1.6 The actuary signing a certificate relating to a self-administered scheme should have regard to any mismatching of investments particularly in relation to the contracted-out and higher priority liabilities which appears likely to arise in the light of the investment policy of the trustees and any likely changes in that policy.
- 3.1.7 When signing an actuarial certificate the actuary should give careful consideration to the value to be placed on any employer-related investments or particular assets which constitute a relatively high proportion of investments. In determining the value to be placed on such assets the actuary should consider the possible realisable value of such assets in the circumstances that may lead to a wind-up of the pension scheme.
- 3.1.8 If the assets of the fund take the form of insurance policies, and the actuary (who will then normally be employed by the life office) is signing a certificate related to the ability to provide benefits in the form of annuities, he or she should take into account the practice of the office in winding-up pension contracts and how it might alter in the external events mentioned in 3.1.4 above. If the certificate is not related to benefits in the form of annuities it will be the practice of the office as regards surrender values which is material.

4 Certificate T

- 4.1 Certificate T is the regular form of certification to the COEG during the transitional period up to 5 April 2007. The first Certificate T is required within one month of the actuary certifying the first Schedule of Contributions under the Pensions Act 1995.
- 4.2 Certificate T provides certification of the position of the scheme on the Minimum Funding Requirement calculation basis; therefore calculations should be carried out in accordance with GN27.

5 Supplementary Certificate A

- 5.1 A Supplementary Certificate A is required when the last certificate has expired but the actuary is not yet in a position to sign the Certificate T.
- 5.2 In signing the Supplementary Certificate A the actuary certifies that in his or her opinion the resources of the scheme are likely in the normal course of events to be sufficient at all times over the next three years (or such shorter period as may be stated in the certificate) to meet in full, in the event of the winding-up of the scheme, the contracted-out and higher priority liabilities.

6 Certificate C - Schemes where wind-up commenced before 6 April 1997

- 6.1 Schemes which commenced wind-up prior to 6 April 1997 are not subject to the transitional priority order in section 73 of the Pensions Act 1995 (modified by Regulation 3 of the Occupational Pension Schemes (Winding-up) Regulations 1996 (SI 1996/3126)); however, Regulation 73 of the Contracting-out Regulations 1996 (SI 1996/1172) does apply. With regards to such schemes Certificate C should be signed when the previous certificate covered by this Guidance Note has expired.
- 6.2 In signing Certificate C, the actuary should follow section 3 above in so far as it applies to the particular circumstances of the scheme in question.

Appendix : Northern Ireland Legislation

GB Provision	NI Provision
Section 9(2B)(c)(i) of the Pension Schemes Act 1993	Section 5(2B)(c)(i) of the Pension Schemes (Northern Ireland) Act 1993 (c.49)
Section 53 of the Pension Schemes Act 1993	Section 49 of the Pension Schemes (Northern Ireland) Act 1993 (c.49)
Section 73(3) of the Pensions Act 1995	Article 73(3) of the Pensions (Northern Ireland) Order 1995.
Section 124 of the Pension Schemes Act 1993	Section 120 of the Pension Schemes (Northern Ireland) Act 1993 (c.49)
Section 47(1)(b) of the Pensions Act 1995	Article 47(1)(b) of the Pensions (Northern Ireland) Order 1995
Section 136(3) of the Pensions Act 1995	Article 133(3) of the Pensions (Northern Ireland) Order 1995
Paragraph 48 of Schedule 5 to the Pensions Act 1995	Paragraph 40 of Schedule 3 to the Pensions (Northern Ireland) Order 1995
The Occupational Pension Schemes (Contracting-out) Regulations 1996 (SI 1996/1172)	The Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 (SR 1996 No.493)
Regulation 2 of the Occupational Pension Schemes (Contracting-out) Amendment Regulations 1996 (SI 1996/1577)	Regulation 77 of SR 1996 No.493
The Occupational Pension Schemes (Mixed Benefit Contracted-out Schemes) Regulations 1996 (SI 1996/1977)	The Occupational Pension Schemes (Mixed Benefit Contracted-out Schemes) Regulations (Northern Ireland) 1997 (SR 1997 No.95)
Regulation 3 of the Occupational Pension Schemes (Winding Up) Regulations 1996 (SI 1996/3126)	Regulation 3 of the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996 (SR 1996 No.621)
The Occupational Pension Schemes (Investment) Regulations 1996 (SI 1996/3127)	The Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 1996 (SR 1996 No.584)

GB Provision

The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1997 (SI 1997/786)

The Occupational Pension Schemes (Reference Scheme and Miscellaneous Amendments) Regulations 1997 (SI 1997/819)

The Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No.2) Regulations 1997 (SI 1997/3038)

NI Provision

The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 1997 (SR 1997 No.160)

The Occupational Pension Schemes (Reference Scheme and Miscellaneous Amendments) Regulations (Northern Ireland) 1997 (SR 1997 No.162)

The Personal and Occupational Pension Schemes (Miscellaneous Amendments) (No.2) Regulations (Northern Ireland) 1997 (SR 1997 No.544)