

GN4: Insolvency of Employers: Safeguard of Pension Scheme Contributions

Classification

Recommended Practice.

Legislation or Authority

Pension Schemes Act 1993 (1993, c.48). Section 124. (as amended by the Pensions Act 1995 (1995, c.26). Section 90).

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

Department of Trade and Industry. Safeguard of Pension Scheme Contributions. IL2 (Rev 1), 1997.

Application

Any actuary required to provide an actuarial certificate of the liability for payment from the National Insurance Fund.

Author

Pensions Board

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

1. Attention is drawn to the leaflet IL2, entitled *Insolvency of Employers : Safeguard of Pension Scheme Contributions*, issued by the Department of Trade and Industry. There appears to be some room for doubt as to the precise interpretation of the legislation providing for the payment of outstanding employer's contributions. The 1993 Act, in relation to the certificate by an actuary, and quoted in the leaflet, refers to a singular "liability of the scheme on dissolution" whereas the common obligation is to use the funds to meet liabilities ordered in 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.
2. 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. That will include meeting any liabilities ranking higher than or

equal to benefits for scheme members. All such liabilities can be taken into account. If, however, the payment of contributions due but unpaid would create, or add to, funds available on dissolution that would be used for lower priorities, then the sum certified by the actuary should be limited to contributions that could not be so used. Similarly if the payment of contributions due but unpaid would create, or add to, funds that might be used for lower priorities under discretionary powers then the sum certified by the actuary should be limited to contributions that could not be so used. In the majority of cases it should be possible to complete the certificate without extensive computation.

3. The legislation does not prescribe how the benefits should be valued. The actuary, in making such calculations as are needed to complete the certificate, will be conscious of the interests of both the scheme members and of the National Insurance Fund. Among the valuation methods that might be used are cash equivalents or using the cost of buying-out in the insurance market.
4. 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 with a view to ensuring that all relevant factors of which the Scheme Actuary is aware are taken into account.
5. In the normal way the dissolution clause of a pension fund will provide for payment of expenses by the trustees and dissolution expenses are specifically mentioned in the actuarial certificate. Actuarial fees for giving the certificate could be paid out of the assets of the scheme under that clause and therefore come into consideration in signing the certificate.