



Minister for Social Protection

Guidelines Under Section 48A(10)(b)

in respect of certification by the Pensions Authority of a “relevant amount”

under Section 48A(3) of the Pensions Act 1990

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Guidelines of the Minister for Social Protection under Section 48A(10)(b) of the Pension Act 1990, as amended

1. Introduction

- 1.1 These Guidelines have been drawn up under the provisions of Section 48A(10)(b) of the Pensions Act 1990, as amended, in respect of the certification by the Pensions Authority of a “relevant amount” as provided for under Section 48A(3).
- 1.2 Sections referred to in these guidelines are to sections of the Pensions Act 1990 as amended (the “Act”). Unless otherwise stated, terms used in these guidelines have the meanings given in the Act.

2. General

- 2.1 Section 48A provides for the payment of certain amounts by the Minister for Finance to the trustees of a relevant scheme which is being wound up after 25 December 2013, where the resources of that scheme are not sufficient to discharge the liabilities in respect of certain benefits. The employer of the relevant scheme, or if there is more than one employer, all of the employers, must be insolvent on the date of the winding up of the scheme.
- 2.2 The amount paid will be the difference between the amount which the trustees require to discharge the liabilities in respect of benefits referred to in section 48(1D) (known as the “relevant amount”), and the resources of that scheme that are available to discharge those liabilities in respect of those benefits.
- 2.3 Section 48A(2) requires the trustees to apply to the Pensions Authority to certify the relevant amount.
- 2.4 Section 48A(3) requires the Pensions Authority to have regard to these guidelines when certifying a relevant amount.

3. Certification of a relevant amount by the Pensions Authority under Section 48A(3)

- 3.1 Before certifying a relevant amount, the Pensions Authority shall obtain the following from the trustees of the relevant scheme concerned (“scheme”):

a completed application in such form as the Pensions Authority makes available which shall include the following:

- (i) written confirmation by the trustees that the winding up of the scheme has commenced, specifying the date of the winding up, details of the employer(s) at the date of winding up and the date of the employer(s) insolvency;
- (ii) a statement by the actuary that, at the date of the winding up, the scheme did not satisfy the funding standard;
- (iii) a statement outlining the factors that led to the failure of the scheme to satisfy the funding standard at the date of the winding up;
- (iv) a declaration that the trustees will use the monies paid by the Minister for Finance for the purpose of discharging the liabilities for the benefits under section 48(1D);
- (v) a statement prepared by the actuary pursuant to section 48A(1) and in accordance with the guidelines and guidance notes prescribed in regulations made by the Minister under section 48A(11);

- (vi) a statement of affairs of the insolvent employer(s);

- (vii) the notice of the appointment of a liquidator or receiver to the insolvent employer(s);

- (viii) a statutory declaration by the employer(s) that:
 - a) the employer(s) is insolvent for the purposes of the Protection of Employees (Employers' Insolvency) Act 1984 (No. 21 of 1984);
 - b) that the the employer(s) did not contrive a pension deficit or employer insolvency for the purpose of the scheme obtaining payment under section 48A;
 - c) that there has not been any misappropriation or fraudulent conversion of the scheme resources; and
 - d) that there has not been any failure to remit employee contributions to the scheme in accordance with section 58A by the employer(s) or to pay employer(s) contributions in accordance with the scheme rules.

- (ix) a statutory declaration by the trustees that:
 - a) all claims for moneys due to the scheme, whether from the employer(s) or any other person or body have been recovered by the scheme or there is no reasonable prospect of such recovery;
 - b) that the trustees did not contrive a pension deficit or employer insolvency for the purpose of the scheme obtaining payment under section 48A;
 - c) that there has not been any misappropriation or fraudulent conversion of the scheme resources;
 - d) that there has not been any failure to remit employee contributions to the scheme in accordance with section 58A by the employer(s) or to

pay employer(s) contributions in accordance with the scheme rules;
and,

- e) they have made all reasonable efforts to ensure that in so far as possible the information provided for the purposes of the application under section 48A(2) is in all material respects complete and accurate.

- 3.2 The Pensions Authority may, by notice in writing, require the trustees and the employer(s) to furnish to the Pensions Authority such further information as the Pensions Authority believes necessary to enable it to consider the application under section 48A(2).
- 3.3 The Pensions Authority shall review the information provided in accordance with the guidelines and guidance notes prescribed by the Minister under section 48A(11).
- 3.4 The Pensions Authority shall refuse to consider, or continue to consider, any application under section 48A(2) which does not comply with the guidelines and the guidance notes prescribed by the Minister under section 48A(11).
- 3.5 Before certifying a relevant amount, the Pensions Authority shall, in its sole discretion, decide whether it is satisfied of the following matters:
 - (i) the statement prepared by the actuary under section 48A(1) has been prepared in accordance with the guidelines and guidance notes prescribed in regulations made by the Minister under section 48A(11);
 - (ii) the relevant amount has been calculated in accordance with the guidelines and guidance notes prescribed in regulations made by the Minister under section 48A(11);
 - (iii) the trustees and the employer(s) have provided the Pensions Authority with all of the information required under paragraph 3.1 and 3.2; and
 - (iv) that there is nothing on the face of that information which indicates that it is in any material respect incomplete or inaccurate.
- 3.6 Where the Pensions Authority is satisfied of the matters set out at paragraph 3.5 the Pensions Authority shall certify the relevant amount in writing and shall notify the trustees accordingly.