

THE PENSIONS AUTHORITY

**PRESCRIBED GUIDANCE IN RELATION TO
SECTION 48A OF THE PENSIONS ACT, 1990**

VERSION 2

DATE: October 2016



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Sections referred to in these guidance notes are to sections of the Pensions Act 1990, as amended (the “Act”). Unless otherwise stated, terms used in these guidance notes have the meanings given in the Act.

These guidance notes should be read in conjunction with the Ministerial guidelines issued under section 48A(10)(a) of the Act (the “Ministerial Guidelines”) and prescribed by regulations made by the Minister under section 48A(11).

Background

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.¹
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.
3. Section 48A(1) requires the trustees to direct the actuary to prepare a Statement which includes a statement of the relevant amount and a statement by the actuary that the relevant amount is the amount required to discharge the liabilities in respect of the benefits referred to in section 48(1D).
4. Section 48A(2) requires the trustees to apply to the Pensions Authority to certify the relevant amount concerned and submit a copy of the Statement referred to in section 48A(1) with the application.
5. Section 10 provides that a function of the Pensions Authority shall be to issue guidelines or guidance notes on the operation of the Act.
6. These are guidance notes issued by the Pensions Authority under section 10 for the purposes of section 48A(11).

¹ For the purpose of these guidance notes, the date of the winding up is defined as the date of the doing of such act, the happening of such event, or the making of such decision as, under the rules of the scheme, requires the scheme to be wound up.



PART 1 ACTUARIAL STATEMENT

1 General

1.1 The Ministerial Guidelines² set out the underlying calculation basis to be used in the Actuarial Statement. These Pensions Authority guidance notes are intended to assist with the details of the calculations to be used in the preparation of the Actuarial Statement.

1.2 Section 48A provides for the payment of certain amounts for the purpose of the discharge by the trustees of the liabilities for benefits referred to in section 48(1D). The section 48A process is linked to the date of winding up of the scheme. As a result of market, data and timing issues arising between the date of winding up of the scheme and the completion of the wind up, the benefits secured for members may not be demonstrably or precisely the same as the liabilities under section 48(1D). This is inherent in the process and does not require additional applications or refunds from the trustees under section 48A.

1.3 In calculating the liabilities and resources of the scheme, the actuary should have regard to the underlying principles used when preparing an actuarial funding certificate (“AFC”) as set out in Actuarial Standard of Practice PEN-3 (“ASP PEN-3”), i.e., the liabilities and resources of the scheme giving rise to the relevant amount should be calculated in the same manner as the liabilities and resources that would be reported in an AFC with an effective date of the date of winding up of the scheme. There are exceptions to this principle which are set out in the following sections of this guidance.

1.4 When directing the actuary to prepare the Statement under section 48A(1), the trustees shall direct the actuary to prepare the Statement in the form appended to this guidance as Appendix 1.

2. Liabilities

2.1 As set out in the Ministerial Guidelines issued under section 48A(10)(a) and consistent with the principles set out in ASP PEN-3 as regards the valuation of liabilities for the purpose of an AFC:

- (a) the basis for the calculation of pensioner liabilities is the cost of purchasing annuities in the open market, and

² [http://www.welfare.ie/en/downloads/Ministerial-Guidelines-Section-48A\(10\)\(a\)-statementandapplication.pdf](http://www.welfare.ie/en/downloads/Ministerial-Guidelines-Section-48A(10)(a)-statementandapplication.pdf)

(b) the basis for the calculation of non-pensioner liabilities is the Section 34 standard transfer value basis as at the date of the winding up of the scheme.

2.2 Paragraph 2.6 of ASP PEN-3 is to be disregarded when calculating the resources of the scheme for the purpose of the statement, i.e., considerations related to self-investment and concentration of investment do not affect the calculation of resources.

2.3 Where, in the preparation of the most recent AFC prior to the date of winding up of the scheme, use has been made of provision 2.4(iv) of ASP PEN-3 (under this provision, for schemes providing index-linked or parity pay increases to pensions in payment, the actuary may assume that, in the event of a wind-up, annuities with a fixed rate of increase in accordance with the basis specified in the Appendix to ASP PEN-3 would be purchased by the trustees), this provision should be applied to the calculation of liabilities for the purpose of the statement.

2.4 Where the death has occurred of one or more members or beneficiaries of the scheme, on or after the date of winding up, for the purpose of the actuarial statement, any such death should be assumed to have occurred immediately prior to the date of winding up and any contingent liabilities arising on the death, that come within the scope of section 48(1AB)(b), (c) or (d) should be included in the liability calculation.

3. Wind up costs

3.1 Paragraph 2.4(c) of ASP PEN-3 applies.

PART 2 APPLICATION BY TRUSTEES

Application to the Pensions Authority for certification

1. When applying to the Pensions Authority for certification of the relevant amount under section 48A(2), the trustees of the relevant scheme concerned (“scheme”) shall submit the following to the Pensions Authority:

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 the 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 amount 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 these guidance notes and the Ministerial Guidelines;
- (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) stating:
 - a) that the employer(s) is insolvent for the purposes of the Protection of Employees (Employers’ Insolvency) Act 1984 (No. 21 of 1984);
 - b) that 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 a 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 or to pay employer contributions in accordance with the scheme rules.
- (ix) a statutory declaration by the trustees stating:
 - a) that 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.

2. The information set out in paragraph 1 is for the purposes of the Pensions Authority establishing that both the employer and the scheme are insolvent at the date of winding up of the scheme. The Pensions Authority has discretion to waive any of the requirements where otherwise satisfied on the basis of evidence presented as to the fact of insolvency. The Pensions Authority may also identify further information or documentation necessary following an assessment of the material presented and its function in certifying the relevant amount. 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 an application under section 48A(2). The trustees and the employer(s) shall comply with that request within such time period as the Pensions Authority may specify in the notice.

3. The Pensions Authority shall refuse to consider, or continue to consider, any application under section 48A(2) which does not comply with these guidance notes, the Ministerial Guidelines and prescribed by regulations made by the Minister under section 48A(11).

4. Applications to the Pensions Authority under section 48A(2) must be made by the trustees no later than 9 months after the date of winding up the scheme.



Appendix 1

Scheme Actuary's Statement under Section 48A(1) of the Pensions Act 1990 (as amended)

Scheme name	
Pensions Authority number	

1	Date of the winding up of the scheme	
2	Estimated wind up expenses	
3	Resources of the scheme available to discharge the liabilities in respect of the benefits referred to in section 48(1D)	
4	Liabilities in respect of the benefits referred to in:	
	section 48(1AB)(b)	
	section 48(1AB)(c)	
	section 48(1AB)(d)	
5	Total liabilities	
6	The amount required to discharge the liabilities in respect of the benefits referred to in section 48(1D) (the "relevant amount")	

I confirm that the relevant amount is the amount required for the discharge of the liabilities of the scheme in respect of the benefits referred to in section 48(1D).

Signed and dated by the Scheme Actuary

Signature:	Date:
Name (printed):	Scheme Actuary Certificate No.: