

people:skills:jobs:



Department for
**Employment
and Learning**
www.delni.gov.uk

IL2 NI Pension Schemes Act 1993

Employment Rights

Insolvency of employers:
safeguard of pension scheme
contributions





Introduction

- 1 If an insolvent employer has failed to pay some contributions into an occupational or personal pension scheme on behalf of which you are authorised to act, you may be able to apply for payments into the scheme from the Northern Ireland National Insurance fund. This booklet tells you what contributions the Department for Employment and Learning's (DEL) Redundancy Payments Service can pay. The law which provides for this is section 124 of the Pension Schemes (Northern Ireland) Act 1993 (referred to in this booklet as "the Act") as amended by section 90 of the Pensions (NI) Order 1995.
- 2 Some debts owed directly to the employees of an insolvent employer may also be claimed from the Redundancy Payments Service. These include arrears of pay, holiday pay and compensatory notice pay, and more information is contained in booklet ER5, Employees' rights on insolvency of employer, available from the addresses in Appendix 1.
- 3 This booklet gives general guidance only, and you should not regard it as a complete or authoritative statement of the law.**
- 4 Staff in the Redundancy Payments Offices listed in Appendix 1 will be pleased to help with any queries. A free telephone Helpline number is also given in the Appendix.

Contents

SECTION 1: What is insolvency?	3	SECTION 7: How to apply for payment	6
SECTION 2: Who can claim?	3	SECTION 8: The actuarial certificate	7
SECTION 3: Which pension schemes are covered	3	SECTION 9: Priority of debts	8
SECTION 4: Which contributions are covered	4	APPENDIX 1: Redundancy payments office	9
SECTION 5: What is an employee?	5	APPENDIX 2: State of insolvency	10
SECTION 6: Business transfers	6		



section 1: What is insolvency?

- 5 Unpaid pension scheme contributions can be paid under the Act only when a specific event has made the employer concerned legally insolvent, within the meaning of the Act. The provisions do not apply in the case of an employer who simply stops trading with no formal arrangements being made. The acceptable states of insolvency and their effective dates are itemised in Appendix 2.

section 2: Who can claim?

- 6 Only “persons competent to act” under the trust deed or rules of a scheme may apply for payment. These may be the trustees, the scheme administrators, a management committee or anyone permitted to act on their behalf such as an insurance company or professional adviser. Where the employer is a company, the trust instrument may specifically name the company as sole or joint trustee of a pension scheme. In these circumstances, where no-one else is available to act, the Redundancy Payments Service will accept claims from the employer’s representative (normally an authorised insolvency practitioner) acting in the name of the company, since he or she assumes the powers of the former directors and officers of the company and is consequently a person authorised to act for the pension scheme.

section 3: Which pension schemes are covered?

- 7 Occupational pension scheme:**
section 119(3) of the Act defines
such a scheme for this purpose
as:

*“Any scheme or arrangement
which provides or is capable of
providing, in relation to employees
in any description of employment,
benefits, in the form of pensions
or otherwise, payable to or in
respect of any such employees
on the termination of their
employment or on their death
or retirement”.*

Occupational pensions can be
either salary related or money
purchase.

- 8 Personal pension scheme:**
section 120(3A) of the Act,
in conjunction with section 1,
defines such a scheme for
this purpose as:

*“Any scheme or arrangement
which is comprised in one or
more instruments or agreements
and which has, or is capable of
having, effect so as to provide
benefits, in the form of pensions
or otherwise, payable on death
or retirement to or in respect
of employees who have made
arrangements with the trustees
or managers of the scheme for
them to become members of it”.*



section 4: Which contributions are covered?

- 9 The following contributions are payable under section 120 of the Act:
- unpaid contributions **on behalf of employees**, that is those contributions which have been deducted from wages paid to the employees, but which have not been paid into the resources of the scheme, in respect of the 12 months ending on the day before the employer became insolvent;
 - unpaid contributions **payable by the employer on his own account**, to a limit of whichever is the least of:
 - the balance of contributions relating to the 12 months ending on the day before the employer became insolvent;
 - the amount certified by an actuary as necessary for the scheme to meet its liability on dissolution for payment of benefits to or for the employees (this is not applicable to money purchase schemes¹);
 - an amount equal to 10% of the total pay of the employees concerned for the 12 months ending on the day before the employer became insolvent.
- 10 The following contributions cannot be paid under the Act:
- (a) **contributions in respect of remuneration not actually paid**; in other words where the employer has failed to pay part or all of the due salary or wages for a period of time.
 - (b) **“Rebate-only” contributions** to an appropriate personal pension scheme (or to a group personal pension scheme), which consists solely of the national insurance contracted-out rebate, are not payable under these provisions, and any enquiry about such contributions should be directed to the Contributions Agency. Whilst these minimum contributions are not payable under the Act, any **additional** contributions payable by the now insolvent employer may be claimed as described in this booklet.

1 Section 120(3A) of the Act, as inserted by section 88 of the Pensions (NI) Order 1995

section 5: What is an employee?

11 Claims are payable only in respect of scheme members who satisfy the definition of “employee” in the Employment Rights (NI) Order 1996². Office-holders such as company directors and company secretaries may be unable to show that they are employed under contract of employment, as required by the Employment Rights Order. Others such as contractors and agency workers may also be excluded. For more information on “employee status” see booklet ER5, *Employee’s rights on insolvency of employer*, available from the address in Appendix 1.

section 6: Business transfers

12 The Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE) preserve the contractual rights of employees when a new employer takes over the business undertaking in which they work. Whether or not a relevant transfer within the meaning of TUPE has occurred may be a matter for legal advice, and any dispute as to whether particular employees are protected by TUPE is for an employment tribunal to resolve. Where TUPE applies, liability for occupational pension contributions does not transfer to the new employer and a claim may be under the provisions of the Act. More information about TUPE is contained in booklet ER11, *Employees’ rights on the transfer of an undertaking*, available from the address in Appendix 1.

² Section 119(3) of the Act, as amended by Schedule 1 of the Employment Rights (NI) Order 1996



section 7: How to apply for payment

- 13** Stocks of the necessary forms are available on request from the office listed in Appendix 1. The person competent to act for the pension scheme should complete Part 1 of form RP15 (application form) enclosing form RP16 (actuarial certificate) in the case of a salary related occupational pension scheme (see paragraph 9). Where the number of employees concerned exceeds the space available on form RP15, a photocopy of page 2 of the form, or a page detached from another copy, may be used as a continuation sheet. The insolvency practitioner should agree the claim with the scheme's trustees by reference to the employer's records, complete Part 2 of form RP15 and send it to the Redundancy Payments Office, with form RP16 if appropriate. The practitioner may, however, complete both Parts 1 and 2 of form RP15 if authorised to act for the pension scheme. Payment will be made by the Redundancy Payments Office directly to the pension scheme.
- 14** Close liaison will be necessary between the insolvency practitioner and the person authorised to act on behalf of the scheme. Before completion of the claim form, the person authorised to act should provide the insolvency practitioner with a list of employees who were members of the scheme during the relevant 12-month period together with contribution rates, so that, in consultation with the scheme's administrators, the insolvency practitioner can calculate the amount of contributions due in respect of that period. The insolvency practitioner should identify changes affecting contributions (for example, employees joining and leaving the employer and changes in rates of pay). Depending on the results of the insolvency practitioner's calculations, the person authorised to act will be able to decide whether or not to make a claim. If so, the insolvency practitioner will provide the person authorised to act with form RP15 and, if appropriate, form RP16.

section 8: The actuarial certificate

- 15** Where a claim is to be made for contributions payable to a pension scheme **on the employer's own account**, the person authorised to act on behalf of the scheme should consider whether a certificate (form RP16) should be provided by an actuary to confirm what amount is needed *"for the purpose of meeting the liability of the scheme on dissolution to pay the benefits provided by the scheme to or in respect of the employees of the employer"* (section 120 of the Pension Schemes Act.) As explained in paragraph 9, a certificate will be required only in respect of a salary related occupational scheme.
- 16** Actuarial certificates are not required in respect of money purchase schemes. Any unpaid **employer's** contributions which are met by the Redundancy Payments Service should, on dissolution of a scheme, be used to provide benefits and not, for example, be paid to the employer. Before completion of a certificate, an actuary will therefore need a copy of the winding-up or dissolution clause of the occupational pension scheme. Since the amount payable in respect of employer's contributions does not depend on the result of a preferential claim, completion of the certificate need not await the declaration of a preferential dividend.



section 9: Priority of debts

17 When the Redundancy Payments Service has made a payment into the resources of a pension scheme, the right to recover the relevant contributions from the insolvent employer's assets, including any preferential rights, transfers from the pension scheme to the Department.

18 Under Schedule 3 of the Pension Schemes (NI) Act 1993 contributions that rank as priority debts are:

(a) **Employee contributions:** any amounts deducted or due from wages paid or payable in the four months prior to the employer's insolvency and not paid over to the occupational or personal pension scheme;

(b) **Employer contributions:** contributions due to be paid to an occupational pension scheme over the 12 months prior to the insolvency of the employer. The amount depends upon the contracted-out status of the employment of the member:

- if an employee is contracted out on a salary related basis, the amount of contributions required to secure Guaranteed Minimum Pensions:
- if an employee is contracted out on a money purchase basis, contributions owed for employer's minimum payments in respect of that employee.

19 If it is not possible to identify from the scheme records the contributions needed to secure Guaranteed Minimum Pensions or the minimum payments, Schedule 3 contains a formula to calculate the amounts.

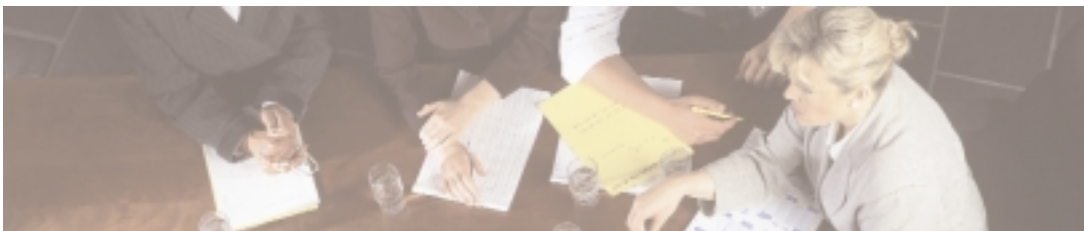
appendix 1: **Redundancy Payments Service**

Department for Employment and
Learning
Redundancy Payments Service
Room 203
Adelaide House
39-49 Adelaide Street
BELFAST
BT2 8FD

Free Helpline

A free Helpline is available to answer
any of your redundancy payment
queries.

The number to ring is 0800 585811.



appendix 2: States of insolvency

- 1 Payments can be made into pension schemes only when an employer has become formally insolvent as defined in section 120 of the Pension Schemes (NI) Act 1993. There is no discretion to make payment in any other circumstances. The table below shows the categories of insolvency specified in the Act, together with the date on which each becomes effective.

Northern Ireland

Bankruptcy (Article 252)

Deeds of Arrangement

Making of Administration Order
(Deceased insolvents) (Article 252)

Administration Order (Companies)
(Article 24)

Company Voluntary Arrangements
(Article 18)

Compulsory Liquidation of Company
(Article 109)

Creditors or Members Voluntary
Liquidations (Article 72)

Administrative Receiverships
Or Managerships of Companies
(Article 43)

Effective Date of Insolvency

Date of Bankruptcy Order

Date of Executing Deed

Date of Administration Order

Date of Administration Order

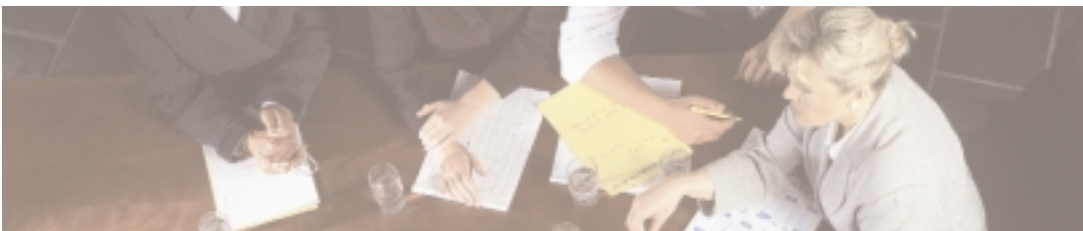
Date arrangement is approved by
meeting of Creditors

Date of Winding-up Order (unless
preceded by an Administration Order
or voluntary winding up resolution.
In which cases the relevant dates
will be the date of Administration
Order or Date of resolution for
voluntary winding up.)

Date of passing of resolution for
voluntary winding up

Date of appointment of Administrative
Receiver

All references are to Insolvency (NI) Order 1989



Notes

people:skills:jobs:



Department for
**Employment
and Learning**
www.delni.gov.uk



INVESTOR IN PEOPLE

THE DEPARTMENT:

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

This document is available in other formats upon request.

CUSTOMER SERVICE UNIT

Redundancy Payments Service
Room 203
Adelaide House
39-49 Adelaide Street
Belfast
BT2 8FD
Freephone 0800 585811

Further information:

telephone: 02890 257 552

email: rpsquery@delni.gov.uk

web: www.delni.gov.uk/index/er.htm