



An tÚdarás Pinsean  
The Pensions Authority

**THE PENSIONS AUTHORITY**

**PRESCRIBED GUIDANCE IN RELATION TO  
SECTION 47 OF THE PENSIONS ACT, 1990**

**GENERAL CONTINGENT ASSET GUIDANCE**

**VERSION 01**

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## 1. INTRODUCTION

- 1.1. This is the general contingent asset guidance referred to in the prescribed guidance issued by the Pensions Authority under section 47 of the Pensions Act 1990 (**section 47 guidance**) and forms part of that guidance.
- 1.2. This guidance applies to contingent assets used for the purposes of calculating the resources of a scheme for the purposes of determining whether or not a scheme satisfies the funding standard or funding standard reserve in accordance with section 44 of the Act. It does not apply to contingent assets which are not used for such purposes although trustees may find it of assistance where contingent assets are offered as security for funding obligations.
- 1.3. Where a contingent asset is to be used for the purposes of determining whether or not a scheme satisfies the funding standard, it must also comply with the requirements of the Occupational Pension Schemes (Funding Standard) Regulations, 1993 to 2009 (as amended or replaced), in particular those requirements relating to self-investment and concentration of investment.
- 1.4. Where the contingent asset takes the form of an unsecured undertaking (as defined in the section 47 guidance) for the purposes of determining whether or not a scheme satisfies the funding standard reserve, it must comply with the terms of the section 47 guidance in relation to unsecured undertakings and this guidance does not apply.
- 1.5. Where the contingent asset takes the form of an unsecured undertaking (as defined in the Section 47 guidance) it cannot be included for the purposes of determining whether or not a scheme satisfies the funding standard.

## 2. GENERAL

- 2.1. A contingent asset is an asset which the trustees of a pension scheme can claim on the occurrence of one or more specified future events.
- 2.2. Before a contingent asset can be included for funding standard or funding standard reserve purposes, it must at a minimum be capable of enforcement in any of the events set out in paragraph 6 of the section 47 guidance in relation to unsecured undertakings.
- 2.3. This guidance sets out minimum requirements which a contingent asset must satisfy before that asset can form part of the resources of a scheme for the purposes of determining whether or not the scheme satisfies the funding standard or funding standard reserve. Bearing in mind their fiduciary duties, trustees may impose additional requirements before accepting a contingent asset.

- 2.4. The Trustees must have agreed to accept a contingent asset before it can be included as a resource of a scheme for the purposes of the funding standard and funding standard reserve.
- 2.5. It is the view of the Pensions Authority that a deficit within a scheme is best dealt with by paying additional contributions and this should be the first objective of trustees. Trustees must have sought such contributions and trustees should only consider accepting contingent assets in lieu of contributions where the employers under the scheme are unwilling to pay such contributions.
- 2.6. In addition, because a contingent asset may have a finite life, the trustees need to carefully consider the impact upon the scheme if and when the contingent asset ceases to be in place and have in place funding arrangements to meet that eventuality.
- 2.7. The trustees must be satisfied that no third party interest in the contingent asset can be created which would adversely affect the trustees' interest in the contingent asset.
- 2.8. The acceptance of a contingent asset and compliance with the Act and the terms of this guidance is a matter for the trustees of a scheme. The trustees must have obtained all appropriate professional advice, both legal and financial, so as to satisfy themselves in relation to the value of the contingent asset, its availability should the contingency giving rise to a claim occur and compliance with this guidance. It is a matter for trustees to satisfy themselves on these matters and the Pensions Authority will not be involved in the approval of contingent assets. In addition, compliance with this guidance should not be construed as a warranty or confirmation by the Pensions Authority that the acceptance of the contingent asset is appropriate, adequate or suitable in the circumstances of the scheme. This is a matter for the trustees of the scheme. However, the Pensions Authority reserves the right from time to time to request such information as it may decide in relation to the contingent asset including copies of any legal or financial advice or professional valuation.

### 3. VALUATION OF CONTINGENT ASSET

- 3.1. The contingent asset must have a measureable value and the trustees will need to place a value on the contingent asset for the purposes of calculating the resources of the scheme. For some contingent assets this may be relatively straightforward (e.g. a charge over monies set aside in a bank account). For other assets this may be more complex and require the input of specialist advisers such as valuers and covenant assessors. This assessment should consider all material factors which may affect the value of the contingent asset. These factors may include, but are not limited to, the following
  - 3.1.1. counterparty risk (where relevant)
  - 3.1.2. any other charges or claims over the asset concerned.
- 3.2. On any date on which a contingent asset is to be included for the purposes of determining

whether or not the scheme satisfies the funding standard or funding standard reserve, the trustee of the scheme must have satisfied themselves, in compliance with their fiduciary duties, of the value to be placed on that asset and confirmed that value to the actuary.

#### 4. **AVAILABILITY OF CONTINGENT ASSET**

- 4.1. The contingent asset must be available as a resource of the scheme and capable of enforcement until it has been terminated in accordance with its terms and those terms must, at a minimum, comply with this paragraph 4.
- 4.2. Except where paragraph 5.2 below applies, the contingent asset must not at any time be capable of termination (in whole or in part)
- 4.2.1. without the written consent of the trustees, or
- 4.2.2. without giving the trustees written notice expiring no earlier than three years after the effective date of the actuarial funding certificate which next follows the date of the notice

unless the actuary has certified that the scheme satisfies the funding standard and, on or after 1 January 2016, the funding standard reserve without taking account of the contingent asset on the date the contingent asset is to terminate. Trustees who are considering permitting the person providing the contingent asset to wholly or partly terminate the contingent asset on lesser notice than that set out in paragraph 4.2.2 need to bear in mind that the contingent asset is a resource of the scheme and they should only do so in compliance with their fiduciary duties.

- 4.3. Where the trustees are on notice that a contingent asset will terminate in whole or in part then, with effect from the date on which the trustees are put on notice, the contingent asset (or the part being terminated) cannot be included as a resource of the scheme for the purposes of determining whether or not the scheme satisfies the funding standard or the funding standard reserve. However, the contingent asset must continue to be capable of enforcement for its full value until the contingent asset is terminated in accordance with its terms.

#### 5. **ENFORCEABILITY OF CONTINGENT ASSET**

- 5.1. The terms of a contingent asset should be such that it is capable of enforcement by the trustees in at least the circumstances set out in paragraph 6.1 of the section 47 guidance in relation to unsecured undertakings.
- 5.2. The terms of a contingent asset can provide that it will not be enforced
- 5.2.1. to the extent that the value of the contingent asset is paid to the scheme, or

5.2.2. to the extent that a new contingent asset complying with this guidance is put in place.

The original contingent asset must continue to be available and capable of enforcement to the extent its value is not paid to the scheme or it has not been replaced (as appropriate).

## 6. **EXISTING CONTINGENT ASSETS IN PLACE**

Where a contingent asset was put in place (and legally enforceable) prior to the date of Version 01 of this guidance, paragraphs 4 and 5 of this guidance do not apply to that contingent asset. For the avoidance of doubt, those paragraphs will apply if the terms of that contingent asset are materially varied on or after the date of Version 01 of this guidance or to any replacement contingent asset put in place on or after the date of Version 01 of this guidance.