



An tÚdarás Pinsean
The Pensions Authority

FAQs ON REMITTANCE OF CONTRIBUTIONS

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1. When did the provisions regarding remittance of contributions become effective?

The Minister for Social and Family Affairs announced on 24 October 2002 that the provision of the Pensions Act requiring employers to remit contribution to the trustees of occupational pension schemes within a specified timescale will be brought into effect from 1 January 2003.

2. What are the provisions in relation to contributions?

Under the current provisions of the Principal Act, trustees are required, under section 59(a), to ensure, insofar as is reasonable, that the contributions payable by the employer and the members of the scheme, where appropriate, are received. A new section, section 58A, was inserted in Part V of the Principal Act, the effect of which requires employers to remit certain contributions in respect of schemes within a specific time period.

3. What contributions are affected by the requirement?

All employee contributions deducted from the employee's wages/salary must be remitted to the trustees or another person on their behalf within 21 days from the end of the month in which the deduction was made.

All employer contributions payable in respect of a defined contribution scheme and expressed as a cash amount or as a percentage or proportion of an employee's wages/salary and payable in respect of that employee, must be paid within 21 days of the end of each month to the trustees of the scheme or another person on their behalf.

4. Are there any additional duties on trustees?

Section 42 amends section 59 of the Principal Act by inserting an additional requirement in connection with the duty to collect contributions (now contained in S.59(1)(a)), to the effect that the contributions referred to in S.58A must be invested in accordance with section 59(1)(b) within 10 days of the latest date on which they should have been remitted or paid by the employer under section 58A.

5. Will trustees of defined benefit schemes who have used the contributions collected from members to pay out benefits due now be required to invest those contributions with the fund manager thereby incurring charges for investment and disinvestment?

Section 59(1)(a) will require that the contributions be invested "in accordance with paragraph (b)" within 10 days of the date specified. Paragraph (b) imposes an obligation on trustees to provide for the "proper investment of the resources of the scheme in accordance with the rules of the scheme." The provisions contained in paragraph (b) have not been changed. Therefore, what constituted "proper investment in accordance with the rules" prior to the amendment of the Act continues to constitute such proper investment after such amendment.

6. Does the requirement to remit employee contributions deducted, and to provide written confirmation, also apply to additional voluntary contributions (AVCs)?

The provisions in Section 58A apply to all contributions deducted.

7. Do all failures to remit contributions require a mandatory report (whistle-blow) to the Pensions Authority?

Failure to comply with the payment deadlines will not require automatic reporting to the Authority. The existing reporting requirements under Section 83 of the Act have not changed. The duty therefore continues as previously i.e. that a “relevant person” must report where he or she has reasonable cause to believe that a fraudulent conversion or material misappropriation has occurred, is occurring or is to be attempted, as does the protection under Section 84 of any person making a voluntary report to the Authority on any matter relating to the state and conduct of a scheme. In summary, for an obligation to report to exist there will have to have been a failure to remit and reasonable cause to believe that fraud or material misappropriation has occurred, is occurring or is to be attempted.

While it will be a breach if there is non remittance of contributions by an employer in respect of an occupational pension scheme or non investment of contributions by the trustees, there will be no automatic requirement for this to be reported to the Authority. The existing reporting requirements have not changed. The duty therefore continues as previously i.e. a “relevant person” must report where he or she has reasonable cause to believe that a fraudulent conversion or a material misappropriation of the resources of a scheme has occurred, is occurring or is to be attempted, as does the protection under Section 84 of any person making a voluntary report to the Authority on any matter relating to the state and conduct of a scheme.

Non remittance or non investment of contributions can indicate that there is a fraudulent conversion or a material misappropriation of the resources of a scheme which should be reported to the Authority under Section 83. Whether it does so indicate will depend on the facts of the particular case. Section 83 also states that the report should be made “as soon as is practicable”. While section 83 does not state that the relevant person must investigate the reason for any non payment of contributions, the Authority would expect that in the ordinary course, following any non remittance within the 21 day period, the situation would be investigated by the relevant person (in this case scheme administrators) to ascertain the facts.

Firstly, it would be appropriate to investigate whether there is in fact non remittance or non investment. For example, a number of different scenarios could explain an apparent non remittance or non investment of contributions.

- The contributions were not deducted from the employee. As an example, this could be because the employee has left service. Obviously in this case there has been no breach and therefore there can be no requirement to report to the Authority.
- No obligation to pay contributions to the administrator (on the employer's part) existed. As an example, the scheme may have switched to another administrator or the employer may have suspended contributions in accordance with the scheme rules. Again, there has been no breach and therefore there can be no requirement to report to the Authority.

Secondly, once it is established that there has been non remittance or non investment of contributions, the "relevant person" will need to decide whether there is reasonable cause to believe that a fraudulent conversion or a material misappropriation has occurred, is occurring or about to be attempted. For example it may be the case that the contributions were not paid but the situation is rectified and circumstances are such that there is no reason to suspect fraud or material misappropriation. In such a situation it is a question of judgement for the relevant person as to whether a report is required. If in doubt, the Authority can be contacted to discuss the situation.

The Authority recognises that it may take some time to establish the facts of the case but relevant persons need to be aware that the sooner the matter is addressed the better the chances of rectifying it. The Authority would be concerned to receive reports under Section 83 where contributions have been outstanding for more than two months. The Authority will specify the format that the report should take so that all of the information required by the Authority to investigate the issue is submitted with the report.

8. What format should a report to the Authority relating to non remittance of contributions take?

The Authority previously indicated that it would specify the format that any report relating to failure to remit contributions in accordance with Section 58A of the Act should take. This is to ensure that all of the information required by the Authority to investigate the issue is submitted with the report. Details of the format of the report is available at www.pensionsauthority.ie.

As the Authority has previously indicated there is no mandatory requirement to report a failure to remit contributions. There is only a mandatory requirement to make a report to the Authority if there is reasonable cause to believe that a fraudulent conversion or material misappropriation of the assets of the scheme has occurred, is occurring or is to be attempted.

Non-remittance of contributions may be an indication of mis-appropriation but it will not necessarily be so. We would expect that providers and advisers will know their clients and will be in the best position to judge if a report is warranted (either on a mandatory or voluntary basis). When it has been

decided that a report is necessary the Authority would expect the following information to be provided, in order that the matter can be investigated:

- Scheme name
- Pensions Authority registration number
- Employer name
- Employer address
- Current trustee details
- Number of active members in scheme
- Period for which contributions have not been remitted
- Total amount outstanding
- Breakdown of total between employer and employee contributions
- Steps taken to address issue with trustees and/or employer
- Whether or not members are aware of the issue
- Any other relevant information (e.g. if company is in receivership)

Failure to provide any of the information will probably lead to the Authority requesting it and will delay the investigation process. If any of the information is unknown this should be stated.

The Authority previously stated that we would be concerned to receive reports where more than 2 months contributions are outstanding. This relates particularly to schemes where there would be reasonable cause for concern. The reason for this is that we find in practice, where there are real issues in relation to non-remittance particularly if the employer is experiencing financial difficulties, they are more easily dealt with if they are tackled early.

Of course, however if at any point misappropriation or fraud is suspected this should be immediately reported.

9. In accordance with Section 58A(2), can employer's contributions only be remitted monthly? What happens if an employer currently remits fortnightly?

The requirement in Section 58A(2) is that a sum equal to the appropriate cash amount or percentage or proportion of every payment of wages or salary made to that employee during that month must be remitted "within 21 days following the end of every month". While the sum must be remitted within 21 days following the end of every month there is no requirement that it be made in one monthly payment. In other words, where an employer's payments are remitted fortnightly, so long as a sum equal to the full amount is remitted within 21 days following the end of every month, there is no reason why this cannot be done via more than one payment made within that period.

10. What circumstances are there, if any, in which fees may be deducted by trustees from remitted contributions?

Section 58A requires the employer to remit contributions without any deduction. Therefore the full amount of contributions must be remitted by the employer. Section 59(1)(a) requires that the relevant contributions be

invested by the trustees “in accordance with paragraph (b)” within 10 days. Paragraph (b) imposes the obligation on trustees to provide for “proper investment of the resources of the scheme in accordance with the rules of the scheme.” The provisions contained in paragraph (b) have not been changed. Therefore, what constituted “proper investment in accordance with the rules” prior to the amendment of the Act continues to constitute such proper investment after such amendment. In summary, if the fee deduction by the trustees constituted proper investment in accordance with the rules prior to the commencement of Section 59(1)(a), it will continue to do so after.

11. What needs to be notified?

Employers must ensure that a statement is issued at least once a month to employees, and to the trustees or the person to whom the employer remits contributions directly, specifying the amount of contributions remitted on their behalf to trustees. In relation to defined benefit schemes this statement should specify the amount of employee contribution which has been remitted. In relation to defined contribution schemes the statement should specify the amount of both the employee and employer contribution remitted.

This disclosure can be made via the payslip. The actual amount remitted during the period to which the statement relates may be specified on the payslip or, alternatively, where the amount of employee deduction and employer contribution which were specified on the previous payslip have since been remitted, a statement to that effect may be included on or with the payslip.

12. Do employer contributions paid in respect of life assurance benefits have to be notified to the employee?

Section 58A(3) requires the disclosure of contributions paid “on behalf of or in respect of an employee”. This means a contribution paid on behalf or in respect of a specific, identifiable employee. This means that where an employer pays a premium for a group life assurance contract he is not required to disclose this under Section 58A. If, however, the employees’ life assurance benefits are insured on an individual basis this would need to be disclosed.

This document is intended to set out the Authority’s view in relation to the operation of Section 58A and is subject to the understanding that the question of final interpretation is one for the courts.