



An tÚdarás Pinsean
The Pensions Authority

Determinations by the Pensions Authority under Sections 38, 53, 58, 64(A) and 81G of the Pensions Act, 1990

GUIDANCE NOTES

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This document has not yet been updated to take account of IORP II transposition

Determinations by the Pensions Authority under Sections 38, 53, 58, 64(A) and 81G of the Pensions Act, 1990

General

s.26
s.38
s.53
s.58
s.64A
s.81G

1. Provision is made, under the Pensions Act, 1990, for the Pensions Authority to issue formal determinations in respect of certain questions specified in *the Act*. These questions include matters such as

- whether a *scheme* is a *defined benefit scheme* or a *defined contribution scheme* for the purposes of a specified Part of *the Act*,
- whether any provision of a specified Part of *the Act* conflicts with any rule of a *scheme*.

A question to be determined by *the Authority* under *the Act* must be determined by it either, in its absolute discretion, without or after an oral hearing by *the Authority* (or such member or members of *the Authority* (or other person or persons as *the Authority* may authorise for that purpose).

Determinations are made by *the Authority* under *the Act* solely for the purposes of the relevant Part(s) of *the Act* and are without prejudice to any claims that *members* may have to have their *benefits* dealt with in any particular way.

While reference is made throughout the following paragraphs to *the Authority*, it should be noted that *the Authority* has authorised the Chief Executive to perform *the Authority's* function of determining any question which falls to be determined by *the Authority* under *the Act* and deciding, under Section 26 of *the Act*, whether an oral hearing is to be held in any case and the person or persons by whom it is to be held.

Predetermination Procedure

Persons entitled to apply for a determination

s.38 (3)
a.10
S.I.445/92

2. The following categories of person are entitled to make an application (which must be made in writing) for a determination:
 - the trustees of the *scheme*,
 - any employer of persons in *relevant employment* to which the *scheme* applies,
 - any *member* or *prospective member* of the *scheme*,
 - an agent to the *scheme*,
 - an *authorised trade union* representing a *member* or *members* of the *scheme*,
 - such other persons as the Minister may prescribe.

Request for further information

3. *The Authority* may, following receipt of the application, ask the applicant to clarify any matter or furnish any further documentation/information, as appropriate.

Notice to any person concerned of the application for a determination

4. Notice that an application for a determination has been made to *the Authority* will be given to any other person who appears to be concerned. The persons likely to be notified by *the Authority* are those listed in paragraph 2 who, on the facts of the case, *the Authority* is aware ought to be notified.
5. Where possible, notice will be given by post (by pre-paid registered letter). If notification by post is not practicable *the Authority* may place a notice in a daily newspaper published in and circulating throughout the State notifying persons concerned that an application for a determination has been received by *the Authority*.

Representations

s.26(1)(b) **6.** Any person concerned may make representations to *the Authority* and *the Authority*, in reaching its determination, will take into account any such representations made.

s.26(2)

Representations must be made in writing or, if an oral hearing is being held, at the hearing.

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Procedure — Determination

Determination may be made without or after an oral hearing

- s.26(1)(a) 7. As soon as may be after all appropriate enquiries and notifications have been made and representations considered, *the Authority* will decide, on the facts of the case, whether or not an oral hearing is to be held. While the Pensions Act gives *the Authority* absolute discretion in deciding whether an oral hearing is to be held in any case, in practice, the decision will be made having regard of the rules of natural justice, in particular, the question of whether it is necessary to hold an oral hearing in order to resolve a conflict of evidence in relation to any matter essential to the determination.

Determination without an oral hearing

- s.26(1)(b) 8. If a decision is made to determine the matter without an oral hearing, the matter will be determined by *the Authority* on the basis of the information and representations furnished in respect of the application.

The Authority's determination will be communicated, in writing, to the applicant, to any other person concerned who has made representations in connection with the application and to any other person as determined by *the Authority*.

Oral hearing

- s.26(1)(a)
a.3
S.I. 77/97 9. If a decision is made to determine the matter after an oral hearing, *the Authority* will either hold a hearing or appoint a Tribunal to hold a hearing.

Notice of oral hearing

- a.4
S.I. 77/97 10. *The Authority*/Tribunal will, as soon as may be, fix a time, date and place for the hearing and give notice of the hearing, not less than 21 days before the hearing, to:

- (a) the applicant;
- (b) any other person concerned who has made a representation in writing to *the Authority* under the Act in connection with the question to be determined by it; and

(c) any person (other than a person specified in (a) or (b) above) whom *the Authority* or the tribunal requires to attend to give evidence at the hearing in connection with the question to be determined.

a.4(2)
S.I.77/97

The Authority or the tribunal may require any of the persons specified at (a), (b) and (c) above to produce at the hearing any documents in his/her possession, custody, control or procurement relating to the question to be determined.

a.2 S.I.
77/97

A notice given under this paragraph may be given either by delivering it to that person or by sending it by post in a prepaid registered letter to the person at the address at which he/she ordinarily resides.

Attendance at hearing

a.5 **11.** The applicant for a determination must, unless otherwise determined by *the Authority* or the tribunal on application to it by the applicant in writing, appear at the hearing in person and may be accompanied by any other person with the consent of *the Authority* or the tribunal. Any other person who has been notified of the hearing by *the Authority* or the tribunal may appear at the hearing.

Any person required to appear at the hearing may, with the prior consent of *the Authority* or the tribunal, be represented at the hearing by any other person including a legal representative.

Procedure at hearing

a.6
S.I.77/97

12. The procedure at the hearing will be such as *the Authority* or the tribunal may determine.

The hearing or any part of it, may take place in public or in private, as determined by *the Authority* or the tribunal.

The Authority or the tribunal may:

- proceed with the hearing notwithstanding that any person specified in paragraph 10 (a), (b) or (c) above has failed to attend the hearing;
- postpone or adjourn the hearing; or
- admit any document or other material it may consider to be appropriate to the question for determination.

A record of the proceedings at the hearing will be made by such person and in such manner as *the Authority* or the Tribunal may authorise for the purpose.

- s.26(3) **13.** *The Authority* or the tribunal may take evidence on oath and for that purpose may administer oaths to persons attending as witnesses at the hearing.
- a.7
S.I. 77/97 **14.** *The Authority* may determine any question referred to it notwithstanding the failure or neglect of the applicant or any other person to comply with any requirement of S.I. 77 of 1997.

Notification of determination by Authority after oral hearing

- a.8
S.I. 77/97 **15.** A written notice of a determination by *the Authority* will be sent as soon as may be to the persons specified at (a) and (b) of paragraph 10 and to any other person as determined by *the Authority*.

Failure to attend an oral hearing

- s.26(4)(c) **16.** A person to whom a notice requiring his/her attendance or production of documents has been given and who refuses to give evidence or gives false evidence at an oral hearing or refuses or wilfully fails to produce any document to which the notice relates at such a hearing shall be guilty of an offence under *the Act*.

Expenses

- s.26(5) **17.** *The Authority* or the tribunal may order a person concerned to pay to any other person concerned a reasonable sum in respect of expenses occasioned by the person in relation to the hearing.

Appeal to the High Court on a point of law

- s.38(4)
s.53(3)
s.58(3)
s.64A(3)
s.81G(2) **18.** An appeal to the High Court on a point of law from a determination of the Authority may be made by the person who made or a person who was entitled under the Act to make the application concerned.