



An tÚdarás Pinsean
The Pensions Authority

Preservation of Benefits and Minimum Value of Contributory Retirement Benefits Guidance Notes

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**Preservation of Benefits
and
Minimum Value of Contributory Retirement Benefits
Guidance Notes
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Criteria for the Exercise by the Pensions Authority of its function under Article 3(1)(b) of the Occupational Pension Schemes (Preservation of Benefits) Regulations, 2002 (S.1. No. 279 of 2002)

Abbreviations

References to provisions of the Pensions Act, as amended, and its regulations to which the Guidance Notes relate, are given in abbreviated form on the left hand side of the page. The following is the key to the abbreviations.

"s" This means **"section"** and is used only to refer to sections of the Pensions Act, 1990, as amended. Thus **"s27(1)"** means section 27, subsection (1) of the Act.

"SI" This means **"Statutory Instrument"** and refers to regulations made under the Act. Thus **SI 279/02** means the regulation numbered 279 made in 2002.

"Sch" This means **"Schedule"** and is used to refer to Schedules to the Pensions Act. Thus **"2nd Sch"** means the Second Schedule of the Pensions Act, 1990.

"a" This means **"article"** and is used to refer to the articles of a regulation. Thus **"a4(1) & a5 - SI 279/92"** means article 4, subsection 1 and article 5 of S.I. 279/02.

"p" This means **"paragraph"** and is used to refer to paragraphs of Schedules. Thus **"p 1(2) 2nd Sch"** means paragraph 1, subsection (2) of the Second Schedule of the Pensions Act, 1990.

Preservation of Benefits
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Guidance Notes

Introduction

- s28(2)** 1. Part III of the Pensions Act 1990 which came into effect on 1 January, 1991 provides for the preservation of benefits for *members* of *occupational pension schemes* who leave *relevant employment* before *normal pensionable age (NPA)* for any reason other than death and who satisfy specified qualifying conditions.
2. Part III of the Pensions Act 1990 ("the Act") has been amended by various legislation since 1990, the most recent being the Pensions (Amendment) Act 2002.
- s29(3)**
s30(2) 3. The main purpose of the preservation legislation is to provide a *member* whose employment terminates before his/her *NPA* with an entitlement to a proportionate share of the benefits to which he/she would have become entitled had he/she remained in employment and retired at *NPA*. It also provides an entitlement where the *member's* employment ceases to be relevant i.e. where the *member* remains in the employment but a *scheme* no longer applies to that employment. The *preserved benefit* as defined by the legislation is a minimum requirement and does not preclude a *scheme* from providing a greater benefit. The legislation also provides a minimum *contributory retirement benefit* for a *member of a contributory scheme* whose *relevant employment* terminates after 1 June 2002 at, after or within 5 years before, *NPA*.
3. These notes are a guide to the requirements as specified in Part III of the Act and in the regulations entitled:
- Occupational Pension Schemes (Preservation of Benefits) Regulations, 2002"
(S.I. No. 279 of 2002)
- "Occupational Pension Schemes (Preservation of Benefits)(Special
Calculations) Regulations, 2002 (S.I. No. 217 of 2002) ("the Regulations").
4. The Act and the Regulations are collectively referred to as "the legislation" throughout the notes.
- s39(1)** 5. Where there is any conflict between the legislation and the *rules* of a *scheme* the legislation is overriding.

**Preservation of Benefits
and
Minimum Value of Contributory
Retirement Benefits**

PART I

**General Content of the Preservation
Requirements**

*This Part of the notes provides a general overview of
the content of the preservation requirements and
explains the key terms used in the legislation.*

GENERAL CONTENT OF THE PRESERVATION REQUIREMENTS

General

- s28(2)** 6. A statutory entitlement to a *preserved benefit* is provided under the legislation to a *member* of an *occupational pension scheme* who satisfies the qualifying condition and whose service in *relevant employment* terminates before *NPA* for any reason other than death. Hence, the legislation applies to a *member* whose employment terminates before *NPA* and who receives an immediate early retirement benefit (see paragraph 48). A statutory entitlement to *preserved benefit* also arises where a *member* remains in employment but there is no longer a *scheme* applying to that employment i.e. the employment is no longer relevant.

Qualifying Condition

- s28(2)** 7. The qualifying condition depends on whether *relevant employment* terminates on or before, or after, 1 June 2002. If *relevant employment* terminates on or before 1 June 2002 the entitlement to a *preserved benefit* is subject to the *member* having completed a minimum of five years' *qualifying service*, at least two of which must have been completed after 1 January, 1991. If *relevant employment* terminates after 1 June 2002 the entitlement to a *preserved benefit* is subject to the *member* having completed a minimum of two years' *qualifying service* after 1 January 1991 (see paragraph 32 for the definition of *qualifying service*). This is only the minimum condition for entitlement to *preserved benefit*. It does not preclude a *scheme* from providing for benefits to be preserved for *members* who have less than the minimum *qualifying service*.

Occupational Pension Schemes

- s2** 8. In general the preservation requirements apply to any *occupational pension scheme*. An *occupational pension scheme* is a *scheme* or arrangement (which need not necessarily be established under trust) which provides or is capable of providing retirement benefits in relation to employment within the State and which has been approved for tax purposes or has applied for such approval.
- s37(1) & (2)
a11 SI 279/02** 9. There are, however, a number of *schemes* which are specifically excluded from the preservation requirements on the basis that the benefits which they provide on leaving service are no less favourable than those required by the Act. In general these are public sector *schemes* and are listed in the Schedule to the Preservation of Benefits Regulations, 2002 (SI 279/02).

10. Throughout these notes, any reference to a *scheme* should be taken to mean an *occupational pension scheme*.

Members

- s2** 11. The legislation is expressed in terms of what a *scheme* must provide for, or in respect of, a *member* meaning any person who is, or has been, in *reckonable service* in the State under an *occupational pension scheme*.

Relevant Employment

s2

12. A *member* is regarded as being in *relevant employment* if he/she is in any employment to which a *scheme* applies. A *scheme* is regarded as applying to an employment where an *employee* is, or is capable of becoming, a *member* of that *scheme*. A *scheme* is regarded as no longer applying to an employment where:

- the *scheme* is wound up and not replaced by another *scheme*
- the *scheme* is "frozen" (i.e. benefits for existing *members* are no longer accruing, and no new *members* are being included) and not replaced.
- an *employee* has declined to join, or has opted to terminate his/her membership of, the *scheme*.

Reckonable Service

s2

13. The definition of *reckonable service* applies for both calculation and qualifying purposes under the legislation. It extends to all service in *relevant employment* while a *member* of the *scheme* (see also paragraph 71). There are, however, two exceptions. It does not include service as a *member* of the *scheme* where either:

- the only benefit under the *scheme* in respect of such service is in respect of death before *NPA*, or
- the *member* has been notified in writing by the trustees that a period of service does not entitle him to *long service benefit*.

14. *Reckonable service* includes any period of service during which the *member* is in part-time employment and which at the time it is given qualifies the *member* for *long service benefit*. This means that, a period of one year during which a *member* works part of each day worked by full-time *employees* would count as one year's *reckonable service*, provided that such part-time service is pensionable. Equally, if a *member's contract of employment* requires him/her to work on only some of the days normally worked by full-time *employees* (e.g. on a week on/week off basis), the full period during which he/she is employed counts as *reckonable service*, provided that such part-time employment is pensionable. If, however, he/she is employed for limited periods from time to time (e.g. a seasonal worker), the periods intervening between such periods of employment would not usually count as *reckonable service*.

15. If a *scheme* provides for extra years of pensionable service to be taken into account for benefit purposes (for example, service before joining the *scheme*), or enables *members* to purchase extra years of benefit, these are not regarded as *reckonable service*.

Termination of Relevant Employment

16. If a *member's* employment ceases other than in the circumstances described in paragraphs 17 and 19, or if a *scheme* no longer applies to his/her employment (see paragraph 12), his/her *relevant employment* is treated as terminated and he/she is entitled to a *preserved benefit* subject to satisfying the qualifying condition.

Temporary Absence

s37(3)(b)
a2 SI 279/02
a6SI 279/02

17. If a *member's* employment is interrupted due to a period of *temporary absence*, the *member's relevant employment* is not treated as terminated. A period of *temporary absence* is not treated as *reckonable service* unless the rules of the *scheme* provide or the trustees decide that such period is a period of membership of the *scheme* or the *member* is on paid maternity leave.

18. If a period of *temporary absence* is not treated as *reckonable service*, the two periods either side of the period of *temporary absence* must both count as *reckonable service* should the *member's relevant employment* subsequently terminate. For this purpose *temporary absence* means a period of absence:

- on account of the *member's* pregnancy or childbirth
- in furtherance of a trade dispute
- where under the *scheme's temporary absence* rule the *member's* employment is not treated as terminated
- of less than one month.

Scheme which applies to more than one employer, employment by affiliated employer, change in ownership or business of employer

s37(3)(a)

a4 SI 279/02

19. If:

- in the case of a *centralised scheme* (including an industry-wide *scheme*) a *member's* employment ceases and within a period of one month (or such longer period as the trustees decide) following such cessation he/she becomes employed by another employer participating in the same *scheme*, or
- a *member's* employment ceases and within a period of one month (or such longer period as the trustees decide) following such cessation he/she becomes employed by an *affiliated employer* and commences membership of a *scheme* of that employer which has received a transfer from the former scheme of an amount not less than the amount which he/she would have been entitled to if he/she was entitled to a *preserved benefit* from the former *scheme*, or
- in the case of a change in ownership of the *employer*, or of the *employer's* business, a *member's* employment ceases and within a period of one month (or such longer period as the trustees decide) following such cessation he/she
 1. becomes employed by the new *employer* and resumes membership of the same *scheme*, or
 2. commences membership of a *scheme* of the new *employer* which has received a transfer from the former *scheme* of an amount not less than the amount to which he/she would have been entitled if he/she was entitled to a *preserved benefit* from the former *scheme*,

his/her *relevant employment* is not treated as terminated. The two periods either side of the interval must both count as *reckonable service* should his/her *relevant employment* subsequently terminate.

Normal Pensionable Age

s2

20. The legislation defines "*normal pensionable age*" (*NPA*) as the later of age 60 and the earliest age at which a *member* is entitled under the rules of the *scheme* to receive immediate benefits on his/her retirement from *relevant employment*, (other than under any *early retirement rule*).

21. An *early retirement rule* means a provision of a *scheme* under which a *member* may retire with entitlement to an immediate benefit where either

- the *member's* right is subject to the consent of some person or the satisfaction of some condition which does not relate only to age and/or his/her period of service in *relevant employment*, or
- the calculation of the *member's* immediate retirement benefit may involve the use of an actuarial reduction factor which exceeds 0.25 per cent multiplied by the number of completed months by which the *member's* age at retirement is less than a stated retirement age.

22. Thus, even if a *scheme* specifies that its retirement age is 65, the *NPA* could be earlier if, for example, *members* were given an unqualified right to retire on an unreduced pension from an earlier age.

23. Again, even if a *scheme* provides that its retirement age is 65, the *NPA* could be earlier if, for example, *members* were given an unqualified right to retire from an earlier age and the actuarial reduction factor is 0.25 per cent per month or less.

Preserved Benefit

s2
s28(2) 24. *Preserved benefit* is the benefit to which an early leaver who satisfies the qualifying condition (see paragraph 7), is entitled from the *scheme* under the legislation. It is the proportion of all *long service benefit* which relates to *reckonable service* completed, or contributions paid. It also encompasses any *contingent pension* which is payable on the death of the early leaver before his/her *preserved benefit* becomes payable (see Part V of the notes).

s2 25. *Long service benefit* means the benefits which the *scheme* would be under an obligation to pay to the *member*, or to others, at or after *NPA* on the assumption that the *member* remains in *relevant employment* until *NPA*. *Long service benefit* includes personal benefits, whether in pension form or a separate lump sum and any guaranteed pension increases. It also includes any benefits payable on death after *NPA* to the *member's* spouse or dependants, whether as a separate pension or, for example, through the guaranteed payment of the *member's* pension in respect of a period after his/her death.

s29(4) & (5)
s30(3) 26. A benefit must also be provided if an early leaver who is entitled to *preserved benefit* dies before such benefit becomes payable (see Part IV of the notes).

Revenue Limits

27. A *member* must be provided with the full *preserved benefit* to which he/she is entitled on termination of *relevant employment* even if the *preserved benefit* exceeds the maximum benefit which could otherwise be paid under Revenue Limits.

Minimum Contributory Retirement Benefit

s35A 28. This benefit must be provided for a *member* of a *contributory scheme* whose *relevant employment* terminates after 1 June 2002 at or after *NPA*, or within five years before *NPA*, and who is entitled under the rules of the *scheme* to a *contributory retirement benefit* (see paragraph 127 for the calculation of the minimum *contributory retirement benefit*). This provision does not affect the calculation of a *member's preserved benefit* if he/she leaves 5 or more years before *NPA*.

Higher Benefits

s39

29. A *scheme* may provide benefits over and above the *preserved benefit* or the *minimum contributory retirement benefit*. A *scheme* may also provide benefits either without any qualifying condition or with a condition lower than that specified in the legislation (see paragraph 7). Where a *scheme* provides higher benefits to a *member* whose service in *relevant employment* terminates such higher benefits must be provided to the same extent to or in respect of a *member* whose service in *relevant employment* terminates as a consequence of moving to another *Member State*.

(paragraph 30 spare)

**Preservation of Benefits
and
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Benefits**

PART II

Entitlement to and Payment of Preserved Benefit

This Part of the notes sets out the circumstances in which a member is entitled to a preserved benefit and the general provisions which apply to the payment of a preserved benefit.

ENTITLEMENT TO AND PAYMENT OF PRESERVED BENEFIT

Qualifying Condition

- s28(2)** 31. A *member* who leaves *relevant employment* after 1 June 2002 and before NPA, other than on death and who has completed a minimum of two years *qualifying service* after 1 January 1991 is entitled to a *preserved benefit*. A *member* who leaves *relevant employment* on or before 1 June 2002 and before NPA other than on death and who has completed a minimum of five years' *qualifying service*, at least two of which have been completed after 1 January 1991, is entitled to a *preserved benefit*.

Qualifying Service

- s27(1)** 32. *Qualifying service* is *reckonable service* under the *scheme* (see paragraphs 13 to 15) together with *reckonable service* under every other *scheme* relating to the same employment or any other employment from which rights have been transferred (see paragraph 110). *Qualifying service* need not be continuous.
33. Thus, if a *member* of a *scheme* pays *additional voluntary contributions* under a separate *scheme*, his/her *reckonable service* as a *member* of the main *scheme* is taken into account in determining whether he/she satisfies the qualifying condition for a *preserved benefit* from the *additional voluntary contribution scheme*.

Example

A *member* of a *scheme* who has one year's *reckonable service* under a main *scheme* begins paying *additional voluntary contributions* on 1 January 2002 (which could be either to the main *scheme* or to a separate *scheme*). She leaves *relevant employment* on 1 April 2003. She has more than 2 years *qualifying service* and is, therefore, entitled to a *preserved benefit*. She may not therefore receive a refund of her 15 months *additional voluntary contributions*.

34. *Qualifying service* does not include *reckonable service* as a *member* of a *scheme* which is not approved by the Revenue Commissioners (unless the *scheme* is a public sector *scheme*). For example, if a *member* transfers from a UK *scheme* which is not approved by the Revenue Commissioners to a *scheme* which is so approved, his/her period of *reckonable service* in the UK *scheme* would not count as *qualifying service* if he/she subsequently leaves the employment to which the second *scheme* applies.

s27(1)
a7 SI 279/02

35. If a *member's* employment terminates and he/she subsequently re-enters the same employment, his/her previous period of *reckonable service* will count for qualifying purposes (but not for calculation purposes) if his/her *relevant employment* terminates a second time, even if he/she is entitled to, or has received, a benefit (e.g. a refund of contributions) in respect of part or all of such previous period of *reckonable service*.

36. Similarly, if a *member* whose *relevant employment* has ceased without his/her leaving employment subsequently joins or rejoins any *scheme* relating to that employment, his/her previous period of *reckonable service* will count as *qualifying service* even though he/she may have a *preserved benefit* in respect of part or all of such previous period of *reckonable service*.

37. Where a *member* ends his/her *reckonable service* in a *scheme* but *relevant employment* does not terminate, e.g. he/she joins another *scheme* relating to the same employment, his/her earlier *reckonable service* will also count towards the qualifying period for preservation in the second *scheme*.

s27(1)

38. If a *member's* rights in one *scheme* are transferred to a second *scheme* relating to another employment, the period of *reckonable service* in the first *scheme* must be taken into account in determining whether or not the *member* qualifies for *preserved benefit* if his/her *relevant employment* subsequently terminates.

39. The transfer of rights does not have to be a direct transfer in order for the period of *reckonable service* in the first *scheme* to count. For example, the *member* may have transferred his rights in the first *scheme* to an approved insurance policy or contract (i.e. a buy-out bond) during an intervening period. If the trustees of the second *scheme* subsequently accept a transfer of the proceeds of the buy-out bond, the earlier period of *reckonable service* in the first *scheme* from which those rights derived must be taken into account in determining whether or not the *member* qualifies for *preserved benefit* on subsequently leaving the employment to which the second *scheme* applies.

40. Even though the number of years credited in a final salary *scheme* to which rights are transferred may be more or less than the number of years' *reckonable service* under the first *scheme*, the second *scheme* must take into account, but only for qualifying purposes, the actual *reckonable service* in the first *scheme*.

Example

If a *member* with 4 years' *reckonable service* in one *scheme* takes a transfer amount to another *scheme* and then leaves the second *scheme* after a further 2 years' *reckonable service*, he has completed 6 years' *qualifying service*. Even if the transfer amount purchased only 2.5 years' benefit in the second *scheme*, this benefit, as well as the benefit he has earned by his *reckonable service* in the second *scheme*, must be preserved.

s27(1)

41. Where only part of a *member's* accrued rights in a *scheme* are transferred, his/her full *reckonable service* in that *scheme* will be taken into account for qualifying purposes.

Payment of Preserved Benefit

s31(2)

42. A member's preserved benefit is payable in accordance with, and subject to, the rules of the scheme relating to the payment of long service benefit at the date of termination of his/her relevant employment.

Benefits on Death after NPA

43. If the rules of the *scheme* provide for a spouse's and/or dependant's pension to be paid on the death of a *member* after *NPA*, or for the guaranteed payment of the *member's* pension in respect of a period after his/her death, a similar benefit must be provided in respect of a *member* who is in receipt of a *preserved benefit*.

44. If, under the rules of the *scheme*, such a pension is payable only to the person to whom a *member* was married or the person who was dependent on a *member* at the date of his/her retirement, a *preserved benefit* need only be paid to the person to whom a *member* was married or who was dependent on a *member* at the date of termination of his/her *relevant employment*.

45. If, however, the rules of the *scheme* provide for a pension to be paid, on the death of a *member* after *NPA*, to any person to whom a *member* was married or any person who was dependent on a *member* at the date of his death, a pension must similarly be paid on the death of a *member* who is in receipt of a *preserved benefit* to any person who was married to or dependent on him/her at the date of his/her death.

Options

s31(2)

46. The rules of a *scheme* may allow certain options. They may, for example, permit commutation of pension rights into a lump sum or allocation of part of a *member's* personal benefit to provide for a spouse's or other dependant's benefit. Such options must extend to a *member* with a *preserved benefit* if they apply to a *member* who leaves *relevant employment* at *NPA*.

Discretionary Rules

s31(2)

47. The principle in paragraph 46 does not, however, extend to discretionary rules. For example, discretionary pension increases awarded to pensioners who left employment at *NPA* do not have to be awarded to a recipient of *preserved benefit*.

Optional Early or Late Payment of Preserved Benefit or Minimum Contributory Retirement Benefit

s39

48. Benefits payable before *NPA* may be provided in lieu of a *preserved benefit* or *minimum contributory retirement benefit* (see paragraph 28) provided that the *actuarial value* of such benefits is at least equal to the *actuarial value* of such *preserved benefit*. Similarly, benefits payable after *NPA* may be provided in lieu of a *preserved benefit*, subject to the consent of the *member* and provided that the *actuarial value* of such benefits is at least equal to the *actuarial value* of the *preserved benefit* (including the value of any prospective revaluation) . If this option is availed of, a benefit must be paid as outlined in Part V of the notes if the *member* dies before the early or late retirement benefits become payable. The same options must be provided to or in respect of a *member* whose service in *relevant employment* terminates as a consequence of moving to another *Member State*.

49. If benefits are paid before *NPA*, different early retirement reduction factors may be applied to different categories of *members*. For example, one set of factors could be applied to *members* who receive immediate early retirement benefits on leaving employment and a different set to those who leave employment with entitlement to a *preserved benefit* and who subsequently opt for early retirement benefits (subject to meeting the requirement outlined in paragraph 48).

Claim of Preserved Benefit or Minimum Contributory Retirement Benefit

50. Trustees should ensure that a *member* is aware of the procedures for claiming a *preserved benefit* or a *minimum contributory retirement benefit* so that he/she can establish contact with the appropriate person when his/her benefit becomes due.

51. If necessary, a *member* with entitlement to a *preserved benefit* or a *minimum contributory retirement benefit* from a *scheme* may apply to the Pensions Authority in order to obtain the address of the *scheme* and a contact name.

s36 52. A *member* may not be deprived of his/her entitlement to a *preserved benefit* or a *minimum contributory retirement benefit* as a result of failure to claim or to notify a change in circumstances.

Securing Preserved Benefit

s31(1) 53. A *preserved benefit* is payable out of the general resources of a *scheme*. This does not preclude the trustees from securing a *preserved benefit* by purchasing an annuity or deferred annuity contract. The purchase of an annuity or deferred annuity contract will not discharge the trustees from the obligation to provide a *member's preserved benefit* unless:

- the *member* has requested the purchase of such a contract (as outlined in paragraph 54), or
- the circumstances outlined in paragraph 55 or 56 apply.

Transfer of Rights

s34(2) & (3) 54. As an alternative to a *preserved benefit*, if the *member* so requests, or in the circumstances outlined in paragraphs 55 and 56, his/her rights may be transferred to:

- another funded or unfunded *occupational pension scheme* which provides or is capable of providing *long service benefit* and of which he/she has become a *member* or is a *prospective member* but the trustees of an unfunded *occupational pension scheme* must agree to accept the *transfer payment*, or
- an insurance policy or contract which is approved by the Revenue Commissioners (i.e. a "buy-out bond"), or
- other prescribed arrangements (see paragraph 58 and Part VII of the notes in relation to *transfer payments*).

s35(1)
a3 SI 279/02

55. Where a *member* is entitled to a *preserved benefit* in respect of which a *transfer payment* would be less than a nominated figure (currently €10,000), the trustees may make a *transfer payment* to one or more buy-out bonds without the *member's* consent, subject to the following conditions:

- The *transfer payment* may not be made until at least 2 years after the termination of *relevant employment*.
- Notice must be given to the *member* at least 30 days before the proposed transfer and the *member* must subsequently be notified of the insurance company or companies with whom the buy-out bonds have been effected.
- There must be no outstanding request from the *member* for a *transfer payment* to another *scheme* or to a buy-out bond of the *member's* choice at the time the transfer is made.
- The *transfer payment* may not be made if the *transfer payment* would be reduced (see Part VII of the notes in relation to *transfer payments*).

s35(1)
a3 SI 279/02

56. Where the amount of the *transfer payment* is in excess of the nominated figure, the trustees may apply in writing to the Pensions Authority for permission to make a *transfer payment* to one or more buy-out bonds without the *member's* consent. The Appendix to these Notes sets out the criteria which have been adopted by the Pensions Authority in this regard.

s34(5)
s35(2)

57. Where the trustees of a *scheme* have effected a *transfer payment*, they are discharged from any obligation to provide the *preserved benefit* to which the *transfer payment* relates.

58. Transfers to Other Arrangements

If prescribed, and in accordance with such conditions as may be prescribed, a *member* may request that his/her rights be transferred to the trustees, custodians, managers or administrators of an arrangement for the provision of retirement benefits other than the schemes or the buy out bond referred to in paragraph 54. This arrangement could be established within or outside the State.

Winding up of Schemes

59. When a *scheme* is wound up and not replaced, *members* still in employment who have met the qualifying condition become entitled to a *preserved benefit* at the date of winding up as if there has been a termination of *relevant employment*. Where the wound up *scheme* is replaced (e.g. a defined benefit *scheme* replaced by a defined contribution *scheme*) and the replacement *scheme* applies to such *employees*, no entitlement to a *preserved benefit* arises unless or until their *relevant employment* subsequently terminates.

s48
p2&3 - 3rd
Sch

60. In the event of a *scheme* winding up, however, the trustees are required to apply the resources of the *scheme* in accordance with Part IV of the Act. In particular, the trustees may secure benefits by making a *transfer payment* or payments, without the consent of the *member* concerned, to another *scheme* or to an approved insurance policy or contract.

Forfeiture of or Lien on Preserved Benefit

s36

61. In general terms a *preserved benefit* cannot be subject to forfeiture even where the *scheme's* rules have a general forfeiture clause. Where, however, the person entitled to the *preserved benefit* is or becomes a bankrupt or assigns or charges or attempts to assign or charge the benefit the trustees may, at their discretion, apply any provision of the *scheme* which allows a benefit to be forfeited and paid to the *member* or other person specified in the provision.

62. The employer may not exercise any charge or lien on a *preserved benefit* even if a debt to the employer arises out of a criminal, negligent or fraudulent act or omission by the *member*. This does not preclude any lien on the amount, if any, by which the benefit payable under the rules of the *scheme* exceeds the statutory minimum *preserved benefit*.

(paragraphs 63 - 64 spare)

**Preservation of Benefits
and
Minimum Value of Contributory Retirement Benefits**

PART III

Calculation of Preserved Benefit

This Part of the notes sets out the detailed requirements concerning the calculation of preserved benefit in relation to various types of scheme and benefit

CALCULATION OF PRESERVED BENEFIT

Determination of Type of Scheme

- s27(2)** **65.** The legislation sets out separately the basis on which a *preserved benefit* should be calculated for a *defined benefit scheme* and a *defined contribution scheme*. Where under the rules of the *scheme* a *member's long service benefit* is calculated partly on a defined benefit and partly on a defined contribution basis, the appropriate part of his/her *preserved benefit* should be calculated on the basis prescribed for a *defined benefit scheme* and the other part on the basis prescribed for a *defined contribution scheme* (see paragraphs 101 and 102 in relation to hybrid schemes).
- s2** **66.** Any part of a *member's long service benefit* which is not directly determined by the amount of the contributions paid by or in respect of the *member* is deemed to be calculated on a defined benefit basis.
- s2** **67.** Any part of a *member's long service benefit* which is directly determined by the amount of the contributions paid by, or in respect of the *member*, is deemed to be calculated on a defined contribution basis.
- 68.** Where certain specified benefits are being targeted but, under the rules of the *scheme*, the *member's* entitlement to *long service benefit* is solely determined by the amount of the contributions paid, such a *scheme* is a *defined contribution scheme* and not a *defined benefit scheme*.

Defined Benefits

- s29(3)**
p1(1) 2nd Sch **69.** (a) *Preserved benefit* is calculated as the sum of:
- (i) basic *preserved benefit* (see (b) below)
 - (ii) *preserved benefit* arising from *additional voluntary contributions* (see paragraph 105)
 - (iii) *preserved benefit* arising from a transfer of accrued rights from another *scheme* (see paragraph 110) and
 - (iv) additional *preserved benefit* in the case of a *member* whose service in *relevant employment* terminates after 1 June 2002 and who has completed at least two years' *qualifying service* after 1 January 1991; this additional *preserved benefit* may apply even if the *member* does not have *reckonable service* prior to 1 January 1991 (see (c) below).
- (b) If the *member's relevant employment* terminates before *NPA*, his/her basic *preserved benefit* is calculated by applying a fraction to his/her *long service benefit* at termination of *relevant employment*. This fraction is calculated as the period of *reckonable service* which he/she has completed after 1 January, 1991 divided by his/her potential *reckonable service* to *NPA*. This is represented by the following formula

$$\frac{A \times B_1}{C}$$

A = the amount of *long service benefit* (excluding benefits secured by *additional voluntary contributions* or a transfer of accrued rights from another *scheme* or an increase to *contributory retirement benefit*) calculated at the date of termination of the *member's relevant employment*.

B₁ = the period of *reckonable service* completed after 1 January 1991.

C = the period of *reckonable service* which the *member* would have completed if he/she had remained in *relevant employment* until *NPA* (i.e. including any *reckonable service* prior to 1 January, 1991).

(c) Additional *preserved benefit* is the greater of the three formulae as follows:

- (i) the leaving service benefit provided under the *rules* of the *scheme* less the basic *preserved benefit* – this is represented by the formula G-J where:

G = the benefit (excluding benefits secured by *additional voluntary contributions* or a transfer of accrued rights from another *scheme*) to which the *member* is entitled on termination of *relevant employment* under the *rules* of the *scheme* disregarding any provision for revaluation or increase of that benefit after the date of such termination, and

J = the basic *preserved benefit* calculated as in (b) above.

- (ii) the amount of benefit which would have an *actuarial value* equal to the normal contributions paid by the *member* (plus interest) less the basic *preserved benefit* – this is represented by the formula H-J where:

H = the benefit whose *actuarial value* is equal to the contributions (excluding *additional voluntary contributions*) paid by the *member* to the *scheme* together with compound interest, if any, applicable under the *rules* of the *scheme* to a refund of such contributions on leaving service, and

J = the basic *preserved benefit* calculated as in (b) above.

- (iii) pre 1991 *preserved benefit* – this is represented by the formula:

$$\frac{A \times B_2}{C}$$

Where A and C have the same values as in (b) above and

B₂ = the period of *reckonable service* completed up to 1 January 1991.

- (d) If a *member's long service benefit* is on a defined benefit basis, his/her *preserved benefit* in (b) above and additional *preserved benefit* in (c)(iii) above is calculated on the basis of uniform accrual, i.e. *long service benefit* is assumed to accrue uniformly over his/her entire *reckonable service* (see paragraphs 13 to 15 in relation to *reckonable service*).

- p2 2nd Sch** **70.** Where a *scheme* provides for benefits to be calculated in relation to a *member's* pensionable earnings at, or in a specified period, prior to *NPA* or on earlier death, or in some other way relative to such earnings, a *preserved benefit* must be calculated in a corresponding manner, by reference to his/her earnings at, or in the same period before, the date of termination of his/her *relevant employment*.
- a9(a)**
SI 279/02 **71.** *Reckonable service* should be calculated disregarding any rule of the *scheme* under which the number of years taken into account in calculating *long service benefit* is subject to an upper limit, e.g. if in calculating basic *preserved benefit* or additional *preserved benefit* a *member* has 45 years' potential *scheme* service, C equals 45 years, even if a maximum of 40 years *scheme* service is taken into account in calculating *long service benefit*. *Reckonable service* should be calculated to the next highest or next lowest month or any period within that range provided that the same basis is used to determine B and C.
- a9(b)**
SI 279/02 **72.** The amount of the *preserved benefit* should be calculated to the next highest or next lowest whole euro or any amount within that range.

Example

A *scheme* provides a pension benefit of 1/60th of final pensionable salary for each year of pensionable service at *NPA* (65). Final pensionable salary is defined as the average salary on 1 January in the three years preceding *NPA*. Pensionable service is defined as complete years of service with the Company subject to a maximum of 40 years. *Members* join the *scheme* on the first anniversary of entering service.

An *employee* enters service on 1 April 1988. His date of birth is 30 September 1965. He subsequently leaves *relevant employment* on 1 July 2002. His *scheme* benefit on leaving service is €6,900.

His salary details are as follows:

Year	Salary on 1 January
2000	€28,000
2001	€29,000
2002	€30,000

His basic *preserved benefit* is calculated as follows:

$$A = (28,000 + 29,000 + 30,000)/3 \times 40/60 = €19,333.33$$

$$B_1 = 1 \text{ January, 1991 to 1 July, 2002} = 11 \text{ years, 6 months}$$

$$C = 1 \text{ April, 1989 to 30 September, 2030} = 41 \text{ years, 6 months}$$

$$\text{Basic } \textit{preserved benefit} = €19,333.33 \times 11.5 / 41.5 = €5,357 \text{ (rounded to the nearest Euro)}$$

Additional preserved benefit

(i) $G = €6,900$

$$G - J = €6,900 - €5,357 = €1,543$$

(iii) A and C are as above.

$$B_2 = 1 \text{ April, 1989 to 31 December, 1990} = 1 \text{ year, 9 months}$$

$$\text{Pre 1991 } \textit{preserved benefit} = €19,333.33 \times 1.75 / 41.5 = €815$$

Additional preserved benefit is greater of €1,543 and €815 = €1,543

$$\textit{Preserved benefit} = €5,357 + €1,543 = €6,900$$

Improvements in Benefits

p2(2) 2nd Sch 73. If a *scheme* improves its *long service benefits* after 1 January, 1991 (or the date of commencement of *relevant employment*, if later) and before the date of termination of a *member's relevant employment*, an appropriate proportion of the improvement in the *long service benefit* must be included in the *member's basic preserved benefit*. In such circumstances, the calculation of a *member's additional preserved benefit* is not affected i.e. it is calculated as set out in paragraph 69(c).

p2(2) 2nd Sch 74. The *member's basic preserved benefit* is calculated as the sum of the basic *preserved benefit* to which the *member* would have been entitled based on the rules of the *scheme* before the improvement was made plus a fraction of the increase in the *long service benefit*. This fraction is calculated as the period of *reckonable service* completed after the effective date of the improvement divided by the total *reckonable service* which the *member* would have completed after the effective date of the improvement if he/she had remained in *relevant employment* until *NPA*. This is represented by the following formula:

$$\frac{A \times B_1}{C} + \frac{D \times E}{F}$$

A = the amount of *long service benefit*, (excluding benefits secured by *additional voluntary contributions* or a transfer of accrued rights or an increase to contributory retirement benefit) calculated at the date of termination of *relevant employment* on the basis of the rules in force before the alteration.

B₁ = the period of *reckonable service* completed after 1 January 1991.

C = the total period of *reckonable service* which the *member* would have completed if he/she had remained in *relevant employment* until *NPA*.

D = the amount of the difference in *long service benefit* calculated at the date of termination of *relevant employment* as a result of the alteration.

E = the period of *reckonable service* completed after the effective date of the alteration.

F = the period of *reckonable service* which the *member* would have completed after the date of such alteration if he/she had remained in *relevant employment* until *NPA*.

Example

A *scheme* provides a pension benefit of 1/80th of final pensionable salary for each year of pensionable service at *NPA* (65). Final pensionable salary is defined as annual salary at *NPA* less a deduction for State benefits. Pensionable service is defined as years of service as a *member* of the *scheme*. On 1 January, 2000, the pension benefit provided by the *scheme* in respect of all pensionable service is increased to 1/60th of annual salary (i.e. no State offset) for each year of pensionable service.

A *member* joins the *scheme* on 1 May, 1985 and her date of birth is 1 December 1950. She subsequently leaves *relevant employment* on 31 October, 2010. Her annual salary at the date of leaving is €50,000 and Pensionable Salary (on old *rules*) is €40,000.

Her basic *preserved benefit* is calculated as follows:

Long service benefit based on the *scheme rules* before the alteration:

$$€40,000 \times 30.583 / 80 = €15,292$$

Long service benefit based on the *scheme rules* after the alteration:

$$€50,000 \times 30.583 / 60 = €25,486$$

$$A \text{ (old rules)} = €15,292$$

$$B_1 = 1 \text{ January } 1991 \text{ to } 31 \text{ October } 2010 = 19 \text{ years, } 10 \text{ months}$$

$$C = 1 \text{ January } 1985 \text{ to } 1 \text{ December } 2015 = 30 \text{ years, } 7 \text{ months}$$

$$D = €25,486 - €15,292 = €10,194$$

$$E = 1 \text{ January } 2000 \text{ to } 31 \text{ October } 2010 = 10 \text{ years, } 10 \text{ months}$$

$$F = 1 \text{ January } 2000 \text{ to } 1 \text{ December } 2015 = 15 \text{ years, } 11 \text{ months}$$

$$\text{Basic preserved benefit} = (€15,292 \times 19.833 / 30.583) + (€10,194 \times 10.833 / 15.916) = €16,855$$

Her additional *preserved benefit* is calculated as follows:

$$(i) \text{ Scheme leaving service benefit} = €21,250$$

$$G - J = €21,250 - €16,855 = €4,395$$

(iii) C has the value shown above

$$A \text{ is long service benefit at date of termination} = €25,486$$

$$B_2 = 1 \text{ May } 1985 \text{ to } 31 \text{ December } 1990 = 5 \text{ years, } 8 \text{ months}$$

$$\text{Pre 1991 benefit} = €25,486 \times 5.666 / 30.583 = €4,722$$

$$\text{Additional preserved benefit is greater of } €4,395 \text{ and } €4,722 = €4,722$$

$$\text{Preserved benefit} = €16,855 + €4,722 = €21,577$$

75. If a *scheme* improved its *long service benefit* before 1 January 1991, the *member's preserved benefit* is calculated as set out in paragraph 69.

Example

Details are as in the example relating to paragraph 74 except that the date of alteration to the basis of calculating pension benefits is 1 January 1990.

A *member* joins the *scheme* on 1 May 1985 and her date of birth is 1 December 1950. She subsequently leaves *relevant employment* on 31 October 2010. Her annual salary at the date of leaving is €50,000.

Her basic *preserved benefit* is calculated as follows:

$$A = €50,000 \times 30.583 / 60 = €25,486$$

$$B_1 = 1 \text{ January } 1991 \text{ to } 31 \text{ October } 2010 = 19 \text{ years, } 10 \text{ months}$$

$$C = 1 \text{ January } 1985 \text{ to } 1 \text{ December } 2015 = 30 \text{ years, } 7 \text{ months}$$

$$\text{Basic } \textit{preserved benefit} = €25,486 \times 19.833 / 30.583 = €16,528$$

Her additional *preserved benefit* is calculated as follows:

(i) *Scheme* leaving service benefit = €21,250

$$G - J = €21,250 - €16,528 = €4,722$$

(iii) A and C have values as above

$$B_2 = 1 \text{ May } 1985 \text{ to } 31 \text{ December } 1990 = 5 \text{ years, } 8 \text{ months}$$

$$\text{Pre } 1991 \text{ benefit} = €25,486 \times 5.666 / 30.583 = €4,722$$

Additional *preserved benefit* is €4,722.

$$\textit{Preserved benefit} = €16,528 + €4,722 = €21,250$$

76. Where a *scheme* improves its *long service benefit*, it is not required to award any additional *preserved benefit* to *members* whose *relevant employment* terminated before the improvement was made.

Reduction in Benefits

p1(2) 2nd Sch 77. The same principles apply if a *scheme* reduces its *long service benefit* after 1 January 1991 (or the date of commencement of *relevant employment* if later), i.e. a *member* whose *relevant employment* ends after the effective date of the reduction is entitled to a basic *preserved benefit* calculated on the basis of his/her *long service benefit* entitlement under the rules of the *scheme* before the reduction less an appropriate fraction of the reduction in the *long service benefit*.

Example

A *scheme* provides a pension benefit of 2/3rds of final pensionable salary at *NPA* (65). Final pensionable salary is defined as annual salary at *NPA*.

On 1 January 1996 the pension benefit provided by the *scheme* is altered to 1/60th of final pensionable salary for each year of service as a *member* of the *scheme*.

A *member* joins the *scheme* on 1 January, 1988 on his 35th birthday and subsequently leaves *relevant employment* on 1 January 2003. His annual salary at the date of leaving is €30,000. His *scheme* benefit on leaving service is €7,500.

His basic *preserved benefit* is calculated as follows:

Long service benefit based on the *scheme rules* before the alteration

$$€30,000 \times 2/3 = €20,000$$

Long service benefit based on the *scheme rules* after the alteration

$$€30,000 \times 30/60 = €15,000$$

$$A = €20,000$$

$$B_1 = 1 \text{ January } 1991 \text{ to } 1 \text{ January } 2003 = 12 \text{ years}$$

$$C = 1 \text{ January } 1988 \text{ to } 1 \text{ January } 2018 = 30 \text{ years}$$

$$D = €15,000 - €20,000 = (€5,000)$$

$$E = 1 \text{ January } 1996 \text{ to } 1 \text{ January } 2003 = 7 \text{ years}$$

$$F = 1 \text{ January } 1996 \text{ to } 1 \text{ January } 2018 = 22 \text{ years}$$

$$\text{Basic } \textit{preserved benefit} = (€20,000 \times 12 / 30) - (€5,000 \times 7 / 22) = €6,409$$

His additional *preserved benefit* is calculated as follows:

$$(i) G = €7,500$$

$$G - J = €7,500 - €6,409 = €1,091$$

(iii) C is calculated as above

$$A \text{ is the } \textit{long service benefit} \text{ at date of termination} = €15,000$$

$$B_2 = 1 \text{ January } 1988 \text{ to } 31 \text{ December } 1990 = 3 \text{ years}$$

$$\text{Pre } 1991 \text{ benefits} = €15,000 \times 3 / 30 = €1,500$$

$$\text{Additional } \textit{preserved benefit} \text{ is greater of } €1,091 \text{ and } €1,500 = €1,500$$

$$\text{Preserved benefit} = €6,409 + €1,500 = €7,909$$

78. Where there is more than one alteration in the basis of calculation of *long service benefit*, the basic *preserved benefit* which relates to each alteration should be calculated separately and the amounts aggregated.

Minimum Value of Preserved Benefit

p2(3) 2nd Sch **79.** A *preserved benefit* calculated in accordance with paragraphs 69 to 78 must have an *actuarial value* which is at least equal to the total contributions (excluding *additional voluntary contributions*) paid by the *member* to the *scheme* together with any interest which is payable under the rules of the *scheme* on refunds of contributions. (See also paragraph 125 in respect of the value of the minimum *contributory retirement benefit*).

Alteration in Normal Pensionable Age

a8(1)
SI 279/02 **80.** If the basis of calculating *long service benefit* is altered after 1 January, 1991 (or the date of commencement of a *member's relevant employment*, if later) and such alteration includes an alteration in *NPA*, a basis for the calculation of the elements of basic *preserved benefit* which relate to *reckonable service* before and after the date of the alteration is prescribed.

a8(3)
SI 279/02 **81.** The calculation of *preserved benefit* is carried out in two parts. The portion of the *long service benefit* which relates to *reckonable service* after the date of alteration is calculated in the normal way and is preserved in full at the new *NPA*. The portion of the *long service benefit* which relates to *reckonable service* after 1 January 1991 and before the date of alteration will also be payable from the new *NPA* but is calculated as described in paragraph 82.

a8(3)
SI 279/02 **82.** To reflect the revised date of payment, the amount of the *preserved benefit* which relates to *reckonable service* between 1 January 1991 and the date of alteration is adjusted by a percentage certified by the actuary. This percentage is determined immediately following the date of alteration and is designed to ensure that the *actuarial value* of a *preserved benefit* on the basis of the rules of the *scheme* after the alteration is equal to the *actuarial value* of a *preserved benefit* on the basis of the rules before the alteration. For the purpose of this calculation the qualifying condition for *preserved benefit* should be ignored. The percentage to be applied in the calculation of a *member's preserved benefit* on subsequent termination of *relevant employment* is then increased on a uniform basis over the period of complete years between the date of alteration and the date on which the *member* would have attained the new *NPA*, or 10 years if less.

83. (a) The basic *preserved benefit* is calculated using the following formula:

$$\frac{A \times E}{C} + \frac{A \times S \times T}{C}$$

$$\text{where } T = U + \frac{(100 - U) \times V}{W}$$

A = the *member's long service benefit* at the date of termination of *relevant employment* calculated by reference to the rules of the *scheme* at that date (i.e. by reference to the new *NPA*)

E = the period of *reckonable service* completed after the date of alteration

S = the period of *reckonable service* completed between 1 January 1991 and the date of alteration

C = the period of *reckonable service* which would have been completed by the *member* if he/she had remained in *relevant employment* until the new *NPA*

U = the percentage certified by the actuary

V = the number of complete years of *reckonable service* (subject to a maximum of 10) completed after the date of alteration

W = the number of complete years of *reckonable service* (subject to a maximum of 10) which would have been completed by the *member* after the date of alteration if he/she had remained in *relevant employment* until the new *NPA*.

(b) The additional *preserved benefit* is calculated using the greater of the following formulae:

a 8(4)
SI 279/102

(i) $G - J$

Where:

G = the benefit to which the *member* is entitled on termination of *relevant employment* under the rules of the *scheme* (disregarding any provision for revaluation or increase of that benefit after the date of such termination) at that date (i.e. by reference to the new *NPA*) and

J = the basic *preserved benefit* calculated as in (a) above

(ii) $H - J$

where:

H = the amount of benefit which would have an actuarial value equal to the contributions (excluding *additional voluntary contributions*) paid by the *member* to the *scheme* together with compound interest, if any, applicable under the rules of the *scheme* to a refund of such contributions on leaving service and

J = the basic *preserved benefit* calculated as in (a) above

(iii) $\frac{A \times S_1 \times T}{C}$

where:

A, C and T have the same values as in (a) above and

S₁ = the period of *reckonable service*, if any, completed up to 1 January 1991.

Example

A *scheme* provides a pension benefit of 1/60th of annual salary at *NPA* (65) for each year of service as a *member* of the *scheme*. On 1 January, 2008, *NPA* is altered to 60.

A *member* joined the *scheme* on 1 July 1995 on her 35th birthday. She leaves *relevant employment* on 1 July 2015. Her salary at the date of leaving is €45,000 and her *scheme* benefit (at the new *NPA*) on leaving service is €15,000.

Her basic *preserved benefit* is calculated as follows:

$$A = €45,000 \times 25 / 60 = €18,750$$

$$E = 1 \text{ January } 2008 \text{ to } 1 \text{ July } 2015 = 7 \text{ years, } 6 \text{ months}$$

$$C = 1 \text{ July } 1995 \text{ to } 1 \text{ July } 2020 = 25 \text{ years}$$

$$S = 1 \text{ July } 1995 \text{ to } 1 \text{ January } 2008 = 12 \text{ years, } 6 \text{ months}$$

$$U \text{ (as certified by the Actuary)} = 80\%$$

$$V = 1 \text{ January } 2008 \text{ to } 1 \text{ July } 2015 = 7 \text{ complete years}$$

$$W = 1 \text{ January } 2008 \text{ to } 1 \text{ July } 2020 \\ \text{subject to a maximum of } 10 \text{ years} = 10 \text{ years}$$

$$T = U + (100 - U) \times V / W$$

$$\text{i.e. } 80\% + (100\% - 80\%) \times 7 / 10 = 94\%$$

$$\text{Basic } \textit{preserved benefit} = €18,750 \times 7.5 / 25 + €18,750 \times 12.5 / 25 \times 94\% = €14,438$$

$$\text{Her additional } \textit{preserved benefit} \text{ is } €15,000 - €14,438 = €562$$

The total *preserved benefit* of €15,000 is payable from the new *NPA*, 1 July 2020

Alteration to Ancillary Benefits

s31(2) p2(2) 2nd Sch

84. If there is an alteration to the rules of a *scheme*, between 1 January 1991 (or the date of commencement of a *member's relevant employment*, if later) and the date on which he/she leaves *relevant employment*, which affects an aspect of the *long service benefit* other than the amount of benefit payable to the *member* at *NPA* (e.g. the introduction of guaranteed increases to pensions in payment or of spouses' pensions on death after retirement), the proportion of the basic *preserved benefit* which must be provided in the form specified by the rules of the *scheme* after the alteration is determined in the same way as an alteration to the amount of benefit payable at *NPA* (see paragraph 74). The amount which must be provided in the form specified by the rules after the alteration may exceed the amount of the basic *preserved benefit* itself .

Example

A *scheme* provides a pension of 2/3rds annual salary at an *NPA* of 65. With effect from 1 January, 2006, the *rules* are altered to provide for guaranteed increases to pensions in payment in line with increases in the Consumer Prices Index, or 4%, if lesser.

A *member* joined the *scheme* on 1 January, 2001 on his 30th birthday. He leaves *relevant employment* on 1 January 2011. His annual salary at the date of leaving is €26,250.

His basic *preserved benefit* is $€26,250 \times 2/3 \times 10/35 = €5,000$

The proportion of basic *preserved benefit* which must be increased in payment as outlined above is:

$€26,250 \times 2 / 3 \times 5 / 30 = €2,917$

This example assumes that there is no additional *preserved benefit*

Additional Benefits provided for an Individual Member

85. Where the rules of the *scheme* include a discretionary power to grant the right to additional *long service benefit* to an individual *scheme member* (for example in the form of notional added years of service in recognition of special qualifications), any such additional benefit granted to an individual at the commencement of his/her *relevant employment* or before 1 January 1991 should be included in the amount of his/her *long service benefit* for the purpose of calculating his/her basic and additional *preserved benefit* as set out in paragraph 69.

86. Any such additional benefit granted to a *member* after 1 January 1991 (or the date of commencement of his/her *relevant employment*, if later) should be treated as an alteration in the *member's long service benefit* and his/her basic *preserved benefit* should be calculated on the basis described in paragraph 74. The calculation of the *member's additional preserved benefit* is not affected, i.e. it is calculated as set out in paragraph 69(c).

87. These principles apply even if the additional benefit to which the *member* is entitled, although provided under the *scheme*, is not specified in the rules of the *scheme* other than under the general provision for discretionary augmentation. As a matter of good practice, however, any such additional benefit granted to an individual *member* should be properly documented, at least by means of correspondence between the employer, the trustees and the *member*.

Defined Benefits which are not Salary-Related

88. If a *scheme* provides *long service benefit* which is a fixed amount or the rate or amount of which is calculated by reference solely to the *member's* length of service, a *member's preserved benefit* is calculated on the basis set out above for *defined benefit schemes* generally. For such *schemes* (other than those to which paragraph 89 applies), an alteration in the fixed amount or rate of benefit constitutes an alteration in the basis of calculating *long service benefit*. The basis outlined in paragraph 74 therefore applies to the calculation of a *preserved benefit*.

Example

A *scheme* provides a pension benefit at *NPA* (65) of €200 per annum for each year of service as a *member* of the *scheme*. On 1 January 2004, *members'* pension entitlements are increased to €240 per annum for each year of *scheme* service. On 1 January, 2009, *members'* pension entitlements are further increased to €300 per annum for each year of *scheme* service.

A *member* joined the *scheme* on 1 January 1995 on her 25th birthday. She subsequently leaves *relevant employment* on 1 January 2015 with a *scheme* leaving service benefit of €6,000.

Her basic *preserved benefit* is calculated as follows:

$$[\text{€}200 \times 40 \times 20 / 40] + [(\text{€}240 - \text{€}200) \times 40 \times 11 / 31] + [(\text{€}300 - \text{€}240) \times 40 \times 6 / 26]$$
$$= \text{€}5,122$$

Her additional *preserved benefit* is €6,000 - €5,122 = €878

Her *preserved benefit* is €5,122 + €878 = €6,000

89. If, however, a *scheme* provides for the rate or amount on which a *member's long service benefit* is based to be altered from time to time in line with a recognised measure of the base or average earnings of *members* of the *scheme* or *employees* in a certain category or industry, the *long service benefit* is essentially salary-related and a *member's preserved benefit* should be calculated by reference to the rate or amount of *long service benefit* applicable at the date on which a *member's relevant employment terminates* (i.e. as for a final salary *scheme*).

Part-time Employment

90. The *preserved benefit* for a *member* of a *scheme* whose entire period of *reckonable service* has been on a part-time basis should be calculated as set out in paragraph 69.

91. If, however, a *member* who was previously a full time employee becomes a part-time employee (or vice versa) and this gives rise to an alteration in the *member's long service benefit*, his/her *preserved benefit* on subsequently leaving *relevant employment* should be calculated on the basis set out in paragraph 74 by reference to his/her *long service benefit* before and after the date on which he/she became a part-time employee.

Example

A *scheme* provides a pension benefit of 1/60th of final salary at *NPA* (65) for each year of service as a *member* of the *scheme*.

A full-time *member* who joined the *scheme* on 1 January 1996 at age 25 begins to work part time (half days only) with effect from 1 January 2001. Under the *rules* of the *scheme* her *long service benefit* entitlement becomes a pension of 5/60ths of the full-time equivalent of her actual salary at *NPA* plus 35/60ths of her actual salary.

She leaves *relevant employment* on 1 January 2003. Her actual salary at the date of leaving is €9,000, i.e. the equivalent full time salary is €18,000. Her *scheme* benefit on leaving service is €1,800.

Her basic *preserved benefit* is calculated as follows:

Long service benefit before the alteration to part-time:

$$€18,000 \times 40/60 = €12,000$$

Long service benefit after the alteration to part-time:

$$(€18,000 \times 5 / 60) + (€9,000 \times 35 / 60) = €6,750$$

$$\text{Basic } \textit{preserved benefit} = €12,000 \times 7 / 40 + (€6,750 - €12,000) \times 2 / 35 = €1,800$$

Her additional *preserved benefit* is €0 as her *scheme* benefit is equal to her basic *preserved benefit*

Temporary Supplements

92. If the *scheme* provides a temporary supplement to any *long service benefit* (e.g. a supplement during the period between *NPA* and the age at which the State Pension becomes payable) this must be taken into account in the calculation of a *preserved benefit*. The element of the *preserved benefit* which represents the temporary supplement is payable in accordance with the rules of the *scheme* i.e. in the above instance, it would be payable until State Pension Age.

Variable Earnings

93. If the rules of the *scheme* provide for the accrual of *long service benefit* in respect of variable earnings, such as commissions or shift pay, over the period during which a *member* has such variable earnings, the commencement of variable earnings must be treated as an alteration to the *member's long service benefit* entitlement. Therefore, if the accrual of *long service benefit* in respect of variable earnings begins after 1 January, 1991 (or the *member's* date of commencement of *relevant employment*, if later), *preserved benefit* should be calculated on the basis set out in paragraph 74.

Example

A *scheme* provides a pension benefit of 1/60th of basic annual salary at *NPA* (65) for each year of *scheme* service, plus 1/60th of average annual shift pay during the last three years in which shift pay was received for each year of *scheme* service during which the *member* is in receipt of shift pay.

A *member* joined the *scheme* on 1 January 1984 on his 28th birthday. He started to receive shift pay on 1 January 1994. He stopped receiving shift pay on 1 January 2009. He leaves *relevant employment* on 1 January 2014 with a *scheme* leaving service benefit of €10,000. His basic annual salary at the date of leaving is €20,000 and his average annual shift pay during the years 2006 to 2008 is €5,000.

His basic *preserved benefit* is calculated as follows:

$$\begin{aligned} & (\text{€}20,000 \times 37 / 60 \times 23 / 37) \\ & + (\text{€}5,000 \times 27 / 60 \times 20 / 27) \\ & - (\text{€}5,000 \times 12 / 60 \times 5 / 12) = \text{€}8,917 \end{aligned}$$

His additional *preserved benefit* is calculated as follows:

(i) *Scheme* benefit = €10,000

$$G - J = \text{€}10,000 - \text{€}8,917 = \text{€}1,083$$

(iii) C is as above

A is *long service benefit* at date of termination

$$= (\text{€}20,000 \times 37 / 60) + (\text{€}5,000 \times 15 / 60) = \text{€}13,583$$

B_2 = 1 January 1984 to 31 December 1990 = 7 years

$$\text{Pre 91 benefit} = \text{€}13,583 \times 7 / 37 = \text{€}2,570$$

Additional *preserved benefit* is greater of €1,083 and €2,570 = €2,570

$$\text{Preserved benefit} = \text{€}8,917 + \text{€}2,570 = \text{€}11,487$$

94. If, on the other hand, a *scheme* which provides benefits in respect of variable earnings does not distinguish between the accrual of *long service benefit* in relation to basic pay and variable earnings, a *member's preserved benefit* will simply be based on his/her total pensionable earnings at, or in the appropriate period preceding, the date of termination of *relevant employment*. If, therefore, the *member* has not been in receipt of variable earnings in the period immediately preceding the date on which his/her *relevant employment* terminates, he/she will not be entitled to a *preserved benefit* in respect of variable earnings relating to any earlier period of *reckonable service*.

Defined Contributions

- s30(2) & (4)** 95. If the *member's long service benefit* is on a *defined contribution* basis, his/her *preserved benefit* must be determined in the same way, i.e. the *actuarial value* of the *preserved benefit* at the date on which it becomes payable must be equal to the *accumulated value* of the *appropriate contributions*.

Appropriate Contributions

96. *Appropriate contributions* normally mean contributions paid by or in respect of the *member* for the purposes of *long service benefit*. In the case of a *member* whose *relevant employment* terminates on or before 1 June 2002 it is such contributions paid between 1 January 1991 and the date of termination of *relevant employment*. In the case of a *member* whose *relevant employment* terminates after 1 June 2002 it is all such contributions paid between the commencement and termination of *relevant employment* (but see paragraphs 105 and 111 in relation to *additional voluntary contributions* and transfers of accrued rights).

Accumulated Value

97. The *accumulated value of appropriate contributions* means the amount which the trustees determine to be equal to:

- the realisable value of the resources of the *scheme*, determined in accordance with the rules of the *scheme*, which represent these contributions
less
- the amount of any of the expenses of the *scheme* which, under its rules, are to be discharged from these resources.

98. If, under the *scheme*, *appropriate contributions* are used to purchase units in a unit-linked fund or unit trust, shares, or other securities and the *member's long service benefit* is based on the realisable value of those units, shares or securities at *NPA*, or averaged over a period before *NPA*, the realisable value of the resources of the *scheme* which represent such *appropriate contributions* as at the date on which the *preserved benefit* becomes payable is the value at, or averaged over a period before, such date of those units which have been purchased by, or are attributable to, the *appropriate contributions*.

- s30(7)** 99. If the *member's long service benefit* is based on the contributions paid by or in respect of him/her, together with a prescribed form of smoothed investment return or notional rate of interest, his/her *preserved benefit* should be determined on an equivalent basis.

100. If, under the rules of the *scheme*, any *appropriate contributions* are invested in an insurance policy or policies, the realisable value of the resources of the *scheme* which represent such *appropriate contributions* at the date on which the *preserved benefit* becomes payable is the amount of the proceeds of such insurance policy or policies at that date.

Hybrid Schemes

s27(2)

101. Where an element of a *member's long service benefit* is calculated on a defined benefit basis and another element is calculated on a defined contribution basis, the *preserved benefit* in relation to each element should be calculated separately on the appropriate basis.

102. There may, however, be circumstances in which the two elements cannot be considered entirely separately, e.g. if a *member's long service benefit* is determined on a defined contribution basis but is subject to a minimum defined benefit. In this instance, the *member's preserved benefit* at *NPA* calculated on a defined contribution basis would also be subject to a minimum of the *preserved benefit* calculated on a defined benefit basis (including revaluation up to *NPA*).

Retained Benefits

103. A *member's long service benefit* may be a defined benefit but be expressed as an aggregate benefit inclusive of a benefit representing rights accrued in another *scheme*. These accrued benefits may have:

- remained in the other *scheme*, or
- been transferred into an approved insurance policy or contract (i.e. a "buy-out bond"), or
- been transferred to the *member's* current *scheme*.

Furthermore, they could be in a number of different forms, e.g.

- a number of notional added years of pensionable service, or
- a *preserved benefit* subject to statutory revaluation, or
- a fixed deferred benefit not subject to any revaluation, or
- the accumulated value of specified contributions or amounts transferred (i.e. defined contribution form).

104. In determining the amount of *long service benefit* under the *scheme* (excluding benefits secured by *additional voluntary contributions* or accrued rights transferred from another *scheme*) at the date of termination of *relevant employment*, for the purposes of calculating the *member's preserved benefit* (i.e. the amount of "A" in paragraph 69) the following principles should be applied in determining the amount to be offset in respect of the rights accrued in the other *scheme*:

Form of Accrued Rights	Amount to be offset from aggregate long service benefit
Notional added years	Benefit formula based on notional added years and current pensionable salary

<i>Preserved benefit</i> subject to statutory revaluation	Current amount of <i>preserved benefit</i> , inclusive of any revaluation amounts added, but excluding prospective revaluation
Fixed deferred benefit not subject to revaluation	Current amount of " <i>preserved benefit</i> " which, with prospective revaluation, would have an <i>actuarial value</i> equal to the current <i>actuarial value</i> of the fixed deferred benefit
<i>Defined contribution</i>	Current amount of " <i>preserved benefit</i> " which, with prospective revaluation, would have an <i>actuarial value</i> equal to the current accumulated value of the specified contributions or amount transferred

Example

A *scheme* provides a pension benefit of 2/3rds of annual salary less any retained benefits at *NPA* (60).

A *member* joined the *scheme* on 1 January, 1994 on his 34th birthday. He leaves *relevant employment* on 1 January, 2004. He has a personal retirement bond representing a transfer of accrued rights from a previous employment the accumulated value of which at 1 January, 2004 is €30,000. His annual salary at 1st January 2004 is €45,000.

His *preserved benefit* is calculated as follows:

Preserved Pension Benefit at *NPA* which, with allowance for future revaluation would have an *actuarial value* at 1 January, 2004 of €30,000

= €6,500

Basic *preserved benefit* = $(€45,000 \times 2/3 - €6,500) \times 10 / 26 = €9,038$

This example assumes that there is no additional *preserved benefit*

s29(6)
s30(5)

Additional Voluntary Contributions

105. A *member* is entitled to a *preserved benefit* in respect of all *additional voluntary contributions* (including special contributions) made by him/her to a *scheme* whether such *additional voluntary contributions* were made before or after 1 January, 1991. A *member* whose *relevant employment* terminates on or before 1 June 2002 is, however, entitled to elect to take a refund of any *additional voluntary contributions* which he/she made before 1 January, 1991 (provided that the rules of the *scheme* so permit) in which case a *preserved benefit* need only be provided in respect of *additional voluntary contributions* made after 1 January, 1991. A *member* who is entitled to a *preserved benefit* and whose *relevant employment* terminates after 1 June 2002 is not entitled to a refund of any *additional voluntary contributions*.

106. The additional benefits payable in respect of *additional voluntary contributions* made by individual *members* may be determined on a defined benefit basis (e.g. in the form of notional added years of service) or on a defined contribution basis, and the *preserved benefit* relating to such

additional voluntary contributions should be determined accordingly.

p3(1) 2nd Sch

107. Where the *member* has been paying a fixed rate of *additional voluntary contribution* (either as a percentage of pensionable pay or in money terms) in order to obtain an additional defined benefit, his/her *preserved benefit* in respect of such *additional voluntary contributions* should be calculated by applying a fraction to the additional *long service benefit* to which he/she would have been entitled in respect of the *additional voluntary contributions*. This fraction is calculated as the period of *reckonable service* during which the *member* has made *additional voluntary contributions* divided by the period of *reckonable service* during which the *member* would have made *additional voluntary contributions* if he/she had remained in *relevant employment* until *NPA*. This is represented by the following formula:

$$X \times \frac{Y}{Z}$$

X = the amount of additional *long service benefit* to which the *member* would have been entitled at *NPA* by virtue of making *additional voluntary contributions* at a particular rate

Y = the period of *reckonable service* for which the *member* has paid the particular rate of *additional voluntary contribution*

Z = the period of *reckonable service* during which the *member* would have paid the particular rate of *additional voluntary contribution* if he/she had remained in *relevant employment* until *NPA*.

p3(2) 2nd Sch

108. If the rate at which the *member* has made *additional voluntary contributions* has altered at any time prior to the termination of *relevant employment*, the *preserved benefit* in respect of each such alteration should be calculated separately on the basis of the above formula.

Example

A member began to pay *additional voluntary contributions* on 1 January, 1980 (at which date he was aged exactly 35) at the rate of 6% of salary in respect of which he was promised an additional pension of 5/60ths of annual salary at *NPA* (65).

On 1 January, 1990 he made a special single voluntary contribution of €15,000 in respect of which he was promised an additional 1/60th of final salary at *NPA*. He therefore reduced his regular *additional voluntary contributions* to 4% of salary also with effect from 1 January 1990. As a consequence the total additional *long service benefit* to which he will be entitled at *NPA* in respect of both his single and his regular *additional voluntary contributions* remains unchanged at 5/60ths of annual salary at *NPA*.

He leaves *relevant employment* on 1 January 2005 at which time his salary is €30,000.

His basic *preserved benefit* in respect of his *additional voluntary contributions* is calculated as follows:

$$(\text{€}30,000 \times 5 / 60 \times 25 / 30) + (\text{€}30,000 \times 1 / 60 \times 1 / 1) - (\text{€}30,000 \times 1 / 60 \times 15 / 20)$$

$$= \text{€}2,208$$

s30(5)

109. Where the *member* is paying *additional voluntary contributions* on a defined contribution basis, the *preserved benefit* in respect of his/her *additional voluntary contributions* is based on the accumulated value of such *additional voluntary contributions* (see paragraph 97 to 100).

s29(7)

s30(6)

Benefits provided in respect of a Transfer of Rights from another Scheme

110. If a *scheme* receives a transfer of accrued rights from another *occupational pension scheme*, where such rights result from the termination of the employment to which that other *occupational pension scheme* applied, the *long service benefit* provided in the receiving *scheme* in respect of the transfer amount must be preserved in full for an early leaver, whether:

- the transfer amount was received before or after 1 January, 1991, or
- relates to rights accrued before or after 1 January, 1991 in the other *scheme*.

111. A *member* who leaves *relevant employment* on or before 1 June 2002 is, however, entitled (if the rules of the *scheme* so permit) to elect to take a refund of any part of a transfer amount received by the *scheme* which represents any contributions paid before 1 January 1991 by him/her to the *occupational pension scheme* which provided the transfer amount. If a

member takes such a refund, a *preserved benefit* need only be provided in respect of the part of the additional *long service benefit* granted in respect of the transfer amount which represents rights accrued after 1 January 1991 in the other *occupational pension scheme*.

112. The additional *long service benefit* payable in respect of the transfer amount received by a *scheme* may be determined on a defined benefit basis (e.g. in the form of notional added years of service) or on a defined contribution basis, and the *preserved benefit* relating to such transfer amount should be determined accordingly.

113. It is important that the *long service benefit* to be provided in the receiving *scheme* is determined at the time of the transfer and is properly recorded so that the *member* can be notified and the benefit preserved should the *member's relevant employment* subsequently terminate.

114. It is not a requirement of the legislation that the value of the additional *long service benefit* granted in the receiving *scheme* (which is then preserved on subsequent termination of *relevant employment*) must equate to the transfer amount where such amount exceeded the *actuarial value* of the benefits to which the *member* was entitled on termination of the previous employment, although this equivalence in value would normally be provided for under the rules of *schemes* except in certain circumstances such as the payment of a bulk transfer value.

Membership of More than one Scheme Relating to the Same Employment

a4(1) & a5
SI 217/02

115. There are special regulations relating to the calculation of a *preserved benefit* where, on termination of *relevant employment*, an employee has had periods of *reckonable service* in more than one *scheme* relating to the same employment. In general, the purpose of these regulations is to ensure that such an employee is entitled to an aggregate *preserved benefit* which is no less than the aggregate *preserved benefit* to which he/she would have been entitled if his/her periods of *reckonable service* in the various *schemes* had each related to different employments.

a4(2) & a5
SI 217/02

116. If a *member* has periods of *reckonable service* in more than one *defined benefit scheme* relating to the same employment the *preserved benefit* to which he/she is entitled in respect of his *membership* of each *scheme* is the *preserved benefit* to which he/she would have been entitled if his/her *relevant employment* had terminated at the date on which his/her *membership* of the relevant *scheme* ceased, together with an annual enhancement. This annual enhancement is equivalent to, and applied in the same manner as, statutory revaluation (see Part V of the notes). The vital difference is that the annual enhancement applies to the period between the date on which the *member's reckonable service* in the relevant *scheme* ceased and the date on which his/her *relevant employment* terminated.

a4(4)
SI 217/02

117. If there has been a transfer of accrued rights from the first *defined benefit scheme* to the second *defined benefit scheme* relating to the same employment, the *preserved benefit* to which the *member* is entitled in respect of his/her membership of the first *scheme* is calculated in accordance with the principle outlined in paragraph 115, but is payable from the second *scheme*.

a5

118. The *preserved benefit* to which he/she is entitled in respect of his/her

membership of the second *scheme* is then calculated in accordance with the principle outlined in paragraph 115, but having regard to the basis on which rights were granted in the second *scheme* in substitution for rights in the first *scheme*. This means that for the purposes of calculating *preserved benefit* the *member's long service benefit* in respect of his/her membership of the second *scheme* is taken to be his/her aggregate *long service benefit* less the greater of:

- the amount of *preserved benefit* to which he/she is entitled in respect of his/her period of *reckonable service* in the first *scheme*.
- the amount of *long service benefit* which represents the transfer of accrued rights from the first *scheme*.

Example

Scenario 1

Scheme A which applies to works employees provides a pension benefit of 1/80th of annual salary at *NPA* (65) for each year of service as a *member* of the *scheme*. *Scheme B* which applies to staff employees provides a pension benefit of 1/60th of annual salary at *NPA* (65) for each year of *scheme* service. Employees who transfer from *Scheme A* to *Scheme B* are entitled to a pension at *NPA* of 1/60th of annual salary for each year of *scheme* service both before and after the date of transfer.

A *member* joined *Scheme A* on 1 January 1990 on his 30th birthday. On 1 January 2010 he became a staff employee and transferred to *Scheme B*. His annual salary on leaving *Scheme A* was €20,000. He leaves *relevant employment* on 1 January 2017. His annual salary at the date of leaving *relevant employment* is €40,000. The average statutory revaluation percentage applicable over the period 1 January 2010 to 1 January 2017 is 3% p.a.

His basic *preserved benefit* at the date of leaving *relevant employment* in respect of his *membership* of *Scheme A* is:

$$€20,000 \times 35 / 80 \times 19 / 35 = €4,750$$

His *scheme* leaving service benefit at the date of leaving *relevant employment* in respect of his *membership* of *Scheme A* is €5,000 and hence his additional *preserved benefit* is the greater of:

$$(€5,000 - €4,750) \text{ and } (€20,000 \times 35 / 80 \times 1 / 35) = €250$$

His *preserved benefit* before enhancement in respect of *membership* of *Scheme A* is €5,000

Applying enhancement for the period 1 January 2010 to 1 January 2017 is:

$$€5,000 \times (1.03)^7 = €6,149$$

His *preserved benefit* in respect of his *membership* of *Scheme B* is:

$$((€40,000 \times 35 / 60) - \text{the greater of } [€40,000 \times 20 / 60, \text{ and } €6,149]) \times 7 / 15$$

$$= (\text{€}23,333 - \text{€}13,333) \times 7 / 15 = \text{€}4,667$$

His *preserved benefit* is €6,149 + €4,667 = €10,816

Scenario 2

As Scenario 1 except that *employees* who transfer from *Scheme A* to *Scheme B* are entitled to a pension at *NPA* of 1/80 of their annual salary at the date of transfer for each year of service as a *member* of *Scheme A* plus 1/60 of their salary at *NPA* for each year of service as a *member* of *Scheme B*.

The *member's long service benefit* representing the transfer of accrued rights is therefore:

$$\text{€}20,000 \times 20 / 80 = \text{€}5,000$$

His *preserved benefit* in respect of his membership of *Scheme A* is, as before, €6,149.

His *preserved benefit* in respect of his membership of *Scheme B* is:

$$((\text{€}30,000 \times 20 / 80 + \text{€}40,000 \times 15 / 60) - \text{the greater of } [\text{€}5,000 \text{ and } \text{€}6,149]) \times 7 / 15$$

$$= (\text{€}17,500 - \text{€}6,149) \times 7 / 15 = \text{€}5,297$$

His *preserved benefit* is €6,149 + €5,297 = €11,446

a4(3) & a8
SI 217/02

119. If a period of *reckonable service* in a *defined benefit scheme* is followed by a period of *reckonable service* in a *defined contribution scheme* relating to the same employment, and the *member's* accrued rights under the *defined benefit scheme* are transferred to the *defined contribution scheme*, the trustees may choose to provide a *preserved benefit* in respect of the transfer of accrued rights on a defined contribution basis. This means that the *member's preserved benefit* in respect of the previous period of *reckonable service* may be determined as the *accumulated value* of the amount transferred which represents the *actuarial value* of the *preserved benefit* to which a *member* would have been entitled if his/her *relevant employment* had terminated on the date on which his/her membership of the *defined benefit scheme* ceased (ignoring the minimum qualifying condition).

Defined Benefit Scheme switches to Defined Contribution Basis

a4(3)
SI 217/ 02
a4(5)
SI 217/ 02

120. If the basis of calculation of the *long service benefit* provided by a *scheme* is altered from a defined benefit basis to a defined contribution basis after 1 January 1991, the basis for calculating a *member's preserved benefit* is the same as if he/she had transferred from one *scheme* to another *scheme* relating to the same employment.

121. If a *member's long service benefit* entitlement in respect of the first period of *reckonable service* remains in defined benefit form, while his/her *long service benefit* in respect of the second period is determined on a defined contribution basis, his/her *preserved benefit* on subsequently leaving the *relevant employment* should be calculated separately in respect

of the defined benefit part and the defined contribution part. The *preserved benefit* in respect of the defined benefit part should be calculated as outlined in paragraph 116. The *preserved benefit* in respect of the defined contribution part is calculated as outlined in paragraph 95.

a8 SI 217/02

122. Alternatively a portion of the *scheme's* resources may be allocated to each *member* in lieu of the *long service benefit* to which the *member* would otherwise have been entitled on a defined benefit basis in respect of service prior to the date of alteration. In this case, provided that the amount so allocated is equal to the *actuarial value* of the *preserved benefit* to which the *member* would have been entitled if he/she had left *relevant employment* on the date of the alteration (ignoring the minimum qualifying condition), a *member's preserved benefit* on subsequently leaving *relevant employment* will be the *accumulated value* of such amount plus the *accumulated value* of contributions subsequently paid by or in respect of the *member*.

Defined Contribution Scheme switches to Defined Benefit Basis

**a4(3) & a4(5)
SI 217/02**

123. If the basis of calculation of the *long service benefit* provided by a *scheme* is altered from a defined contribution basis to a defined benefit basis after 1 January 1991, a *member's preserved benefit* in respect of *appropriate contributions* made before the date of alteration must be the *accumulated value* of such *appropriate contributions*, even if the *member's long service benefit* in respect of *reckonable service* both before and after the date of alteration is calculated on a defined benefit basis.

**a4(2)
SI 217/02**

124. The same principle applies where the two periods of *reckonable service* are in different *schemes* relating to the same employment.

**Preservation of Benefits
and
Minimum Value of Contributory Retirement
Benefits**

PART IV

Minimum Contributory Retirement Benefit

This Part of the notes sets out details of the minimum contributory retirement benefit, when it is payable and how it is calculated.

MINIMUM CONTRIBUTORY RETIREMENT BENEFIT

General

125. This is a new provision designed to ensure that a *member of a defined benefit scheme* who was required to pay contributions to that *scheme* will receive a benefit on retirement after 1 June 2002 at his/her NPA that, in value, is not less than 120% of the ordinary contributions (plus interest if applicable) he/she has made to that *scheme*. Where such a *member's relevant employment* terminates within 5 years before NPA (e.g. due to early retirement) the minimum of 120% is reduced on a phased basis.

126. A “*contributory scheme*” means a *defined benefit scheme* under the *rules of* which *members* are, or have been, required to pay contributions to the *scheme*.

A “*contributory retirement benefit*” means the amount of a *member's long service benefit* (excluding benefits secured by *additional voluntary contributions* or a transfer of accrued rights from another *scheme*) multiplied by the *member's reckonable service* during which, under the *rules of the scheme*, he/she was required to pay contributions to the *scheme* and divided by his/her total *reckonable service*.

Calculation of Minimum Contributory Retirement Benefit

127. Where a *member is a member of a contributory scheme* and his/her *relevant employment* terminates after 1 June 2002 either -

- (1) at or after NPA, or
- (2) within five years before NPA,

then provided he/she is entitled under the rules of the *scheme* to a *contributory retirement benefit* the amount of that benefit shall, if necessary, be increased so that its *actuarial value* is not less than 120% of the *member's* ordinary contributions (plus interest if applicable) to the *scheme* with a proportionate reduction if the date of termination of *relevant employment* is prior to NRD. This is represented by the formula:

$$\frac{360 - Q}{300} \times R$$

Q = the number of complete calendar months by which the date of termination of *relevant employment* precedes NPA subject to a minimum of 0 and maximum of 60.

R = the amount of contributions (excluding *additional voluntary contributions*) paid by the *member* to the *scheme* together with compound interest, if any, applicable under the rules of the *scheme* to a refund of such contributions on leaving service.

s35A(2)

128. The legislation provides that no part of any increase to a *contributory retirement benefit* may be provided by reducing the amount of any other benefit payable under the rules of the *scheme*.

s36

129. Paragraphs 48, 61 and 62 apply to a *member's* minimum *contributory retirement benefit*.

s35A(3)
s35A(4)

130. Any increase to a *contributory retirement benefit* must be payable out of the resources of the *scheme* and a *contributory retirement benefit*, increased if required, is payable in accordance with and subject to the rules of the *scheme* as at the date of termination of *relevant employment*.

Example

A *member* of *Scheme B* retires on 1 January 2003; he was born on 1 September 1940 and *NPA* is age 65. The *Scheme* provides him with a retirement benefit of €500 per annum, which has an *actuarial value* of €6,000. His accumulated ordinary contributions at retirement are €7,000.

The minimum *contributory retirement benefit* is calculated as follows:

Q = 32 months

R = €7,000

Minimum value is $(360 - 32) / 300 \times €7,000 = €7,653$

The *scheme* benefit should be increased to:

$€7,653 / €6,000 \times €500 = €638$ per annum.

(Paragraphs 131 – 135 spare)

**Preservation of Benefits
and
Minimum Value of Contributory Retirement
Benefits**

PART V

**Benefits on Death before Preserved Benefit Becomes
Payable**

This Part of the notes sets out details of the benefits which must be provided if a member who is entitled to a preserved benefit dies before his/her preserved benefit begins to be paid.

BENEFITS ON DEATH BEFORE PRESERVED BENEFIT BECOMES PAYABLE

General

- s29(4) & 5
s30(3)** 136. If a *member* who is entitled to a *preserved benefit* dies before such benefit becomes payable, with one exception (see paragraph 143), a benefit must be paid either to his/her estate or to his/her spouse and/or other dependants.

Defined Benefit Schemes

- s29(4)** 137. If any part of the *member's long service benefit* is determined on a defined benefit basis, the legislation provides for the payment to the deceased *member's* estate of an amount equal to the *actuarial value* immediately prior to his/her death of his/her *preserved benefit* (including any *preserved benefit* in respect of *additional voluntary contributions* or a transfer of accrued rights from another *scheme*).

Contingent Pensions

- s29(5)(a)** 138. If, however, a *defined benefit scheme* provides a pension to the spouse and/or dependants of a *member* who dies in *relevant employment* prior to *NPA* (i.e. a *contingent pension* or pensions), it may similarly provide a *contingent pension* or pensions to the spouse and/or dependants of a *member* instead of the *actuarial value* of the *member's preserved benefit*.

139. Such a *contingent pension* or pensions, may only be paid if provided for under the *scheme* rules.

Calculation of Contingent Pension

- s29(5)(b)
p1(1) 2nd
Sch** 140. The amount of any such *contingent pension* or pensions should be determined on the basis set out for the calculation of *preserved benefit* for *defined benefit schemes* and is subject to revaluation during the period between the date the *member* leaves *relevant employment* and the date of his/her death.

Choice of Death Benefit

141. Where there is a choice of benefit, the trustees may decide to provide a *contingent pension* or pensions for a *member* or category of *members* who leave *relevant employment*, while providing the benefit described in paragraph 137 for other *members* or categories of *members*.

142. Where there is a choice of benefit, a decision as to which benefit is to be provided in the event of a *member's* subsequent death before his/her *preserved benefit* becomes payable should be made and communicated to the *member* at the date on which his/her *relevant employment* terminates (but see paragraph 145).

Change in Member's Circumstances

143. If a *scheme* undertakes to provide a *contingent pension* or pensions at the date on which a *member* leaves *relevant employment* and he/she subsequently dies before the *preserved benefit* becomes payable, it is possible that no *contingent pension* will be payable. This may be the case if his spouse, and/or other dependants, at the date of leaving *relevant employment*, are no longer living or no longer satisfy the qualifying conditions under the rules of the *scheme* (e.g. children who were young enough to have qualified for a pension at the date of termination of *relevant employment* may at the date of the *member's* death be older than the age at which children no longer qualify for a pension under the rules of the *scheme*). In such circumstances, the legislation does not require that the *actuarial value* of the *member's preserved benefit* be paid to the *member's* estate.

144. Equally, however, if a *scheme* undertakes to provide a *contingent pension* or pensions in respect of a *member* who subsequently dies before his/her *preserved benefit* becomes payable, leaving a spouse and/or dependants, other than his/her spouse and/or dependants at the date of termination of *relevant employment*, the spouse and/or dependants at the date of death will qualify for a *contingent pension* or pensions.

A Member without Spouse/Dependants

145. If at the date of leaving *relevant employment*, a *member* does not have a spouse or any dependant(s) who would qualify for a *contingent pension*, the *scheme* must undertake to provide the benefit described in paragraph 137 in the event of his/her death, even if a *contingent pension* is normally provided. The *scheme* may, however, decide that, if the *member* subsequently acquires a spouse or dependant(s), a *contingent pension* will be provided instead. Such a decision should be made, and communicated, to a *member* at the date of termination of *relevant employment*.

146. If the trustees so decide, and if the *member* does acquire a spouse or any dependant(s), paragraphs 143 and 144 will apply if his/her circumstances subsequently change again. Thus, if he/she dies before his/her *preserved benefit* becomes payable and at that time he/she no longer has a spouse or any dependant(s) who would qualify for a *contingent pension*, it would not be necessary to pay the *actuarial value* of his/her *preserved benefit* to his/her estate.

Transfer Payments

s34(2)

147. The benefit which would be payable in the event of a *member's* death before *preserved benefit* becomes payable should be taken into account in the calculation of any *transfer payment* relating to the *member's preserved benefit*.

Defined Contribution Schemes

s30(3) & (4) **148.** If any part of the *member's long service benefit* is determined on a defined contribution basis, and if the *member's relevant employment* terminates on or before 1 June 2002, the legislation provides for the payment to the deceased *member's* estate of an amount equal to the *accumulated value* of the *member's appropriate contributions* (including any *additional voluntary contributions* or any amount transferred from another *scheme*, other than *additional voluntary contributions* paid, or the part of any amount transferred which relates to rights accrued, before 1 January 1991 where the *member* has received a refund of the *additional voluntary contributions*, or contributions to the other *scheme*, paid before January 1991).

149. If any part of the *member's long service benefit* is determined on a defined contribution *basis* and if the *member's relevant employment* terminates after 1 June 2002 the legislation provides for the payment to the deceased member's estate of an amount equal to the *accumulated value* of the *member's appropriate contributions* (including any *additional voluntary contributions* or any amount transferred from another *scheme*).

(paragraph 150 spare)

Preservation of Benefits
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PART VI

Revaluation of Preserved Benefit

This Part of the notes sets out details of the way in which a preserved benefit which has been determined on a defined benefit basis must be revalued during the period from termination of relevant employment to NPA.

REVALUATION OF PRESERVED BENEFIT

General

s33(2) 151. Where there is a period of at least one year between the date of termination of the *member's relevant employment* (or 1 January 1996 if later) and the date on which he/she will reach *NPA*, any part of his/her *preserved benefit* which has been calculated on a defined benefit basis (including any *contingent pensions* for his/her spouse or other dependants) must be revalued.

Revaluation Year

s33(1),(2) & (3) 152. A revaluation amount must be added to the *member's preserved benefit* annually in respect of each *revaluation year*. Subject to paragraph 151, the first *revaluation year* is the calendar year in which the *member's relevant employment* terminates (or the 1996 calendar year if later). The last *revaluation year* is the last complete calendar year ending before the earliest of:

- the date of payment of *preserved benefit* to or in respect of him/her,
- the date of his/her attainment of *NPA*,
- the date of his/her death.

Example

A *member's relevant employment* terminates on 1 March 1996 and the payment of his *preserved benefit* commences on 1 October 2015. The first *revaluation year* is the calendar year 1996. The last *revaluation year* is the calendar year 2014.

Revaluation Percentage

s333(4) & (5) 153. The legislation specifies that the *revaluation percentage* will be the lesser of the percentage increase in the Consumer Price Index as calculated by the Minister, or 4%. A percentage will be specified for each *revaluation year*.

p5 2nd Sch

The following are the rates specified by the Minister for revaluation years 1996 to 2001 (inc.) The Minister is empowered under the legislation to alter the 4% rate but not in respect of any *revaluation year* prior to the alteration.

Revaluation Year	Revaluation Percentage
1996	1.6%
1997	1.5%
1998	2.4%
1999	1.6%

2000	4.0%
2001	4.0%

Benefits based on Final Salary

p5 2nd Sch

154. Where any part of a *member's preserved benefit* has been calculated by reference to his/her earnings at or in a period immediately preceding the date of termination of his/her *relevant employment*, it must be increased by the appropriate revaluation amount in respect of each *revaluation year*.

Appropriate Revaluation Amount

155. The appropriate revaluation amount is calculated as follows:-

First Revaluation Year

The appropriate revaluation amount is calculated by multiplying the *preserved benefit* as at the date of termination of *relevant employment* by $x/12$ ths of the *revaluation percentage* prescribed by the Minister for Social Protection where x is the number of complete months from the date of termination of the *member's relevant employment* to the end of the calendar year. A complete month is a complete calendar month, e.g. 1 December to 31 December both dates inclusive. Where a *member's relevant employment* terminated after 1 December, no appropriate revaluation amount is added to the *preserved benefit* at the end of the first *revaluation year*. Where a *member's relevant employment* terminated prior to 1 January 1996, and the first *revaluation year* is the calendar year 1996 the full *revaluation percentage* is applied to the *preserved benefit* to calculate the appropriate revaluation amount at the end of the first *revaluation year*. Where a *member* is entitled to an additional *preserved benefit* on leaving service after 1 June 2002, the total *preserved benefit* (i.e. basic *preserved benefit* plus additional *preserved benefit*) will be revalued as described above and the appropriate revaluation amount will be added to the total *preserved benefit* at the end of the revaluation year in which *relevant employment* terminated. However, a *transfer payment* based on this *revaluation* may have to be curtailed in certain circumstances (see paragraph 171).

Subsequent Revaluation Years

The appropriate revaluation amount is calculated by multiplying the *preserved benefit* as at the last day of the previous calendar year (including all revaluation amounts for that, and previous years) by the *revaluation percentage* prescribed by the Minister for Social Protection.

Example

A *member's relevant employment* terminates on 1 July 2001 and his *preserved benefit* on that date is calculated as €10,000. Payment of his *preserved benefit* commences on his *NPA* on 1 August 2007. His *preserved benefit* will increase as follows:

Revaluation Year	Revaluation Percentage	Appropriate Revaluation Amount	Preserved Benefit at end of Year
2001	4.0%	200*	10,200

2002	4.0%	408	10,608
2003	2.8%	297	10,905
2004	2.2%	240	11,145
2005	1.9%	212	11,357
2006	2.6%	295	11,652
2007	2.9%	NIL	11,652**
* 10,000 X 4% X 6/12ths			
** On 1 August, 2007			

Benefits based on Career Average Earnings

p6 2nd Sch

156. Where any part of a *member's preserved benefit* is based on a *long service benefit* which is calculated by reference to his/her average pensionable earnings over the whole period of service to which such *long service benefit* relates (i.e. "career average earnings") the trustees may choose to revalue it on the basis outlined in paragraphs 154 and 155. Alternatively, they may choose to revalue the *member's* pensionable earnings during each *revaluation year* in any manner in which they could have been revalued if the *member* had remained in the same *reckonable service*. Such revaluation of the *member's* pensionable earnings will increase the *member's long service benefit* which will in turn result in a proportionate increase in the *member's preserved benefit*.

Defined Benefits which are not Salary-Related

p7 2nd Sch

157. Where any part of a *member's preserved benefit* is based on a *long service benefit* which is a fixed amount or the rate or amount of which is calculated by reference solely to the *member's* length of service, it should be revalued on the basis outlined in paragraphs 154 and 155. If, however, the *scheme* is not one to which paragraph 89 applies and the trustees consider that by revaluing a *preserved benefit* on this basis, a *member* whose service in *relevant employment* has terminated would be treated more favourably than a *member* who remains in *relevant employment* in relation to the period of *reckonable service* to which the *preserved benefit* applies, they may revalue the *preserved benefit* on such other basis and on such other dates as they consider just and equitable.

158. If *long service benefit* for *members* who remain in *relevant employment* is increased on an annual basis at a rate equal to or in excess of the increase in the Consumer Price Index and such increases are reflected fully in the benefits to which such *members* would become entitled on termination of *relevant employment*, a *preserved benefit* should be revalued on the basis outlined in paragraphs 154 and 155.

159. If *long service benefit* for *members* who remain in *relevant employment* is increased less frequently than annually, provided that such increases at least keep pace with price inflation, and such increases are reflected fully in the benefits to which such *members* would become entitled on termination of *relevant employment*, a *preserved benefit* need only be revalued at the dates on which *long service benefit* is increased. The basis for revaluation should otherwise be as outlined in paragraphs 154 and 155.

160. If *long service benefit* for *members* who remain in *relevant employment* is increased from time to time and the rate of increase is less than the rate of statutory revaluation, provided that such increases are reflected fully in the benefits to which such *members* would become entitled on termination of *relevant employment*, a *preserved benefit* should be increased in line with increases in the *long service benefit* for *members* who remain in *relevant employment*.

161. If *long service benefit* for *members* who remain in *relevant employment* is increased from time to time but such increases are not fully reflected in the benefits to which such *members* would become entitled on termination of *relevant employment*, a *preserved benefit* should be revalued in proportion to the amount, if any, by which the *member's* entitlement on leaving *relevant employment*, in respect of the period of *reckonable service* to which his/her *preserved benefit* applies would have increased as a consequence of the increase in *long service benefit* had he/she been in *relevant employment* at the date of the increase.

162. If *long service benefit* for *members* who remain in *relevant employment* is not increased, no revaluation of a *preserved benefit* is required.

s33(2) Benefits provided in respect of a Transfer of Rights

163. Where the additional *long service benefit* provided by a *scheme* in respect of a transfer of accrued rights from a *scheme* relating to another employment is determined on a defined benefit basis (e.g. in the form of notional added years of service or a fixed amount of additional pension), the *member's preserved benefit* in respect of such transfer of accrued rights does not fall to be revalued.

s29(7) 164. The legislation requires that any additional *long service benefit* granted in respect of a transfer of rights must be preserved in the form in which it was granted i.e. a fixed amount of additional pension does not have to be revalued. If, however, the additional *long service benefit* takes the form of notional added years of service applied to a percentage of the *member's* salary at, or in the period immediately preceding, *NPA*, his/her *preserved benefit* must similarly be calculated by reference to his/her salary at, or in the period immediately preceding, *NPA*. Effectively therefore, this form of *preserved benefit* must be increased during the period between the date the *member* leaves *relevant employment* and *NPA* in line with an appropriate measure of the salary increases which he/she would have received if he/she had remained in *relevant employment*.

Two or more categories of benefit

s27(2) 165. Where a *member* has a *preserved benefit* which has been calculated on more than one basis each benefit should be treated separately for revaluation purposes.

Hybrid Schemes

166. A *member's long service benefit* may be calculated on a "hybrid" basis, e.g. *long service benefit* is determined on a defined contribution basis but is subject to a minimum defined benefit. In this instance, the minimum defined benefit should be revalued as outlined in paragraphs 153 to 161 before such comparison is made.

Ancillary or Optional Benefits

- s31(2)**
s33(2) **167.** Elements of a *member's preserved benefit* other than the amount of benefit payable at *NPA* (e.g. benefits payable on death before or after *NPA* to the *member's* spouse and/or dependants, the portion of the *preserved benefit* to which guaranteed pension increases apply or the lump sum commutation option) must also be revalued as outlined in paragraphs 158 to 162.

Anti-Frinking Provision

- p8 2nd Sch** **168.** The legislation provides that if a *member's relevant employment* terminates on or before 1 June 2002, no part of the appropriate revaluation amount to be added to a *member's preserved benefit* may be provided by reducing the amount of any benefit payable under the *rules* of the *scheme* in respect of *reckonable service* completed before 1 January 1991. If, however, the benefit payable to the *member* under the *rules* of the *scheme* in respect of *reckonable service* completed after 1 January 1991 is greater than his/her *preserved benefit*, the legislation does not prevent part of the revaluation amount from being provided by reducing the amount by which his/her benefit entitlement in respect of *reckonable service* completed after 1 January 1991 exceeds his/her *preserved benefit*.

169. The anti-franking provision also applies in the case of an early retirement benefit payable to a *member* where his/her *relevant employment* terminates on or before 1 June 2002. Benefits payable on retirement before *NPA* in respect of *reckonable service* completed after 1 January 1991 must be such that their *actuarial value* is at least equal to the *actuarial value* of the *preserved benefit* at *NPA* including prospective revaluation of such *preserved benefit* (see paragraph 48). The anti-franking provision means that this requirement may not be met by reducing the amount of any early retirement benefit payable under the *scheme rules* in respect of *reckonable service* completed before 1 January 1991.

170. The anti-franking provision in the legislation does not apply where a *member's relevant employment* terminates after 1 June 2002. In such circumstances, however, the additional *preserved benefit* is subject to a minimum of the leaving service benefit provided under the *rules* of the *scheme* less the basic *preserved benefit* (see paragraph 69(c)). Therefore, the scope for reducing the amount of any benefit payable under the *rules* of the *scheme* to provide the *revaluation amount* to be added to a *member's preserved benefit* is prohibited elsewhere in the legislation.

Transfer Payments

- s32(2)** **171.** A *transfer payment* to another *scheme* or an insurance policy or contract must reflect the *actuarial value* of the *preserved benefit* together with prospective revaluation. However, that part of a *transfer payment* which relates to the revaluation of the additional *preserved benefit* outlined in paragraph 69(c) may be reduced in line with the specified percentage disclosed in the most recent actuarial funding certificate if the *scheme* making the *transfer payment* is not fully funded in respect of such revaluation (see paragraphs 179-180).

Timing of Revaluation

s33(2)

172. The appropriate revaluation amount may be added to a *member's preserved benefit* some time after the end of the *revaluation year* if this is administratively convenient, e.g. in order to coincide with a *scheme's* annual review date. The *revaluation percentage* prescribed (or $x/12$ ths of such percentage if appropriate) must, however, be applied with retrospective effect to the *preserved benefit* at the end of the preceding revaluation year (or at the date of termination of the *member's relevant employment* if appropriate).

(paragraphs 173 - 174 spare)

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PART VII

Transfer Payments

This Part of the notes sets out details of the circumstances in which a member who is entitled to a preserved benefit may elect to take a transfer payment in lieu of his/her preserved benefit, the basis for calculating, and the procedures which must be followed in relation to, transfer payments.

TRANSFER PAYMENTS

General

- s34(1)** 175. In general the legislation gives a *member* of a funded *scheme* the right to a *transfer payment* to another *scheme* or arrangement (see paragraph 189) instead of a *preserved benefit*. The legislation does not give the *member* the right to a transfer amount in respect of non *preserved benefit* and the *member's* right in respect of any such entitlement will depend on the *rules* of a *scheme*.

Calculation of Transfer Payment

- s34(2)(a)** 176. The *transfer payment* in respect of a *preserved benefit* or part of a *preserved benefit* which has been determined on a defined benefit basis is the *actuarial value* of such *preserved benefit* (including the value of any prospective revaluation and the benefit which would have been payable if the *member* had died before *NPA*) at the date of receipt of the application for a *transfer payment* or on a date selected by the trustees which is not earlier than three months before, nor later than three months after, the date of receipt of the application.
177. Such *transfer payments* must be calculated in accordance with any guidelines issued by the Society of Actuaries in Ireland (or with any other applicable guidelines) and specified in regulations.
- s34(2)(b)** 178. The *transfer payment* in respect of a *preserved benefit* or part of a *preserved benefit* which has been determined on a defined contribution basis is the *accumulated value* of the *appropriate contributions* which relate thereto. This value must be determined on a date not later than 3 months following the date on which the trustees receive the *member's* written application for a *transfer payment*.

Reduction in Transfer Payment

- s34(2)** 179. A reduction may be made in a *transfer payment* which has been determined on a defined benefit basis where, in the most recent actuarial funding certificate, the actuary certified a specified percentage (in respect of the future revaluation of the additional *preserved benefit* outlined in paragraph 69(c)) of less than 100%. In such circumstances, the part of a *transfer payment* which represents the actuarial value of the future revaluation of the additional *preserved benefit* may be reduced in respect of a *member* whose *relevant employment* terminates after 1 June 2002 by multiplying it by the specified percentage shown in the most recent actuarial funding certificate in respect of that *scheme*.
180. A *transfer payment* may be further reduced by the trustees on the advice of the actuary if the most recent actuarial funding certificate in respect of the *scheme* certifies that the *scheme* does not satisfy the funding standard.

Application for Transfer Payment

s34(3) **181.** The right to a *transfer payment* is exercised by the *member* making a written application to the trustees of the *scheme* for such a payment to another *scheme* or arrangement (see paragraph 189) and the *member* must provide the trustees with such information as they may reasonably require. The application must apply to the whole of the *preserved benefit*.

182. Where a *transfer payment* is made to one or more insurance policies or contracts (see paragraph 189) the *member* may choose any insurance policy or contract provided that it is a policy or contract which is approved by the Revenue Commissioners and that the insurance company which offers the policy or contract is willing to accept the *transfer payment*.

Timing for Transfer Payment

s34(7) **183.** A *member* may exercise the right to have his/her *transfer payment* applied in accordance with paragraph 175 above at any time within two years after his/her service in *relevant employment* terminates (or such longer period as may be provided for under the rules of a *scheme* or determined by the trustees of a *scheme*) but not later than the date on which the *preserved benefit* becomes payable.

s34(4) **184** Where the trustees of a *scheme* receive an application for a *transfer payment* from a *member*, they are required to apply the *transfer payment* concerned in the manner directed in the application within 3 months of the date of receipt of the application.

Timing

When can a *member* apply for a *transfer payment*?

Within 2 years of termination of *relevant employment* (or longer if the *scheme* allows) and before *preserved benefit* becomes payable.

At what date is the *transfer payment* calculated?

Defined Benefit

A date selected by the trustees not earlier than three months before and not later than three months after the date of receipt of the application.

Defined Contribution

A date not later than three months after the date of receipt of the application.

When must the *transfer payment* be made?

Within three months of the date of receipt of the application.

Receipt of Transfer Payment

s34(6) **185.** Where a *member* makes a valid application to the trustees of a *scheme* of which he was previously a *member* for a *transfer payment* to be made in respect of his *preserved benefit* from that *scheme* to the *scheme* of which he is currently or prospectively a *member*, the trustees of his/her current *scheme* must accept such payment. They are also required to provide benefits of an *actuarial value* that is equivalent to the amount of the *transfer payment* but the benefits provided may be in whatever form they consider appropriate. Where the receiving *scheme* is an unfunded *scheme* an application will not be valid unless the trustees of that *scheme* have indicated their willingness to accept the *transfer payment*.

186. The trustees of the *member's* current *scheme* are not required under the legislation to accept a transfer amount in respect of any non-*preserved benefits* to which the *member* is entitled from a previous *scheme*.

Transfer Payments without Consent

s35(1)
s48(b) **187.** There are certain circumstances in which a *transfer payment* may be made in respect of a *member's preserved benefit* without his/her consent. These are outlined in paragraphs 55, 56 and 60.

In certain circumstances, where a transfer of *members* between one *scheme* and another has taken place as a result of a transaction involving a transfer of undertakings, the rules of a *scheme* may provide for a transfer of assets between *schemes*, without the need to obtain the consent of *members*. It is important to note that such a transfer may be made without consent, only if the *members* have not acquired an entitlement to a *preserved benefit*. This could occur, for example, if their *relevant employment* has not been terminated as a result of the transfer of undertaking - which will depend on the facts of each case. A bulk transfer would also be subject to the trustees complying with any Regulations under s.59E.

Discharge of Trustees' Obligations

s34(5) **188.** Where the trustees of a *scheme* have made a *transfer payment* in respect of a *member's preserved benefit*, they are discharged from any further obligation to provide benefits relating to the *member's preserved benefit*.

Destination of Transfer Payment

s34(3) **189.** A *member* of a funded *scheme* who is entitled to a *preserved benefit* may apply to have a *transfer payment* made to:

- another funded *scheme* which provides or is capable of providing *long service benefit* and of which he/she is a *member* or a *prospective member*, or
- one or more approved insurance policies or contracts (i.e. buy-out bonds), or
- another *scheme* which is not a funded *scheme* which provides or is capable of providing *long service benefit* and of which he is a *member* or *prospective member* and the trustees of which are willing to accept such payment, or
- (where so prescribed and in accordance with such conditions as may be prescribed) the trustees, custodians, managers or administrators of any other arrangement for the provision of retirement benefits established within the State, or
- (where so prescribed and in accordance with such conditions as may be prescribed) the trustees, custodians, managers or administrators of an arrangement for the provision of retirement benefits established outside the State.

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PART VIII

Refunds of Contributions

This Part of the notes sets out the circumstances in which a member may or may not take a refund of his/her contributions on termination of relevant employment.

REFUNDS OF CONTRIBUTIONS

General

s32 **190.** In general terms a *member* of a *scheme* who is entitled to a *preserved benefit* (or who would be entitled to a *preserved benefit* if his/her service in *relevant employment* were to terminate) is not entitled to receive a refund of any contributions.

191. If at the date of termination of his/her *relevant employment* a *member* is not entitled to a *preserved benefit*, and the *scheme* rules allow, he/she may elect to take a refund of his/her total contributions to the *scheme* together with any interest payable under the rules of the *scheme*.

s32 **192.** If a *member* whose service in *relevant employment* terminates on or before 1 June 2002 and such *member* is entitled (or prospectively entitled) to a *preserved benefit*, he/she is not entitled to a refund of any contributions which he/she has paid after 1 January 1991. Provided that the rules of the *scheme* so permit, he/she may elect to take a refund of the contributions which he/she paid to the *scheme* before 1 January 1991. (See paragraph 198).

Additional Voluntary Contributions

s29(6)
s30(5) **193.** A *member* whose service in *relevant employment* terminates on or before 1 June 2002 may elect to take a refund of any *additional voluntary contributions* paid before 1 January 1991. If this is the case:

- any part of the *preserved benefit* in respect of the *member's additional voluntary contributions* which is determined on a defined benefit basis should exclude the part of the benefit which would otherwise relate to *reckonable service* before 1 January 1991
- any part of the *preserved benefit* in respect of the *member's additional voluntary contributions* which is determined on a defined contribution basis should exclude *additional voluntary contributions* made before 1 January 1991.

Contributions included in a Transfer Amount

s29(7)
s30(6) **194.** A *member* whose service in *relevant employment* terminates on or before 1 June 2002 may elect to take a refund of any contributions paid by him/her before 1 January 1991 to another *occupational pension scheme* relating to a different employment from which there has been a transfer of accrued rights. If this is the case:

- any part of the *preserved benefit* in respect of such transfer of accrued rights which is determined on a defined benefit basis should exclude the part of the benefit which would otherwise relate to *reckonable service* before 1 January 1991
- any part of the *preserved benefit* in respect of such transfer of accrued rights which is determined on a defined contribution basis should exclude the part of the rights which accrued prior to 1 January 1991.

Mixed Benefits

195. The legislation does not prohibit a *member* who leaves *relevant employment* on or before 1 June 2002 with entitlement to a *preserved benefit* from electing to take a refund of some but not all of the following types of contributions paid by him/her prior to 1 January 1991:

- normal contributions,
- *additional voluntary contributions*,
- contributions included in a transfer of accrued rights from another *occupational pension scheme* which does not relate to the same employment.

196. Thus, for example, provided that the rules of the *scheme* so permit, a *member* who leaves *relevant employment* on or before 1 June 2002 could elect to take a refund of normal and *additional voluntary contributions* paid before 1 January 1991 and elect not to take a refund of contributions paid before 1 January 1991 which were included in a transfer of accrued rights from another *scheme*. In these circumstances his/her aggregate *preserved benefit* would be:

- *preserved benefit* in respect of post-1991 *reckonable service* and/or normal *scheme* contributions,
- *preserved benefit* in respect of post-1991 *additional voluntary contributions*,
- the full additional *long service benefit* granted in respect of the transfer of accrued rights.

Scheme which Provides Dependants' Benefits Only

197. If a *scheme* which provides pensions for the spouse and/or dependants of a deceased *member* is established under a separate trust to the *scheme* which provides a *member's long service benefit* and if the *scheme* rules provide that such pensions are only payable to the spouse to whom the *member* was married and/or the person or persons who were dependent on the *member* at the date of termination of *relevant employment*, then if, on termination of *relevant employment*, a *member* has no spouse or dependant, the full amount of the *member's* contributions to the *scheme* (including those paid after 1 January 1991) may be refunded (provided that the rules of the *scheme* so provide).

Leaving Relevant Employment without Leaving Employment

198. If a *member* leaves *relevant employment* without leaving employment (i.e. the *scheme* no longer applies to that employment), he/she is entitled to a *preserved benefit* if he/she has met the qualifying condition. It is likely that the *scheme* rules will only permit refunds of contributions on leaving employment, in which event any option to take a refund of the contributions which he/she paid to the *scheme* prior to 1 January 1991 may only arise if and when his/her employment ceases on or before 1 June 2002.

**Preservation of Benefits
and
Minimum Value of Contributory Retirement
Benefits**

PART IX

Determinations by the Pensions Authority

This Part of the notes sets out details of the powers of the Pensions Authority in relation to the preservation of benefits.

DETERMINATIONS BY THE PENSIONS AUTHORITY

General

s38(2) 204. The Pensions Authority has the power to make determinations on any of the following questions:

- whether the legislation conflicts with any rule of a *scheme*,
- whether a *scheme* is a *defined benefit scheme* or a *defined contribution scheme* for the purposes of the preservation requirements,
- whether a *member's relevant employment* may be treated as terminated.

Persons entitled to apply for a determination

s38(3)
a10 SI 279/02 205. The following categories of person are entitled to make a written application for such 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 a *scheme*,
- an *authorised trade union* representing a *member* or *members* or a *prospective member* or *prospective members* of the *scheme*,
- such other persons as the Minister may prescribe.

Oral Hearings

s26(1) 206. The Pensions Authority may decide to hold an oral hearing prior to making such a determination.

Appeal of Determination

s38(4) 207. Any such determination made by the Pensions Authority may be appealed to the High Court on a point of law. An appeal may be brought by the person who made the determination or any person who would have been entitled to apply for such a determination.

Criteria for the exercise by the Pensions Authority (the “Authority”) of its function under article 3(1)(b) of the Occupational Pension Schemes (Preservation of Benefits) Regulations, 2002, as amended (S.I. No. 279 of 2002) (the “Preservation Regulations”)

The Authority will take into account, subject to the exercise by the Authority, where possible, of flexibility and judgement having regard to the circumstances of each application received, the following guidelines in determining, under article 3(1)(b) of the Preservation Regulations, that a transfer payment from the scheme, without the consent of the member concerned, should be effected by the trustees of the scheme:

1. A period of at least 2 years should have elapsed since the date of termination of the member’s relevant employment.
2. The trustees should have already written to members seeking the members’ consent to the transfer of the members’ preserved benefit (to another scheme or to an approved insurance policy or contract). This letter must also include the following:
 - notification to members of any option available to members under section 34(3) of the Act in respect of a transfer payment;
 - notification to members that in the event of members not consenting to the transfer, the trustees are considering applying to the Authority for a determination that would result in the member’s benefits being transferred out of the relevant scheme, notwithstanding their lack of consent; and
 - notification to members that they have 30 days to make written observations to the trustees on the proposed application to the Authority which the trustees must give due consideration to before making any final decision on whether to apply to the Authority.
3. The written notice at 2 above should be given by delivering the notice to the person to whom it relates, or sending it by post in a prepaid registered letter addressed to such person at the address at which he or she ordinarily resides.

Please note that the trustees will not be deemed to have satisfied the notification requirement where a letter is returned as undelivered.

4. If a registered letter is returned, trustees are expected to make all reasonable enquiries as to the whereabouts of the member concerned. The Authority expects trustees to have a robust process in place for keeping track of deferred members such as:
 - reminding members to inform the trustees of their new contact details if they change;
 - using alternative methods to contact members such as mobile phone and email;
 - where members cannot be found, consider using other options such as social media, the electoral register and current or former scheme members who may have kept in contact with the relevant member to locate the member; and
 - where members cannot be found and all other avenues have been exhausted, consider using the Host Mailing Service of the Department of Social Protection.
5. The trustees must complete the Authority's application form, which is available under the 'Trustees/Registered Administrators' section (see under 'Application Forms') on the Authority's website. Click [here](#) for link to form.
6. In their application to the Authority the trustees must:
 - confirm that there are no outstanding requests from members for a transfer payment to another scheme or to an approved policy or contract of assurance of the member's choice at the time the transfer is made;
 - confirm that a period of at least two years has elapsed since the date of termination of the member's relevant employment;
 - confirm that any transfer payment under article 3 would not be reduced in accordance with proviso (i) or (ii) of section 34(2) of the Act;
 - outline the options the trustees considered for deferred members;

- confirm to the Authority that they have already sought the consent of members to the proposed transfer and have given due consideration to any observations received from members concerning the trustees' intention to apply to the Authority for a determination that would result in the member's benefits being transferred out of the relevant scheme, notwithstanding their lack of consent;
 - demonstrate that the proposed transfer is in the best interests of members including by reference to the charges, investment options and retirement options associated with the alternative arrangement versus remaining in the scheme. Please note that the Authority is of the view that the best interests of members are generally not met where a deferred member is potentially financially worse off by way of the transfer; and
 - include a sample of the communication that will issue to members and outline the steps to be taken to contact members if the proposed transfer is approved.
7. The Authority will grant the application where it is satisfied that the trustees have demonstrated that the transfer is in the best interests of the deferred members. In cases where the Authority determines to grant an application, the trustees will be advised that:
- the determination relates only to the making of a transfer payment from the scheme in respect of the member's statutory preserved benefit;
 - the determination does not relieve the trustees from their duties as trustees, under the rules of the scheme or generally;
 - in particular, the determination does not authorise the trustees to make a transfer payment without the member's consent where this would constitute a breach of the rules of the scheme or a breach of the trustees' general duty to carry out the scheme in the interests of the beneficiaries;
 - the determination does not extend to the approval or selection by the Authority of the insurance policy or contract to which it is intended the transfer payment will be made;
 - under article 3(4)(b) of the Preservation Regulations, there must be no outstanding request from members for a transfer

payment to another scheme or to an approved policy or contract of assurance of the members' choice at the time the transfer is made;

- under article 3(4)(c) of the Preservation Regulations, the trustees cannot make the transfer if the transfer payment would be reduced in accordance with proviso (i) or (ii) of section 34(2) of the Act; and
- under article 3(3) of the Preservation Regulations, a transfer payment in accordance with section 35 of the Act is not effective until the trustees have notified the member concerned of the undertaking or undertakings with whom the approved policy or contract of assurance has been effected.

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