An tÚdarás Pinsean
The Pensions Authority

THE PENSIONS AUTHORITY

PRESCRIBED GUIDANCE IN RELATION TO

SECTION 42 OF THE PENSIONS ACT, 1990

VERSION 02

DATE: 14 June 2013

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INDEX

1. INTRODUCTION

1.1. Section 42(4) of the Pensions Act, 1990 (as amended, the **Act**) (as amended by section 27 of the Social Welfare and Pensions Act 2012) provides that where an actuary is completing an actuarial funding certificate and a funding standard reserve certificate, he or she shall comply with the applicable professional guidance issued by the Society of Actuaries in Ireland and specified in regulations or with any other applicable guidance issued by any other person including the Pensions Authority and specified in regulations.

1.2. This guidance, which will be prescribed by the Minister under the Occupational Pension Schemes (Funding Standard) Regulations 1993 to 2009 (as amended or replaced), sets out certain requirements which an actuary must comply with when completing an actuarial funding certificate. It is in addition to the Society of Actuaries in Ireland Guidance (defined below).

1.3. As this guidance will be specified by Regulations made under the Act, it cannot be altered by the Pensions Authority without the prior consent of the Minister by virtue of section 7A of the Act. Any such alteration will be effective when such consent has been given and with effect from the date specified in the alteration and details will be published by the Pensions Authority as soon as reasonably practicable after the Minister has given that consent.

1.4. Sections referred to in this guidance are to sections of the Act. Terms used in this guidance but not defined in this guidance have the meanings given in the Act. The following terms have the following meanings.

"actuarial statement" means the statement by the actuary referred to in section 50(3)(b)(iii)(II), section 55(3) or section 55(4) of the Act.

"effective date"

(a) in relation to an actuarial statement prepared under section 50 of the Act, means the effective date of the reduction in benefits,

(b) in relation to an actuarial statement included in an annual report prepared under section 55 of the Act, means the last day of the period to which the annual report relates, and

(c) in relation to an actuarial funding certificate, has the meaning given in section 42 of the Act.

"EU sovereign bonds" means:

(a) securities issued under section 54(1) of the Finance Act 1970 and known as bonds, or

(b) securities issued under the laws of a Member State of the European Communities (other than Ireland) that correspond to securities referred to in paragraph (a).

“notifications” has the meaning given in paragraph 3.4 of this guidance.

"pensions in payment" means pensions actually in payment under a scheme and the benefits payable under a scheme in respect of members who have reached normal pensionable age and includes future increases in those pensions or benefits.

“resolution” means the resolution referred to in paragraph 3.2 of this guidance.

“section 53B basis” means the basis for valuing pensions in payment set out in paragraph 4 of this guidance.

“Society of Actuaries in Ireland Guidance” means the professional guidance issued by the Society of Actuaries in Ireland and specified in the Occupational Pension Schemes (Funding Standard) Regulations 1993 to 2009 (or any amendment or re-enactment thereof) in relation to the completion of actuarial funding certificates and funding standard reserve certificates.

“sovereign annuity” means a policy or contract of assurance issued by an insurance company to the trustees of a scheme, the form of which has been certified by the Pensions Authority under section 53B of the Act.

“specified level” means all or such proportion, percentage or amount of pensions in payment which the trustees of a scheme resolve to secure through the purchase of sovereign annuities if the scheme were to wind-up.

“traditional annuity basis” means the basis for valuing pensions in payment set out in the Society of Actuaries in Ireland Guidance (currently paragraph 2.7(a) of version 3.4 of ASP PEN-3).

2. GENERAL

2.1. Scheme actuaries are reminded that, in addition to any requirements set out in this guidance, they must comply with the requirements of the Society of Actuaries in Ireland Guidance except to the extent that there is any conflict with this guidance. In the event of any conflict, this guidance shall prevail.

2.2. The Society of Actuaries in Ireland Guidance requires that the value placed on pensions in payment for the purposes of determining the funding standard liabilities of a scheme must be computed on the traditional annuity basis.

2.3. Where a scheme holds EU sovereign bonds or sovereign annuities, the actuary may, in the circumstances and to the extent permitted in this guidance, reduce the value placed on some or all of the pensions in payment under the scheme. Valuing pensions in payment in this manner is referred to as valuing them using the section 53B basis.

3. REQUIREMENTS

3.1. The actuary may value pensions in payment using the section 53B basis where the trustees have confirmed in writing to the actuary that the requirements set out in this paragraph 3 have been complied with.

3.2. The trustees of a scheme must, having first taken advice on the appropriateness of securing pensions in payment on a winding up of the scheme by purchasing sovereign annuities and, having complied with their fiduciary duties, have resolved that:

3.2.1. if the scheme were to wind-up on the date of the resolution, they would secure the specified level of pensions in payment through the purchase of sovereign annuities; and

3.2.2. subject to their fiduciary duties, it is their intention to secure at least the specified level of pensions in payment through the purchase of sovereign annuities in the event that the scheme winds up in the future;

and have evidenced or recorded that resolution in writing (the **resolution**).

3.3.

3.3.1 The resolution referred to in paragraph 3.2 must have been passed not later than the effective date of the actuarial funding certificate or the effective date of the actuarial statement (as appropriate) in respect of which the actuary first values pensions in payment using the section 53B basis and in sufficient time prior to that effective date to allow the notifications referred to in paragraph 3.4 to be made.

3.3.2 The trustees must consider the resolution no later than each anniversary of the date on which it was first passed and resolve in writing to confirm it or to revoke it prior to such anniversary.

3.4. Following the passing of the resolution, the trustees must have notified in writing, in the manner set out in paragraph 3.6, all members of the scheme and any other person in receipt of benefits under the scheme, and also notified any authorised trade union representing members, of at a minimum, the matters referred to in paragraph 3.5 (the **notifications**).

3.5. The notifications must have set out:

3.5.1. the circumstances giving rise to the resolution and the reasons why the trustees believe passing the resolution was in compliance with their fiduciary duties, and

3.5.2. the nature and effect of sovereign annuities and in particular the fact that

3.5.2.1 should a pension in payment under the scheme be secured using a sovereign annuity, payment of the pensions so secured will be dependent upon certain EU Member States fulfilling their payment obligations under the terms of bond(s) which they have issued or not varying the terms of the bond(s) such that anticipated payments under those bond(s) fall,

3.5.2.2 if a Member State does not fulfil any of its payment obligations or there is a variation to the terms of the bond(s), the insurer can reduce the pension in payment under the sovereign annuity referenced to those bond(s) to reflect the loss caused to holders of the bond(s),

3.5.2.3 in that event the person in receipt of a pension through that sovereign annuity will have to bear the loss and will have no recourse to the scheme for that loss, and

3.5.2.4 that the trustees will notify the recipient of the notification if at any time in the future the resolution is revoked.

3.6. For the purposes of making the notifications, the trustees should have addressed the notifications to members or other persons (including any authorised trade union) at their last known address.

3.7. The trustees must then have confirmed in writing to the actuary that

3.7.1. they have complied with the requirements of paragraph 3.2 and 3.3.1 and that the resolution has been passed, and

3.7.2. the notifications have been made in compliance with paragraphs 3.4 to 3.6

and have provided the actuary with a copy of the resolution and a copy of the text of the notifications. The actuary must satisfy himself that the resolution was in place at the effective date of the actuarial funding certificate or the actuarial statement before signing the actuarial funding certificate or actuarial statement (as appropriate).

3.8. In respect of any subsequent actuarial funding certificates or actuarial statements (as appropriate), the actuary must request written confirmation from the trustees prior to signing the actuarial funding certificate or actuarial statement that the resolution continues to be in place at the effective date of the actuarial funding certificate or actuarial statement (as appropriate) and that, where relevant, paragraph 3.3.2 has been complied with.

3.9. If at any time after the first occasion on which the trustees make the confirmation to the actuary referred to in paragraph 3.7

3.9.1. the trustees confirm in writing to the actuary that the resolution is no longer in place, or

3.9.2. the actuary, having requested written confirmation from the trustees that the resolution remains in place, has not received such confirmation

the actuary shall not value pensions in payment using the section 53B basis.

3.10. The written confirmations referred to in this paragraph 3 must have been signed by at least two of the trustees (unless there is a sole trustee). At least one director must have signed on behalf of a corporate trustee.

4. SECTION 53B BASIS

4.1. This paragraph 4 sets out the basis on which the actuary may value pensions in payment for the purposes of completing an actuarial funding certificate or actuarial statement where, and for so long as, the requirements of paragraph 3 have been satisfied.

4.2. Where a scheme holds a sovereign annuity in respect of all or part of a pension in payment, the actuary may either

4.2.1. value both that pension in payment or the part thereof (as appropriate) up to the specified level and the sovereign annuity held up to the specified level as being the then current cost of purchasing a corresponding sovereign annuity for that pension in payment or part thereof up to the specified level, or

4.2.2. omit that pension in payment or the part thereof (as appropriate) and the corresponding sovereign annuity, up to the specified level, from his or her calculations.

4.3. Where a scheme holds EU sovereign bonds, the value of the specified level of pensions in payment calculated on a traditional annuity basis (but ignoring any pension in payment to which paragraph 4.2 applies) may be reduced by the actuary as follows in respect of each EU sovereign bond held:

4.3.1. where there is an active sovereign annuity market in a sovereign annuity referenced to that bond, by the amount obtained by subtracting

(a) the realisable value of the bond from

(b) the cost of purchasing, on a traditional annuity basis, the pension that could be purchased on a sovereign annuity basis by the realisable value of the bond, and

4.3.2. where there is no active sovereign annuity market in a sovereign annuity referenced to a bond, and the bond has a maturity date more than 10 years later than the effective date, by the percentage (if any) set out below of the realisable value of the bond (which percentage is calculated by reference to the difference between the yield on the bond and the yield on the 3.25% Bund of 2010 (2042))

4.3.2.1 Where the effective date of the actuarial funding certificate is on or after 1 June 2012 and before 22 October 2012

	Yield difference	**Percentage**
1.	Less than 3%	0%
2.	Equal to or more than 3%	20%

4.3.2.2 Where the effective date of the actuarial funding certificate is on or after 22 October 2012

	Yield difference	**Percentage**
1.	Less than 2%	0%
2.	Equal to or more than 2%	20%

but the maximum value of the bonds for which a reduction can be obtained under this paragraph 4.3 is the value of the specified level of pensions in payment calculated on a traditional annuity basis (but ignoring any pension in payment to which paragraph 4.2 applies) less any reduction calculated under paragraphs 4.3.1 and 4.3.2.

4.4. Where EU sovereign bond(s) are held indirectly by a scheme (for example in a unit linked fund), the actuary can apply the section 53B basis outlined in paragraph 4.3 by reference to the underlying bonds and the trustees' proportionate indirect holding of such bonds.

4.5. If it is intended to value pensions in payment using the section 53B basis for the purposes of a funding proposal to be submitted to the Pensions Authority the actuary must comply with the requirements of the guidance issued by the Pensions Authority under section 49 of the Act in relation to funding proposals which use the section 53B basis.