



An tÚdarás Pinsean
The Pensions Authority

THE PENSIONS AUTHORITY

**PRESCRIBED GUIDANCE IN RELATION TO
SECTION 50 OF THE PENSIONS ACT, 1990**

VERSION 02

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INTRODUCTION

1.1. Section 50 of the Pensions Act, 1990 (as amended, the **Act**) (as amended by section 11 of the Social Welfare and Pensions (No. 2) Act 2013) permits the Pensions Authority, by notice in writing, following an application by the trustees of a relevant scheme (other than a regulatory own funds scheme), to direct those trustees to take such measures as may be specified in the notice or, if no measures are specified, such measures as may be necessary in respect of

1.1.1. members in relevant employment who have not reached normal pensionable age and members whose service in relevant employment has ceased and who have not reached normal pensionable age with an entitlement to benefits the payment of which has not commenced, and

1.1.2. persons receiving benefits under the scheme or persons who have reached normal pensionable age

to reduce the benefits that would be payable to or in respect of those members or persons from the scheme. In the case of the persons referred to at paragraph 1.1.2 above, the reduction may only relate to (a) future increases in benefits payable from the scheme to or in respect of those persons; and (b) benefits, but only to the extent provided for in section 50(1B) of the Act (as amended by section 11 of the Social Welfare and Pensions (No. 2) Act 2013).

1.2. The circumstances in which trustees can apply to the Pensions Authority for such a direction are:

1.2.1 the trustees of the scheme fail to submit an actuarial funding certificate or funding standard reserve certificate within the period specified in section 43,

1.2.2 the actuarial funding certificate certifies that the scheme does not satisfy the funding standard or the funding standard reserve certificate certifies that the scheme does not satisfy the funding standard reserve and the trustees of the scheme have not submitted a funding proposal in accordance with section 49,

1.2.3 the actuarial funding certificate certifies that the scheme does not satisfy the funding standard or the funding standard reserve certificate certifies that the scheme does not satisfy the funding standard reserve and the trustees have submitted a funding proposal in accordance with section 49, or

1.2.4 the Pensions Authority has consented to the amendment of the scheme in accordance with section 50A of the Act.

1.3. Section 50(4) of the Act provides that the Minister can make Regulations requiring the trustees to comply with guidance issued by the Pensions Authority in relation to applications by trustees under section 50. In accordance with section 50(4), this guidance, which is prescribed by the Minister under the Occupational Pension Schemes (Funding Standard) Regulations 1993 to 2013 (as amended or replaced), sets out

1.3.1. the form by which the trustees may apply to the Pensions Authority for a direction under section 50, and

1.3.2. the requirements to be met by the trustees in relation to any such application.

1.4. As this guidance has been 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.

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

“funding proposal” means a funding proposal submitted or to be submitted in accordance with Section 49.

“section 50 direction” means a direction given by the Pensions Authority to the trustees of a scheme pursuant to section 50(1) or (1A) or (1B).

“employer” means the employer who undertakes the role of principal employer under the scheme for the purposes of the scheme’s approval by the Revenue Commissioners or, where there is no such employer or it is not possible to identify such employer, such employer or employers participating in the scheme as the trustees shall deem appropriate in the circumstances.

2. GENERAL

2.1. Trustees are reminded that the Pensions Authority has a discretion as to whether or not it will give a section 50 direction following an application by the trustees of a scheme.

2.2. Trustees are also reminded that an application for a section 50 direction does not relieve trustees from complying with their obligations under Part IV of the Act within the time limits laid down in the Act.

3. REQUIREMENTS

Before making an application for a section 50 direction, trustees must comply with the requirements set out below. Trustees will be required to confirm as part of the application process that they have complied with each of these requirements. Where an application is made, the Pensions Authority reserves the right to require evidence of compliance with these requirements.

3.1. Scheme Review

Prior to making an application, trustees must have undertaken a comprehensive review of the scheme with a view to the long term stability and sustainability of the scheme. That review must, at a minimum, cover the following matters:

- 3.1.1. the benefits payable under the scheme, the options available for reductions in benefit and their impact on the different categories of member and other persons,
- 3.1.2. the contributions required, both in relation to future accruals of benefit and any past service deficit, under the options considered under paragraph 3.1.1 and the options for increasing those contributions should the need arise after any section 50 direction is made, and the employer's attitude to any request for increased contributions in such circumstances,
- 3.1.3. the long term investment strategy including, where appropriate, how any transition from the current investment strategy would occur, and
- 3.1.4. the future risks facing the scheme including the possibility of the scheme proving more expensive than anticipated, whether through investment under performance, improving longevity or other causes, and what measures could be available to the trustees in those circumstances such as contribution increases or changes to discretionary benefits.

3.2. Employers

The trustees must have requested from the employer contributions sufficient to ensure the long term stability and sustainability of the scheme without the reductions sought in the application and the employer must have declined to pay those contributions. The trustees must also have carried out the review referred to in paragraph 3.1, where appropriate, in consultation with the employer except to the extent that the employer has failed to engage in that review.

3.3. **Notification to members and other persons**

The trustees must have complied with the requirements of paragraph 4 of this guidance before making an application for a section 50 direction.

3.4. **Contribution Rate**

Trustees are required as part of their application to set out the required contribution rate, on the assumption that the application is successful, calculated using a long term gilt yield basis and the most recent mortality projections of the Society of Actuaries in Ireland. Where the proposed contribution rate is less than this, the trustees must provide a detailed explanation of how the proposed contribution rate supports the long term stability and sustainability of the scheme and the factors, if any, which the trustees have taken account of in forming this view. The Pensions Authority considers that a suitable long term gilt yield for these purposes is not more than the long term discount rate set out in Part (A) of Appendix 1 of the Actuarial Standard of Practice PEN-2 issued by the Society of Actuaries in Ireland (4.5% in Version 5.10) or any relevant guidance issued by the Pensions Authority.

3.5. **Funding Standard Reserve**

Because an application for a section 50 direction should be made with a view to the long term stability and sustainability of a scheme, the application must be such that the scheme satisfies the funding standard reserve set out in Section 44(2) of the Act

- 3.5.1. immediately following the making of the direction if the application is not made with a funding proposal; and
- 3.5.2. by the end date of the funding proposal where the application is made with a funding proposal.

3.6. **Legal Advice**

Trustees are required to have taken legal advice on their powers and duties, on the obligations on employers to contribute to the scheme and the manner in which the benefit reductions envisaged in the application will be effected before making an application for a section 50 direction.

3.7. **Actuarial Advice**

Trustees are required to have obtained actuarial advice on the funding position of the scheme, on the available options considered to address the scheme deficit and on the matters referred to in paragraph 3.4 and 3.5 above before making an application for a section 50 direction.

4. INFORMATION

- 4.1. Before making an application for a section 50 direction, the trustees must notify in writing, in the manner set out in paragraph 4.3, all members of the scheme and any other person in receipt of benefits under the scheme, and also notify any authorised trade union representing members, of, at a minimum, the matters referred to in paragraph 4.2 (the **notification**).
- 4.2. The matters referred to in paragraph 4.1 are as follows
 - 4.2.1. the circumstances giving rise to the proposed application,
 - 4.2.2. the reasons why the trustees believe an application is in compliance with their fiduciary duties,
 - 4.2.3. the proposed benefit reductions which are to apply to each category of member or other person and the reasons for treating one or more categories of member or other person differently to others,
 - 4.2.4. that the trustees have requested additional contributions from the employers to avoid the necessity for a section 50 direction and the response of the employers,
 - 4.2.5. where the application is made under Section 50(1), general examples of the projected impact of the reduction(s) on members using such assumptions as the actuary deems appropriate in the circumstances,
 - 4.2.6. where the application is made under Section 50(1A), general examples of the projected impact of the reduction in future increases on the benefits payable to members and other persons in receipt of benefits using such assumptions as the actuary deems appropriate in the circumstances, and
 - 4.2.7. where the application is made under Section 50(1B), general examples of the projected impact of the reduction(s) on members and other persons in receipt of benefits using such assumptions as the actuary deems appropriate in the circumstances.
- 4.3. For the purposes of making the notification, the trustees should address the notification to a member, other person or authorised trade union by post at their last known address.

- 4.4. Where the trustees have made the notification and, prior to making the application, an alteration is proposed to the proposed benefit reductions, the trustees shall form an opinion on whether or not the alteration is material. If the trustees are of the view that the alteration is material, they shall revise the information set out in paragraph 4.2 above and provide the revised information to all members and other persons in receipt of benefits under the scheme.
- 4.5. The trustees must give members and other persons receiving the notification (or any revised notification under paragraph 4.4) at least one month to make written observations to the trustees on the proposed application.
- 4.6. The trustees must not make a decision on whether or not to make the application until the expiry of the period given under paragraph 4.5 to make observations and must give due consideration to those observations before making a decision on whether or not to make the application.

5. **APPLICATION PROCESS**

- 5.1. An application for a section 50 direction must be in the form specified by the Pensions Authority from time to time.
- 5.2. The application must be accompanied by the information required under the form specified by the Pensions Authority. The Pensions Authority may at any time request further information in relation to any application.
- 5.3. Where the making of a section 50 direction is envisaged as part of a funding proposal to be submitted under section 49, the funding proposal must accompany the application for a section 50 direction. That funding proposal must comply with the requirements of section 49 and be stated to have effect if a reduction in benefits is implemented on foot of a section 50 direction.
- 5.4. Where an application for a section 50 direction is made with an application for a later date under Section 49(3B), it must be made with the application for a later date under Section 49(3B). The Pensions Authority will notify the trustees of their decision on both applications at the same time.
- 5.5. While the Pensions Authority will endeavour to deal with the application and notify the trustees of their decision as soon as reasonably practicable, it is a matter for trustees to ensure that their application is made in sufficient time to enable the trustees to comply with their obligations to submit a funding proposal in accordance with section 49.