

Pension scheme funding and restructuring

What happens when a pension scheme
is wound up?



An Bord Pinsean
The Pensions Board

www.pensionsboard.ie



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About this booklet

This booklet focuses mainly on the winding up of *defined benefit schemes*. It describes what pension scheme *members* can expect if their pension scheme is wound up. It also provides information for *trustees* who are involved in winding up a scheme.

However, *trustees* should be aware that this booklet is not a comprehensive guide. They should always seek professional advice when winding up a scheme.

Pension scheme *members* should contact their scheme's *trustees* with any questions about their entitlements in a pension scheme that is being wound-up.

The Pensions Board also provides further information on entitlements. You can contact The Pensions Boards at:

Verschoyle House
28/30 Lower Mount Street
Dublin 2
Tel: (01) 613 1900
Locall: 1890 65 65 65
Fax: (01) 631 8602
Email: info@pensionsboard.ie
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1. Introduction

When a business stops trading, its pension scheme is usually wound up. When this happens, it is important that the pension scheme *trustees* handle the scheme's assets correctly so that *members* get the pension benefits to which they are entitled.

There are two main types of pension scheme:

a. Defined benefit scheme

In a *defined benefit scheme*, *members* are entitled to a pension on retirement based on their pay and service.

If a *defined benefit scheme* is wound up, the *trustees* must assess whether the scheme holds enough assets to pay *members'* pensions. If there are more funds than required, the *trustees* must decide how to treat the surplus assets. However, if there aren't sufficient funds, the *trustees* may be forced to reduce pension benefits.

b. Defined contribution scheme

In a *defined contribution scheme*, *members* are paid a pension based on the amount of pension contributions they have made and the returns those contributions have earned from investment.

Because there is no guaranteed pension payout, if the pension scheme is wound up, the *trustees* must simply allocate the scheme's assets between the *members*.

PART I: SCHEME FUNDING

2. Funded pension schemes

Most companies and commercial semi-state bodies set up a company pension scheme to provide an income for employees when they retire. These schemes are also known as occupational pension plans.

Employees usually pay regular monthly payments into a pension scheme and the money gathered is set aside in a *trust fund*. This fund is kept separate from the employer's business accounts, ensuring that funds will be available to pay *members'* pensions even if the company goes out of business.

What does *that* mean?

Don't be confused by pensions jargon.

See the Glossary for definitions of terms in *italics*.

3. The Funding Standard

The *Funding Standard* is a guideline set out by the Pensions Act to ensure that defined benefit pension schemes have enough funds to pay *members* their pension entitlements if the fund should be wound up.

4. How does The Pensions Board monitor the Funding Standard?

To meet the *Funding Standard*, a *defined benefit scheme* must be regularly evaluated. The scheme *trustees* must arrange for an actuary to carry out a valuation of the scheme at least every three years.

The actuary prepares an *actuarial funding certificate (AFC)* based on the valuation and submits this to The Pensions Board.

What is an AFC?

An *AFC* indicates whether or not a pension scheme can meet all its liabilities were it to wind up at the effective date of the certificate.

What happens if the actuary finds that the scheme can't meet its liabilities?

In this case, the *AFC* indicates that the scheme is underfunded. The *trustees* must submit a *funding proposal* to The Pensions Board that explains how they will adequately fund the scheme over the next three years. In certain circumstances, The Pensions Board can allow the *trustees* more time to rectify the scheme's funding.

What other obligations do the trustees have?

- The actuary must include an 'intervaluation statement' in the Trustee Annual Report for each year. It must state whether, in the actuary's opinion, the scheme can meet the *Funding Standard* of the Board.
- The *trustees* must notify The Pensions Board if no statement has been made or a negative statement is included in the Trustee Annual Report.

- The *trustees* must also have a full *AFC* prepared (and, if relevant, a *funding proposal*) with an effective date not earlier than the last day of the period to which the annual report relates.
- The *trustees* must submit that *AFC* to the Board within 12 months of the last day of the period to which the annual report relates.

PART II: SCHEME WIND-UPS

5. When is a pension scheme wound up?

A pension scheme may be wound up if the employer:

- goes into liquidation
- is bought by another company that decides not to continue the scheme
- fails to make contributions to the scheme within a set period
- notifies the *trustees* that it intends to stop contributing to the scheme.

Rules governing wind-ups

All pension schemes have a set of guidelines called a *trust deed and rules* that governs how the scheme is operated. These guidelines will usually set out how the scheme can be wound up.

6. What are the trustees' responsibilities on wind-up?

The Pensions Act 1990, as amended ('the Act'), requires *trustees* to wind up a scheme without undue delay. The Act also requires that pension benefits be paid in the following order:

1. Benefits relating to *additional voluntary contributions (AVCs)*, including AVCs that were transferred from another scheme
2. Benefits owed to *members* who have reached *normal retirement age (NRA)* (excluding future pension increases)
3. Benefits owed to *members* who haven't yet reached *NRA*
4. Future increases on benefits.

How are pre-retirement age benefits calculated?

When paying benefits to *members* who haven't yet reached *NRA*, *trustees* must pay the larger amount of the *members' preserved benefit* or whatever benefit is due under the rules of the scheme. At this stage, when calculating *preserved benefit*, *trustees* shouldn't revalue the benefits to take account of benefits earned for service before 1991.

Note: The Pensions Act supersedes any attempt by a pension scheme's trust deed and rules to override the order of payments above. The only exception relates to scheme expenses and costs. If the scheme rules allow costs to be paid before pension benefits, this is permitted by the Act.

What happens if there are funds left over?

Once the benefits outlined above and all other liabilities are paid, the *trustees* must revalue benefits to take into account *members' service* before 1 January 1991. Once this revaluation has been done, the *trustees* can begin to deal with any surplus assets.

7. How do trustees pay benefits on wind-up?

When a scheme is wound up, *trustees* must:

- transfer each *member's* benefits into a new pension scheme or
- purchase an approved assurance policy with a life assurance company on behalf of each *member* or
- transfer each *member's* benefits into a PRSA, subject to certain conditions.

Minimum payment

The transfer payment must at least equal the *actuarial value* of the benefit to which the *member* is entitled.

The *trust deed and rules* may allow *trustees* to purchase annuities on behalf of the pension scheme *members*. However, *trustees* must take into account the best interests of the *members*.

8. How do trustees calculate transfer payments?

In a *defined benefit scheme*, trustees must follow guidelines issued by the Society of Actuaries in Ireland and specified in Regulations made under the Act, when calculating transfer payments.

In a *defined contribution scheme*, the transfer payment is based on the accumulated value of the *members'* contributions less any expenses allowed in the scheme rules.

9. How must trustees treat surplus assets?

If there are assets remaining once the *trustees* have paid all benefits and liabilities of a scheme, these funds are distributed according to the scheme's *trust deed and rules*.

There are three common scenarios.

1. The *trust deed and rules* specifies whether benefits to *members* should be increased or whether funds should be repaid to the employer. The *trustees* must obey this ruling.
2. The *trustees* have discretion to increase benefits to *members* or repay funds to the employer. The decision is usually made in consultation with the employer but, ultimately, it is the *trustees'* responsibility.
3. The *trustees* have discretion to increase benefits but only if the employer agrees.

10. What happens if there is a fund deficit?

If a pension scheme doesn't have enough funds to pay *members* their benefit entitlements, some benefits must be reduced. The order of priorities outlined in section 6 determines how *trustees* reduce the benefits. The *trustees* must follow this list when paying benefits until all funds are used.

For example, the *trustees* first pay all benefits relating to AVCs and then benefits to *members* who have reached *NRA*. If no funds then remain, the *trustees* cannot pay any benefits to *members* who haven't reached *NRA*.

Pursuing fund assets

When a scheme is wound up, the *trustees* must ensure that all assets of the scheme are under their control. In particular, they must pursue any outstanding contributions.

If the employer is insolvent, the Protection of Employees (Employer's Insolvency) Act, 1984 allows *trustees* to recover the previous 12 months' contributions from a statutory fund. The *trustees* can only claim enough funds to compensate for any deficit in the pension fund. This must be certified by an actuary. The amount claimed from the statutory fund cannot be more than the total of unpaid contributions, including any outstanding employee contributions that haven't been paid into the scheme.

Making a claim for outstanding contributions

Trustees can make a claim for unpaid contributions from the statutory fund using forms provided by the Department of Enterprise, Trade and Employment.

11. What information are members entitled to?

Trustees must notify *members* as soon as possible that their scheme is being wound up and it must be no later than 12 weeks after the *trustees* become aware of the decision to wind up the scheme.

Trustees must also notify The Pensions Board and any authorised trade union that represents the scheme *members*.

During the wind-up process, *Disclosure of Information regulations* require *trustees* to provide *members* with:

- information about their rights and options regarding their benefit entitlements
- an explanation of how a scheme surplus or deficit is handled
- details of who pays *member* benefits after the scheme is wound up, including an address for enquiries.

Your information rights

For more details on your information rights, see The Pensions Board information booklet 'What do you know about your pension scheme?' This booklet includes information that must be provided to *members* and when it should be made available.

PART III: MERGERS AND ACQUISITIONS

12. Introduction

Mergers and acquisitions are a regular feature of business life. One company may acquire another, two companies may merge or business may be transferred from one company to another.

In many cases, this kind of activity affects the pension schemes operated by the companies involved. This section outlines some of the typical results of a merger or acquisition.

Getting information

When a merger or acquisition is about to take place, an employer normally notifies employees to explain how their contracts of employment are affected. Since pension benefits are part of an employee's conditions of employment, the employer should also inform them of how the merger or acquisition affects pension arrangements.

Where pension arrangements are affected, there is normally a consultation process between the representatives of the pension scheme *members* and the employer.

13. The Sale and Purchase Agreement

When companies complete a merger or acquisition, they usually prepare a confidential legal document called a Sale and Purchase Agreement (SPA).

The SPA would normally outline how the merger or acquisition affects pension arrangements. The employers involved usually provide an outline of this information to pension scheme *members*.

Important note: The Sale and Purchase Agreement is not normally binding on the trustees of a scheme as they are not normally parties to the agreement. In any case, they are always bound by the trust deed and rules.

14. How do mergers and acquisitions affect pension schemes?

In many cases, a merger or acquisition has no effect on the pension scheme. For example, if a new owner acquires all the shares in a company, the change in ownership does not affect the way the company operates and the pension scheme probably remains unchanged.

However, when employees are transferred between employers, pension arrangements are usually affected. In this case, employees usually transfer to the new employer's pension scheme if one is available or to another arrangement depending on the situation that arises.

15. How are scheme transfers handled following mergers and acquisitions?

Listed below are some of the typical situations that require a change in pension arrangements.

Situation 1

Company A acquires company B. Company A has an existing group pension scheme for its subsidiary companies. Company B agrees to become a participating company in this group pension scheme.

OUTCOME: Company B's employees are transferred to the group pension scheme and its own pension scheme is wound up.

Situation 2

Company A merges with company B. Company B's employees are now employed by company A, which has a pension scheme.

OUTCOME: Company B's employees are transferred to company A's scheme and company B's scheme is wound up.

Situation 3

Company B has a group pension scheme. Following its merger with company A, the Revenue Commissioners no longer approve the group scheme.

Company B's employees are transferred to company A's existing scheme or a new scheme.

What happens if there is a change in benefits after a merger or acquisition?

A change of pension scheme may or may not involve a change in benefits. In many cases, benefits don't change or may even improve and scheme *members* have nothing to worry about.

However, if benefits decrease, *members* may wish to raise the issue through normal negotiation channels.

On the transfer of pension scheme membership, *members* often have the option of leaving their pension entitlements in their old scheme. They should consider the funding position of both schemes when making this decision.

Transfer of assets

When a pension scheme is wound up following a merger or acquisition, the scheme rules normally allow some or all of its assets to be transferred to the new pension scheme.

PART IV: MORE INFORMATION

16. The Pensions Board

What is it?

The Pensions Board is a representative body composed of a chairperson and 16 ordinary *members*. The term of office for Board *members* is five years. The Pensions Board also has a chief executive and a team of staff in its office to take care of its day-to-day business.

While all its *members* are appointed by the Minister for Social and Family Affairs, The Pensions Board must comprise representatives of trade unions, employers, consumer interests, pensioner interests, the Government, the pensions industry, pension scheme *trustees* and professional groups involved with pension arrangements.

What does it do?

Along with encouraging the take up of pensions so that all citizens will have an adequate retirement income, it also provides information and authoritative guidance to everyone with an interest in pensions: consumers, employers, *trustees* and the pensions industry. It also promotes the security and protection of pension scheme *members* and PRSA holders.

Its responsibilities include regulating and providing technical guidance on company pension plans, trust RACs and PRSAs. In addition, it advises the Minister for Social and Family Affairs on pension matters generally.

How can it help you?

The Pensions Board can provide you with general information on *occupational pension schemes*, PRSAs and trust RACs. It publishes a comprehensive range of free booklets that can assist you with pension-related matters (see below).

If you have a complaint relating to your pension, The Pensions Board can advise you of your rights and direct you to the appropriate person or organisation for help. In some circumstances, The Pensions Board can act on behalf of pension plan *members* or PRSA contributors who have concerns about their pensions.

Pensions Board booklets

The following booklets are available free of charge from The Pensions Board: Tel: (01) 613 1900; Locall: 1890 65 65 65; or download them from the website, www.pensionsboard.ie

A brief guide to equal pension treatment

As with all areas of working life, pensions are subject to equality rules and legislation. This guide explains the principles of equal pension treatment, discrimination and victimisation in relation to occupational pension schemes.

A brief guide to the pension provisions of the Family Law Acts

Guidance on the pension provisions of the Family Law Act, 1995 and the Family Law (Divorce) Act, 1996.

A guide to hybrid pension schemes

This booklet is intended to help employers, employees, union representatives and others involved with pensions to understand the different types of pension scheme designs. This is with a view to helping them to reach agreement about the most suitable type of pension scheme in a particular situation.

A guide to your scheme's annual report

A guide for pension scheme members to assist them in reading and understanding their scheme's annual report.

Annuities – A brief guide

Some pension plans require retiring members to buy an annuity, which is a product that pays you an annual income for the rest of your life. Find out more about annuities, including how they work and the choices you have.

Integration – A brief guide

Benefits from occupational or company pension plans, particularly defined benefit schemes, are often co-ordinated or integrated with those paid by the social welfare system. Find out how the integration system works and what it means for your pension benefits.

Pensions Checklist

Provides information and a questionnaire to help you inform yourself about how to provide for your retirement.

Personal Retirement Savings Accounts (PRSAs) – A consumer guide

This booklet shows you how to approach, search, apply for and monitor your PRSA, as well as frequently asked questions.

Personal Retirement Savings Accounts (PRSAs) – Employers' obligations

Employers have certain legal obligations with regard to PRSAs. This booklet includes many frequently asked questions that should help employers to understand their responsibilities in this regard.

Selecting member trustees

A guide to the participation by members in the selection of occupational pension scheme trustees.

So you're a pension scheme trustee

A brief guide to the duties and responsibilities of trustees of an occupational pension scheme.

Trustee and employer checklists: On-the-spot fines

These checklists help trustees and employers to ensure that they do not incur any on-the-spot fines for contraventions of the Pensions Act.

What are my pension options?

Find out more about the different types of pensions you can use to save for retirement, such as company pensions, personal pensions, PRSAs and State retirement pensions.

What do you know about your pension scheme?

Trustees and employers must provide you with certain information about your pension plan. Find out what you are entitled to know.

What happens to my pension if I leave?

Your pension isn't lost if you leave your job. Find out how to keep your benefits or transfer them to a new pension plan.

Women and pensions

Women need to pay special attention to pension planning. This booklet addresses issues such as maternity leave, career breaks and re-entering the workforce and how these events affect your pension.

17. Useful addresses

The Pensions Board

Verschoyle House
28-30 Lower Mount Street
Dublin 2
Tel: (01) 613 1900
Locall: 1890 65 65 65
Email: info@pensionsboard.ie
Web: www.pensionsboard.ie

Office of the Revenue Commissioners

Financial Services Pensions District
Large Cases Division
2nd Floor
Setanta Centre
Nassau Street
Dublin 2
Tel: (01) 647 0710
Fax: (01) 647 0899
Email: lcdretirebens@revenue.ie
Web: www.revenue.ie

For information on taxation as it relates to pensions

Office of the Pensions Ombudsman

36 Upper Mount Street
Dublin 2
Tel: (01) 647 1650
Email: info@pensionsombudsman.ie
Web: www.pensionsombudsman.ie

Financial Regulator

PO Box 9138

College Green

Dublin 2

Locall: 1890 777 777

Email: consumerinfo@financialregulator.ie

Web: www.financialregulator.ie

Consumer website: www.itsyourmoney.ie

Financial Services Ombudsman's Bureau

3rd Floor, Lincoln House

Lincoln Place

Dublin 2

Locall: 1890 882 090

Email: enquiries@financialombudsman.ie

Web: www.financialombudsman.ie

Glossary of terms

Actuarial funding certificate (AFC)

A certificate, signed by an actuary, which shows that a pension scheme complies with the Funding Standard under the Pensions Act. Trustees of a pension scheme must submit an AFC to The Pensions Board at least every three years.

Actuarial value

The current cash value of a future payment. The actuarial value of a future pension payment takes into account the likelihood of the scheme member surviving to claim the payment. It also factors in any future investment returns that may be earned.

Additional voluntary contributions (AVCs)

Additional contributions paid by a pension scheme member to secure extra benefits in retirement.

Annuity

An annuity is an insurance contract that provides regular payments to an individual following the payment of a once-off initial payment. Usually, an annuity ends with the death of the holder but it can be set up to make payments to a widowed spouse or dependant.

Defined benefit scheme (also known as final salary plan)

A pension scheme that provides members with retirement and death benefits based on specific formulae. The pension paid is usually based on your salary close to retirement and the length of your service. Many defined benefit plans are 'integrated' with the State pension. This means that the pension they pay allows for the fact that you will receive a State pension.

Defined contribution scheme (also known as money purchase plan)

A scheme that provides pension income by using the value of the member's individual retirement account. The pension you receive will be based on the:

- contributions paid into the account
- investment returns on those contributions
- cost of purchasing the member's pension using annuity rates.

Many company defined contribution pension plans also provide benefits on the death of an employee who is a member of the pension plan. These benefits are usually based on the member's salary at death.

Dependant

A person who depends financially on a scheme member or pensioner. Children are regarded as dependants until they reach the age of 18 or leave full-time education or vocational training. A spouse is always regarded as a dependant.

Disclosure of Information regulations

Regulations issued under the Pensions Act requiring specific information about pension schemes and their benefits to be disclosed to interested parties.

Funding proposal

If a defined benefit scheme doesn't meet the Funding Standard set out by the Pensions Act, the scheme trustees must submit a funding proposal to The Pensions Board explaining how they intend to rectify the scheme's funding.

Funding Standard

The Funding Standard ensures that a defined benefit scheme has sufficient funds to secure the pensions rights that members have built up should the scheme have to be wound up at any stage. To comply with the Funding Standard, a defined benefit scheme must be able to meet certain liabilities, as set down in the Pensions Act.

Member

A person who has been admitted to membership of a pension scheme and who is entitled to benefits under the scheme. This will include active members, pensioners and deferred members.

Normal retirement age (NRA)

The age by reference to which the normal retirement date is determined.

Occupational pension scheme

A pension scheme set up by an employer to provide retirement benefits for employees. This term is used interchangeably with 'company pension scheme'.

Personal Retirement Savings Account (PRSA)

A PRSA is a personal pension that works on a defined contribution basis. Anyone under the age of 75 can start a PRSA by signing a contract with an authorised PRSA provider. The Pensions Board supplies a register of PRSA providers and their products.

Preserved benefit

If you leave a job, your stake in the company pension plan must be preserved for you once you have completed at least two years' service. With defined contribution schemes, this refers to both your and your employer's contributions. With defined benefit schemes, this includes a deferred pension, deferred lump sum (if applicable) and the payment of benefits if you die before retiring.

Trust deed and rules

Occupational pension schemes are set up under trust. A trust deed and rules governs how the scheme is managed. It sets out how the benefits are determined and to whom they are payable.

Trust fund

The monies and assets held by pension scheme trustees.

Trustees

The individuals or company that look after the assets held in a trust fund.



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