



An Bord Pinsean
The Pensions Board

Section 49(3) Guidelines

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1. Introduction

1.1 These guidelines provide information to scheme trustees and their advisers about the approach that the Pensions Board adopts in deciding whether to grant applications for extended funding periods under section 49(3) of the Pensions Act 1990, as amended (the Act).

1.2 These guidelines apply to all schemes making an application under section 49(3). This includes schemes where an existing funding proposal (whether under section 49(2) or 49(3)) has gone off-track, i.e. the scheme is no longer expected to meet the funding standard at the effective date of the next Actuarial Funding Certificate (AFC) or the later date specified by the Board.

1.3 This document is intended for guidance only. It is not intended as legal or actuarial advice. Trustees should obtain professional advice before preparing any application under section 49(3).

1.4 Each individual application received by the Board will be considered on a case by case basis.

1.5 These guidelines on the operation of section 49(3) will be kept under review by the Pensions Board.

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2. Application under Section 49(3) of the Act

2.1 An application to the Board by the Trustees of the scheme should include:

- i) A completed application form (available from the Board's website at www.pensionsboard.ie under Regulation & compliance/Funding Standard).
- ii) A funding proposal, prepared in accordance with the Society of Actuaries in Ireland's Actuarial Standard of Practice, PEN-4 (ASP PEN-4), signed by the scheme actuary (and which may also, but not necessarily, be signed by the Trustees and Employer).

2.2 The application form incorporates:

- (a) the trustees' statement of the grounds under section 49(3) of the Act and corresponding regulations which have caused the scheme to fail to meet the funding standard;
- (b) the trustees' statement of the reasons why the later date is necessary or appropriate and is not contrary to the interests of the members of the scheme;
- (c) the trustees' confirmation that the members will be made fully aware of the funding position of the scheme on a discontinuance basis by category of beneficiary;
- (d) certification by the scheme actuary, in accordance with ASP PEN-4, that the failure of the

scheme to satisfy the funding standard is in accordance with the criteria stated in section 49(3) of the Act and corresponding regulations;

(e) additional information required by the Board in relation to the scheme, the scheme's funding position and the funding proposal.

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3. The Board's Decision

3.1 Specification of a later date is at the discretion of the Board. The Board is not obliged to specify a later date in any case.

3.2 If the Board decides to specify a later date it may do so on the terms it considers appropriate. Any such terms will be specified with the Board's decision.

3.3 In assessing an application, the Board will have regard to the reasons put forward by the trustees justifying the later date for which they are making application to the Board.

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Proposed Contribution

3.4 The Board expects that the proposed contribution rate (or amount) is at least equal to the "ongoing" contribution rate i.e. the aggregate of

(a) the "normal" contribution rate (or amount) necessary to fund the benefits under the scheme if the scheme had neither a deficit nor surplus, and

(b) the contribution rate (or amount) necessary to fund any deficiency in the scheme over the working life of its active members.

3.5 The documentation supplied to the Board must set out the key assumptions on which the calculation of the "ongoing" contribution rate is based. The documentation supplied to the Board should also set out the changes, if any, in these assumptions, compared with the assumptions used in the most recent triennial actuarial report on the scheme.

3.6 The proposed contributions should not be weighted disproportionately to the end of the specified period.

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Basis of certification

3.7 Where the failure to meet the standard (or the reason for an existing funding proposal going off-track) is wholly or partly due to salary increases, the Board is only likely to consider granting an extension where the increases could not have been reasonably foreseen at the previous valuation. The Board will not normally consider applications unless the salary increases are reasonably spread among the employees (as distinct from the scheme members).

3.8 Where failure to meet the standard (or the reason for an existing funding proposal going off-track) is wholly or partly due to the payment of uninsured death or disability benefits, the Board is only likely to consider granting an extension in exceptional circumstances, and the Trustees will be required to demonstrate why the circumstances of their scheme should be considered as exceptional. The Board will also require an explanation of why the benefits had been uninsured, and whether there has been any recent change to the scheme's insurance practice.

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Term of the funding proposal

3.9 The general policy of the Board has been to consider specifying an effective date no later than ten years after the effective date of the AFC giving rise to the necessity for a funding proposal, apart from exceptional cases where the Board may, at its discretion, consider a later date.

3.10 The Board has now adopted a policy under which it will consider granting an effective date more than ten years after the effective date of the relevant AFC, in appropriate circumstances. In considering applications for terms of more than ten years, the Board will have particular regard to the following:

- (a) the extent to which a longer term reduces the contribution rate below that required to fund a 10-year proposal;
- (b) the existence and quality of any enforceable guarantees provided by the employer;
- (c) the proposed investment strategy of the fund, and the extent to which the fund will be exposed to investment risk over the course of the funding period;
- (d) any exceptional circumstances which differentiate the scheme from other underfunded schemes. It should be noted that inability to pay, on its own, is not considered by the Board to constitute exceptional circumstances.

3.11 The Board may, at its discretion, allow the term of a replacement funding proposal to extend beyond the effective date of the original funding proposal. The documentation supplied to the Board must set out the reason or reasons why the pre-existing funding proposal is no longer expected to meet its objective.

3.12 In any event, the Board will only consider an extended period longer than the average future working life of the active members where there are no active members or where the

active members have a relatively short future average working life and comprise only a minority of the liabilities of the scheme.

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Scheme investment

3.13 The Pensions Board recognises that there is no single ‘best’ investment strategy. Setting the investment strategy is the responsibility of the trustees only, and the Board’s role in this matter is limited to ensuring compliance with relevant regulations.

However, the Pensions Board considers that investment strategy is a relevant consideration in deciding whether or not to grant an application. The Board will be looking for evidence that the trustees have fully considered their investment strategy, and have considered the effect of potential investment losses under a number of scenarios during an extended funding period on the security of member benefits.

3.14 Trustees submitting applications under Section 49(3) must demonstrate in their application to the Board that the proposed investment strategy is grounded in sound risk management and investment principles.

In assessing the approach to risk management, the Board will have regard to:

(a) the matching of liabilities with appropriate assets;

(b) the trustees’ consideration of the implications of possible investment losses or increased liabilities.

3.15 Where the trustees have stated that the sponsoring employer is unable or unwilling to pay a higher contribution rate, the Board will pay special attention to the approach the trustees take to investment risk that might result in a requirement for an increase in contribution rates.

3.16 Where the trustees are effecting a change in investment strategy, the Board would not expect this change to be made in an inappropriately short time.

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4. Variable Funding Proposals

4.1 The Pensions Board is willing to consider applications where the proposed contribution rate is variable, as described in 4.2 below.

4.2 The terms under which the Board will consider the later date and which must apply to the operation of such a funding proposal would include:

i) The initial rate of contribution, including the employer’s contribution, would be calculated as for any ‘fixed contribution’ funding proposal, and the existing restrictions on weighting contributions towards the end of the period would apply. This rate should be specified in the funding proposal with a proviso such as “or any such higher rate calculated by the scheme actuary and agreed by the employer.

ii) The required rate of contribution, including the employer's contribution, may subsequently be recalculated by the scheme actuary from time to time. Subject to 4.2.iii) below, the contribution rate paid by the employer may then be varied accordingly, without the need for the Board's consent. This revised rate must follow the same structure and be proportionate to the old rate: back-ending of the revision will not be allowed. Changes in contributions must be notified to the Board.

iii) Contributions cannot be reduced below the level of the initial rate of contribution referred to in 4.2.i) above, without a new application to the Board.

4.3 Notifications to the Board of contribution rate increases must be accompanied by confirmation by the scheme actuary that the requirement for the increase was due wholly or mainly to either or both of the following:

(a) the performance of relevant markets in relation to investments made with the resources of the scheme and that the performance of those markets in relation to those investments is not inconsistent with the performance generally of relevant markets for investment in the same period; or

(b) one or a number of the following factors:

i) adverse experience relating to price inflation or rates of interest underlying the actuarial values over the relevant period;

ii) adverse experience relating to increases in pensionable earnings;

iii) adverse experience relating to the payment of benefits other than long service benefits. In the trustee annual report, the scheme actuary will be making a statement as to whether or not the proposal is on track. The actuary can only do so if the contributions have been increased as required.

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5. Completing the Application Process

5.1 Where the Board specifies the later date requested by the Trustees, the Trustees should submit the AFC and signed funding proposal to the Board in accordance with the legislative requirements, if they have not already done so. The later date does not become effective until these documents have been received: where, in the view of the Board, there is unacceptable delay in providing these documents, irrespective of the cause, the Board may at its discretion withdraw its approval of a later date.

5.2 Where the Board does not specify the later date requested by the Trustees, the Board will notify the Trustees of the decision and the reasons for the decision.

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6 General points

6.1 The existence of a funding proposal for a scheme does not exempt the Trustees from the requirement to prepare an AFC in respect of the scheme at least every three years.

6.2 In the case of a scheme where an existing funding proposal is on-track, there is no requirement on the Trustees to submit an AFC more frequently than every three years.

6.3 A funding proposal takes effect from the effective date of the AFC necessitating the proposal and the period of the proposal is calculated from this effective date.

6.4 Where there are conditions attached to the granting of a later date, the granting will no longer be effective if the conditions are breached. If the scheme does not meet the funding standard, the trustees will be obliged to comply with the requirements of section 55 of the Pensions Act.

6.5 The Pensions Board will make all reasonable efforts to consider applications by trustees as quickly as possible. However, it is the responsibility of trustees to submit their applications in good time, and the Pensions Board will not guarantee to consider any application within a specified time.

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