

Guidance notes on the application under article 3(1)(b) of the Occupational Pension Schemes (Preservation of Benefits) Regulations 2002 (S.I. 279 of 2002)

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 two 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 Pensions Act, 1990, as amended (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 point 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 'Forms') on the Authority's website.
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 of the Preservation Regulations would not be reduced in accordance with proviso (i) or (ii) of section 34(2) of the Act,
 - confirm that Directive 2014/50/EU and the related amendment of section 35 of the Act does not apply in respect of their application,
 - outline the options that 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 member's 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.