

THE PENSIONS AUTHORITY

**PRESCRIBED GUIDANCE IN RELATION TO
SECTION 49 OF THE PENSIONS ACT, 1990**

- (1) CERTIFICATION OF A FUNDING PROPOSAL BY AN ACTUARY**
- (2) SPECIFICATION OF LATER DATES UNDER SECTION 49(3B)**
- (3) CIRCUMSTANCES WHERE THERE IS NO REQUIREMENT TO FILE A FUNDING PROPOSAL**
- (4) NOTIFICATION TO THE PENSIONS AUTHORITY OF FAILURE TO COMPLY WITH A FUNDING PROPOSAL**
- (5) DECLARATION BY THE PENSIONS AUTHORITY THAT A FUNDING PROPOSAL IS NO LONGER VALID**

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INDEX

Paragraph	Contents	Page
1.	INTRODUCTION	2
2.	GENERAL	3
3.	REQUIREMENTS WITH WHICH ACTUARY MUST COMPLY IN CERTIFYING A FUNDING PROPOSAL IN ACCORDANCE WITH SECTION 49(2)	4
4.	TERMS ON AND CIRCUMSTANCES IN WHICH THE PENSIONS AUTHORITY MAY DECIDE TO SPECIFY A LATER DATE UNDER SECTION 49(3B)	6
	4.1. General	6
	4.2. Latest date that may be specified under section 49(3B)	6
	4.3. Investment Strategy	7
	4.4. Contributions	7
	4.5. Section 49(3B) Application Process	7
5.	TERMS ON AND CIRCUMSTANCES IN WHICH TRUSTEES ARE NOT REQUIRED TO SUBMIT A FUNDING PROPOSAL UNDER SECTION 49	7
	5.1. Funding proposal not off-track	8
	5.2. Subsequent positive certificate	8
	5.3. Funding proposals submitted, or applications for later date under section 49(3) made, before 16 December 2011	8
	5.4. Two year easement	9
	5.5. Notification by The Pensions Authority	10
6.	FAILURE TO COMPLY WITH FUNDING PROPOSAL	10
7.	PENSIONS AUTHORITY DECLARING A FUNDING PROPOSAL AS BEING NO LONGER VALID UNDER SECTION 49	11

1. INTRODUCTION

1.1. Section 49 of the Pensions Act, 1990 (as amended, the **Act**) (as amended by section 34 of the Social Welfare and Pensions Act 2012) provides that where the trustees of a scheme

1.1.1. submit an actuarial funding certificate which certifies that, at the effective date of the certificate, the scheme does not satisfy the funding standard, or

1.1.2. on or after 1 January 2016, submit a funding standard reserve certificate which certifies that, at the effective date of the certificate, the scheme does not satisfy the funding standard reserve

the trustees shall, except in circumstances permitted under Regulations, submit to the Pensions Authority a funding proposal in accordance with section 49.

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

1.2.1 the requirements with which an actuary must comply in certifying a funding proposal in accordance with section 49(2) in addition to any prescribed guidance issued by the Society of Actuaries in Ireland,

1.2.2 the requirements with which a funding proposal must comply and which the trustees must ensure compliance with,

1.2.3 the terms on and circumstances in which, on or after 1 June 2012, the Pensions Authority may under section 49(3B),

1.2.3.1 for the purposes of section 49(2)(a)(i) specify a date later than the effective date of the next actuarial funding certificate, and

1.2.3.2 for the purposes of section 49(2)(a)(ii) specify a date later than the effective date of the next actuarial funding certificate and funding standard reserve certificate,

1.2.4 the terms on and circumstances in which trustees are not required to submit a funding proposal,

1.2.5 the terms on and circumstances in which trustees must notify the Pensions Authority of a failure by any person to comply with a term of a funding proposal, and

1.2.6 the terms on and circumstances in which the Pensions Authority may declare that a

funding proposal is no longer a valid funding proposal for the purposes of section 49.

- 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.

“end date” means the last day of a funding proposal which complies with the requirements of section 49.

“off-track” in relation to a funding proposal means that the funding proposal is no longer projected as sufficient to enable the scheme to satisfy the funding standard and, where relevant, the funding standard reserve by the end date.

“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 preparation of funding proposals.

2. GENERAL

- 2.1. Trustees and scheme actuaries are reminded that, in addition to any requirements set out in this guidance, a funding proposal must
- 2.1.1. be designed to ensure that, in the opinion of the actuary,
- 2.1.1.1 the scheme could reasonably be expected to satisfy the funding standard at the effective date of the next actuarial funding certificate or any later date specified under section 49 where the funding proposal is submitted before 1 January 2016 and the effective date of the next actuarial funding certificate or any later date specified by the Pensions Authority under section 49 is before that date, and
- 2.1.1.2 in any other case, the scheme could reasonably be expected to satisfy the funding standard at the effective date of the next actuarial funding certificate and the funding standard reserve at the effective date of the next funding standard reserve certificate or, in either case, any later date specified by the Pensions Authority under section 49

and be certified by the actuary as meeting those requirements,

- 2.1.2. comply with the requirements of the Society of Actuaries in Ireland Guidance except to the extent that there is any conflict with this guidance,
 - 2.1.3. be signed by or on behalf of the employer and by or on behalf of the trustees of the scheme in each case signifying agreement to the funding proposal, and
 - 2.1.4. be submitted by the trustees of the scheme with the actuarial funding certificate or funding standard reserve certificate to which it relates.
- 2.2. It is the trustees' responsibility to ensure that a funding proposal complies with the provisions of Section 49 and is submitted by the latest date permitted under the Act.
 - 2.3. Except where otherwise stated in this guidance, the requirements set out in this guidance in relation to funding proposals submitted in accordance with section 49 apply to all funding proposals whether or not an application is made for a later date to be specified by the Pensions Authority in accordance with section 49(3B).
 - 2.4. Where a funding proposal is to be signed by an employer or employers other than the employer who undertakes the role of principal employer for the purposes of the scheme's approval by the Revenue Commissioners under Chapter 1 of Part 30 of the Taxes Consolidation Act 1997, the trustees must have applied to the Pensions Authority under section 49(4) and obtained from the Pensions Authority notice in writing that the funding proposal can be signed by that employer or those employers before submitting the funding proposal. Trustees must ensure that any such application under section 49(4) is made in sufficient time to enable the trustees to comply with their obligations under section 49.
 - 2.5. Where it is proposed that the resources of a scheme shall include a contingent asset (including an unsecured undertaking where permitted) for the purposes of satisfying the funding standard or the funding standard reserve the prescribed guidance issued under section 47 of the Act must be complied with.
 - 2.6. Whether or not provided for in a funding proposal, there is nothing to prevent contributions being paid to the scheme in excess of the contributions provided for in the funding proposal.

3. REQUIREMENTS WITH WHICH ACTUARY MUST COMPLY IN CERTIFYING A FUNDING PROPOSAL IN ACCORDANCE WITH SECTION 49(2)

This section sets out the requirements with which an actuary must comply when certifying a funding proposal in accordance with section 49(2) of the Act. These requirements are in addition to the requirements set out in the Society of Actuaries in Ireland Guidance and, in the event of any conflict between this guidance and the Society of Actuaries in Ireland Guidance, this guidance shall prevail.

- 3.1. The maximum rate of investment return that can be assumed in a funding proposal is 6% per annum before expenses.
- 3.2. Where a funding proposal is prepared on the assumption that a direction will be made by the Pensions Authority under section 50, the discount rate used to determine the required contribution rate over the term of the funding proposal shall not be 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 5.9).
- 3.3. The actuary may only certify a funding proposal purporting to value pensions in payment in whole or in part in accordance with the section 53B basis set out in the guidance issued by the Pensions Authority under section 42 of the Act (**section 42 guidance**) where, at the date of certifying the funding proposal, he is satisfied that:-
 - 3.3.1 the scheme holds EU sovereign bonds of a value not less than the value of all pensions in payment under the scheme at the date of certification of the funding proposal, using the section 53B basis outlined at paragraph 4 of the section 42 guidance, but ignoring pensions in payment that are matched either by an annuity using the traditional annuity basis or by a sovereign annuity using the section 53B basis at that date,
 - 3.3.2 the funding proposal has been prepared in a manner which complies with the terms of this sub-paragraph:
 - 3.3.2.1 where the reduction in the value of the specified level of pensions in payment (expressed as a percentage of the value of the specified level of pensions in payment) is greater than 5%, the actuary should assume that the percentage so calculated will reduce on 31 December immediately following the date of the certification of the funding proposal and on a pro rata basis on each 31 December thereafter to 5% on 31 December 2023 and shall be 5% thereafter; and
 - 3.3.2.2 where the reduction in the value of the specified level of pensions in payment (expressed as a percentage of the value of the specified level of pensions in payment) is less than or equal to 5%, the actuary should assume that the percentage so calculated will remain unchanged indefinitely, and

3.3.3 where the actuarial funding certificate accompanying the funding proposal has been prepared valuing pensions in payment using the section 53B basis, that the terms of paragraph 3 of the section 42 guidance have been complied with in relation to that certificate and, where this is not the case, the provisions of paragraph 3 have been complied with prior to the date on which the actuary certifies the funding proposal on the assumption that references in paragraph 3 to the effective date of the actuarial funding certificate were construed as references to the date on which the actuary is to certify the funding proposal.

In this paragraph 3.3, the terms pensions in payment, section 53 basis, EU sovereign bonds, traditional annuity basis, sovereign annuity, and specified level have the meanings given in the section 42 guidance.

4. **TERMS ON AND CIRCUMSTANCES IN WHICH THE PENSIONS AUTHORITY MAY DECIDE TO SPECIFY A LATER DATE UNDER SECTION 49(3B)**

This section sets out the terms on and circumstances in which the Pensions Authority may specify a later date than the date of the next actuarial funding certificate or funding standard reserve certificate under section 49(3B).

4.1. **General**

4.1.1. The Pensions Authority has discretion as to whether or not it will specify a later date. This paragraph sets out the latest date the Pensions Authority may specify and the minimum requirements with which the funding proposal must comply. In any case the Pensions Authority may refuse to specify a later date.

4.1.2. The reasons for a scheme not satisfying the funding standard or funding standard reserve and, where there has been a funding proposal in place, the reasons for that funding proposal going off-track must be provided as part of the application for a later date under section 49(3B). The Pensions Authority will take account of those reasons when deciding whether to grant an application for a later date.

4.2. **Latest date that may be specified under section 49(3B)**

4.2.1. Subject always to the other provisions of this paragraph 4.2, the latest date which the Pensions Authority will specify under section 49(3B) is the later of:

- (1) 31 December 2023, and
- (2) the date which is 6 years after the effective date of the actuarial funding certificate and/or funding standard reserve certificate (as appropriate) which gave rise to the requirement to submit a funding proposal under section 49.

4.2.2. The trustees of a scheme may apply to the Pensions Authority for a date later than the latest date specified under paragraph 4.2.1 and the Pensions Authority may at its discretion agree to such application on such terms and conditions as it considers appropriate. The Pensions Authority will only grant such a request in exceptional circumstances. Inability to pay contributions within the timeframe specified in paragraph 4.2.1 above will not of itself be considered an exceptional circumstance.

4.3. **Investment Strategy**

The investment strategy proposed under a funding proposal must envisage that the scheme will hold assets, comprised of government securities and cash deposits with authorised deposit taking institutions, at the end date at least equal in value to the value of the pensions in payment under the scheme at the end date, unless the trustees can demonstrate to the Pensions Authority that the investment strategy envisaged is appropriate in the circumstances of the scheme. The investment strategy proposed should not involve a significant re-allocation of assets towards the end of the funding proposal period.

4.4. **Contributions**

The proposed contributions under a funding proposal must not be weighted to the end of the specified period. Contributions projected to increase in line with assumed future increases in salaries are not considered to be weighted to the end of the specified period.

4.5. **Section 49(3B) Application Process**

4.5.1. An application for a later date under section 49(3B) must be in the form specified by the Pensions Authority from time to time.

4.5.2. An application must be accompanied by any 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.

4.5.3. Where an application has been received, the Pensions Authority will consider it as soon as reasonably practicable and notify the trustees of its decision in writing.

4.5.4. An application must also be accompanied by a funding proposal which complies with the provisions of section 49 by reference to the later date sought and must be stated to have effect if the Pensions Authority specifies the later date sought in the application for a later date.

5. **TERMS ON AND CIRCUMSTANCES IN WHICH TRUSTEES ARE NOT REQUIRED TO SUBMIT A FUNDING PROPOSAL UNDER SECTION 49**

5.1. Funding proposal not off-track

Where a funding proposal has been submitted to the Pensions Authority complying with the terms of section 49 (the **original proposal**), a further funding proposal does not need to be submitted to the Pensions Authority for so long as the original proposal is not off-track.

5.2. Subsequent positive certificate

Trustees are not required to submit a funding proposal under section 49 where the trustees submit:

- 5.2.1. an actuarial funding certificate which certifies that at the effective date of the certificate the scheme does not satisfy the funding standard (the **original certificate**) and they submit a further actuarial funding certificate having an effective date after the effective date of the original certificate but prior to the latest date for the submission of the original certificate to the Pensions Authority, that certifies that at the effective date of the further certificate the scheme satisfies the funding standard, or
- 5.2.2. on or after 1 January 2016, a funding standard reserve certificate which certifies that at the date of the certificate the scheme does not satisfy the funding standard reserve (the **original certificate**) and they submit a further certificate having an effective date after the original certificate but prior to the latest date for submission of the original certificate to the Pensions Authority which certifies that at the effective date of the further certificate the scheme satisfies the funding standard reserve.

In such situations, both the original certificate and the further certificate must be submitted to the Pensions Authority by the date required for submission of the original certificate under the Act.

5.3. Funding proposals submitted, or applications for later date under section 49(3) made, before 16 December 2011

This paragraph 5.3. applies where a funding proposal was submitted before 16 December 2011, or an application for a later date under section 49(3) was made to the Pensions Authority before 16 December 2011 and on foot of that application the Pensions Authority specified a later date and the trustees subsequently submitted a funding proposal.

- 5.3.1. Where the end date of the funding proposal is on or after 1 January 2016, and on or after 1 January 2016 the trustees submit a funding standard reserve certificate which certifies that at the effective date of the certificate the scheme does not satisfy the funding standard reserve, the obligation to submit a funding proposal in relation to the funding standard reserve will not arise until the earlier of the end date of the funding

proposal and the funding proposal going off-track.

- 5.3.2. Where an annual report prepared under section 55 contains a statement by the actuary that he or she is not reasonably satisfied at the last day of the period to which the annual report relates that the scheme will satisfy the funding standard at the effective date of the next actuarial funding certificate or, where applicable, any later date specified under section 49(3) but also includes a statement that, on any date within the period of six months following the last day of the period to which that annual report relates (the **subsequent date**), he or she is reasonably satisfied on the subsequent date that the scheme will satisfy the funding standard at the effective date of the next actuarial funding certificate or, where applicable, any later date specified under section 49(3), the trustees are not required to submit a funding proposal in accordance with section 49.

Where an application for a later date is made under section 49(3) and either the application is not finalised, or a funding proposal is not submitted to the Pensions Authority, by such date as the Pensions Authority may notify to the trustees, this paragraph 5.3 shall not apply.

5.4. **Two year easement**

- 5.4.1. Where the Pensions Authority has specified a later date under section 49(3B) and a funding proposal has been submitted in accordance with section 49, and

5.4.1.1 the funding proposal provides that, if the funding proposal goes off-track and the actuary is reasonably satisfied that the scheme will satisfy the funding standard and, where applicable, the funding standard reserve if the contributions provided for in the last twelve months of the funding proposal will continue to be paid for a period of two years after the end date of the funding proposal and that in all other respects the terms of the funding proposal will continue to apply during that two year period, and

5.4.1.2 the funding proposal goes off-track and the actuary is reasonably satisfied at the time the funding proposal goes off-track that the scheme will satisfy the funding standard and, where applicable, the funding standard reserve within two years after the end date

a funding proposal does not need to be submitted for so long as the requirements provided for in paragraph 5.4.1.1 continue to be complied with and the actuary continues to be satisfied that the scheme will satisfy the funding standard and, where applicable, the funding standard reserve, on or before the date which is two years after the end date. The trustees shall notify the Pensions Authority in writing as soon as reasonably practicable after they become aware that paragraph 5.4.1.2 applies.

5.4.2. Where the Pensions Authority have specified a later date under section 49(3) and a funding proposal has been submitted in accordance with section 49, and

5.4.2.1 the funding proposal goes off-track but the actuary is reasonably satisfied that the scheme will satisfy the funding standard within two years after the end date of the funding proposal if the contributions provided for in the last twelve months of the funding proposal continue to be paid for a period of two years after the end date of the funding proposal and if in all other respects the terms of the funding proposal continue to be complied with,

5.4.2.2 prior to the latest date for the submission of a new funding proposal as a consequence of the funding proposal going off-track (but in any event no later than the end date of the funding proposal) (the **submission date**), the trustees and the employer agree in writing that the contributions provided for in the last twelve months of the funding proposal will continue to be paid for a period of two years after the end date of the funding proposal and that in all other respects the terms of the funding proposal in the form submitted to the Pensions Authority will continue to apply, and

5.4.2.3 the agreement referred to in 5.4.2.2 is submitted by the trustees to the Pensions Authority as soon as reasonably practicable after it is put in place

a funding proposal does not need to be submitted during the period up to the end of the two year period after the end date for so long as the requirements of the agreement referred to in paragraph 5.4.2.2 continue to be complied with and the actuary continues to be reasonably satisfied that the scheme will satisfy the funding standard on or before the end of the two year period.

5.5. Notification by the Pensions Authority

Where a funding proposal (the **original proposal**) is submitted to the Pensions Authority and the original proposal incorporates a later date specified by the Pensions Authority under 49(3B), a further funding proposal does not have to be submitted where the original proposal has gone off-track

5.5.1. prior to such date (if any), or

5.5.2. in the circumstances (if any)

as may have been notified by the Pensions Authority at the time the later date was specified.

6. FAILURE TO COMPLY WITH FUNDING PROPOSAL

The trustees of a Scheme must notify the Pensions Authority in writing if any of the following terms of a funding proposal are not complied with. Such notification must be made not later than one month after the trustees become aware of the failure to comply.

- 6.1. The failure by an employer to pay to the scheme any contributions provided for under a funding proposal by the due date on which those contributions were to be paid.
- 6.2. Assumption of underfunded liabilities contrary to the terms of the funding proposal.
- 6.3. Transfers out of the scheme which reduce the funding level of the scheme for the purposes of the funding standard and, where appropriate, the funding standard reserve.

7. PENSIONS AUTHORITY DECLARING A FUNDING PROPOSAL AS BEING NO LONGER VALID UNDER SECTION 49

- 7.1. This section sets out the terms on and circumstances in which the Pensions Authority may declare a funding proposal submitted in accordance with section 49 to no longer be a valid funding proposal for the purposes of section 49. Paragraphs 5.1, 5.3, 5.4 and 5.5 shall not apply, and shall cease to have effect, where a funding proposal is declared to no longer be a valid funding proposal under this paragraph 7.
- 7.2. Where the trustees of a scheme notify the Pensions Authority or the Pensions Authority otherwise becomes aware of a failure to comply with a term of a funding proposal, it may declare the funding proposal to no longer be a valid funding proposal for the purposes of section 49. In the normal course of events, the Pensions Authority will then notify the trustees that they must submit an actuarial funding certificate and funding standard reserve certificate in accordance with section 43(2A) of the Act having an effective date of the date specified in the notice. Those certificates must be submitted by the date specified in the notice.
- 7.3. The trustees of a scheme may request the Pensions Authority to declare a funding proposal to no longer be a valid funding proposal for the purposes of section 49. Any such application should state the reasons for the request. This may be because the trustees are of the opinion that the scheme satisfies the funding standard and, where applicable, the funding standard reserve. In the normal course of events, the Pensions Authority will require an actuarial funding certificate and/or a funding standard reserve certificate to be submitted before agreeing to make such a declaration.
- 7.4. The Pensions Authority may of its own volition declare a funding proposal to no longer be a valid funding proposal for the purpose of section 49 where it receives an actuarial funding certificate and/or a funding standard reserve certificate showing that the scheme satisfied the funding standard and, where applicable, the funding standard reserve, at the effective date of the certificate.

- 7.5. Any notice issued by the Pensions Authority under this paragraph 7 shall specify the date with effect from which the funding proposal ceased to be a valid funding proposal for the purposes of section 49.