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| **Application under article 3(1)(b) of the Occupational**  **Pension Schemes (Preservation of Benefits)**  **Regulations 2002 (S.I. 279 of 2002)** |
| It is important that due care is taken in completing the application form and that all requested documentation is submitted along with the application form.  Complete this form in line with the Pensions Authority’s guidance at Appendix II to this form. Please note that your application will only proceed when all of the relevant supporting information is received. Incomplete application forms will be returned.  **Type all information into the form.**  Either post the form and relevant attachments to:  The Pensions Authority,  Verschoyle House,  28-30 Lower Mount Street,  Dublin 2,  D02 KX27.  or email documents in PDF form to [legal@pensionsauthority.ie](mailto:info@pensionsauthority.ie) |

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| **Supporting documentation required** | | |
| This application to the Pensions Authority (the Authority) under article 3(1)(b) of the Occupational Pension Schemes (Preservation of Benefits) Regulations, 2002, as amended **must** be accompanied by the below documentation:   * **Please tick:** | | |
| * Copy of the scheme rules including termination rules, transfer rules, and rules regarding death in service and death benefits. | | |
| * Copy of the trust deed including any scheme amendments. | | |
| * Copy of the latest trustee annual report. | | |
| * Copy of template letter issued to the deferred members by the trustees which must include: * information/literature about the proposed transfer arrangement including charges and investment options, * a section seeking members’ consent to a transfer to another scheme or to an approved insurance policy or contract, * information about the options set out in section 34(3) of the Pensions Act, 1990, (as amended) (the Act), * notification that in the event of members not consenting to the transfer, the trustees are considering applying to the Authority under article 3(1)(b) of the Occupational Pension Schemes (Preservation of Benefits) Regulations, 2002, as amended which would result in the members’ benefits being transferred out to an approved insurance policy or contract, * notification that the members have 30 days to make written observations to the trustees on the proposed application to the Authority, to which the trustees must give due consideration. | | |
| * Proof of delivery of the notice to the deferred member(s) to whom the application relates. | | |
| * Details of any other attempts that have been made to contact those deferred members who did not respond to the original notification. | | |
| * Any observations received from members concerning the trustees’ intention to apply to the Authority for a determination and details of the trustees’ considerations in relation to these observations. | | |
| * Confirmation that none of the deferred members to whom the application relates are an outgoing worker (see section 35(1A) of the Act and the Authority’s [Guidance on EU (supplementary Pension Rights) Regulations)](https://pensionsauthority.ie/news_press/news_press_archive/guidance_note_on_the_european_union_supplementary_pension_rights_regulations_2019/). | | |
| * Copy of proposed communication to the deferred members if the Authority approves the transfer. | | |
| * Completed spreadsheet of schedule of deferred members as per Appendix I. Please ensure that only relevant members are included in the spreadsheet, i.e., do not include members whom you were unable to contact or members with a zero-transfer value. Please note that in the case of individual member fund values of less than €20,000, trustees can carry out a transfer without the approval of the Authority. | | |
| * Spreadsheet comparison of the projected fund value at Normal Retirement Age (NRA) that members would receive in the proposed transfer arrangement versus remaining in the scheme (and the assumptions underlining these calculations). | | |
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| **Scheme name:** | |  |
| **Pensions scheme reference number (e.g., PB1234):** | |  |
| **DB or DC scheme:** | |  |
| **Provide details of current trustee names and addresses:** | | |
| **Please confirm the date the notification issued to the deferred members:** | | |
| **Please confirm whether the notification issued to the deferred members either by registered post or recorded delivery, in person, left at their address or was sent by electronic means and that you have confirmation of delivery:** | | |
| **Is the Pensions Data Register (PDR) up to date in relation to this scheme?** | | |
| **Please confirm that Directive 2014/50/EU and section 35(1A) of the Act does not apply in respect of this application?** | | |
| **Please outline the options that the trustees considered for deferred members:** | | |
| **Please outline the grounds for your belief that the proposed transfer arrangement is in the best interests of the members:** | | |
| **Please confirm the transfer relates to the entire preserved benefit, not just a portion of it:** | | |
| **Please provide information as to how the overall charges under the proposed transfer arrangement compare to those under the scheme. Please refer to all charges, including investment management charges, contribution charges, policy fees, commission charges, exit fees, brokerage, stamp duty etc.**  ***Please note that the Authority is unlikely to approve an application where members would be financially worse off by way of the transfer.*** | | |
| **Does the projected fund value at NRA differ between the proposed transfer arrangement and the scheme? If so, please set out why you believe this is in the best interests of the members.** | | |
| **Please provide information as to how the investment options under the alternative arrangement compare to those under the scheme. Please refer to the availability of a lifestyle strategy, a default investment strategy, the credit rating of the institution and the ability to switch funds.** | | |
| **Please provide information as to how the members’ retirement options in the alternative arrangement compare to those under the scheme. Please reference the schemes rules in your response.** | | |
| **Please provide information as to what happens in the case of the death of a member under the alternative arrangement as compared to under the scheme. Please reference the schemes rules in your response.** | | |
| **What is the impact of this transfer on the remaining scheme membership?** | | |
| **Please provide details of any observations received from members concerning the trustees’ intention to apply to the Authority for a determination and details of the trustees’ considerations in relation to these observations.** | | |
| **Trustee(s) Declaration** | | |
| I/We confirm that:   * **Please tick:** * 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, * a period of at least two years has elapsed since the date of termination of the relevant employment of members, * any transfer payment under article 3 would not be reduced in accordance with section 34(2)(i) or (ii) of the Act, * the trustees 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 members’ benefits being transferred out of the relevant scheme, to an approved policy or contract of assurance, notwithstanding their lack of consent, * the trustees believe that the transfer is in the best interests of the members, * that Directive 2014/50/EU does not apply and none of the deferred members are an outgoing worker, * the Pensions Data Register (PDR) portal reflects the current scheme trustee(s) details, and * the information provided above is correct. | | |
| **Trustee 1** |  | |
| **Name (Block capitals):** |  | |
| **Signature:** |  | |
| **Date:** |  | |
| **Trustee 2** |  | |
| **Name (Block capitals):** |  | |
| **Signature:** |  | |
| **Date:** |  | |
| **Please note that the application form must be signed by all current trustees of the scheme. In the event that the trustee is a company, signatures of all directors are required**.  *(Insert more rows above if necessary)* | | |

**Appendix I**

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| **Schedule of members for application under article 3(1)(b) of the Occupational Pension Schemes (Preservation of Benefits) Regulations, 2002 (S.I. 279 of 2002)** | | | |
| **Scheme name:** |  | | |
| **Pensions scheme reference number (e.g., PB1234):** |  | | |
| **Deferred member’s name** | **Date of leaving service** | **Amount of transfer value**  **€** | **Date notification issued to member** |
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| *(insert more rows above if necessary)* | | | |

**Appendix II**

**Guidance notes**

**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 contacted members seeking the members’ consent to the transfer of the members’ preserved benefit (to another scheme or to an approved insurance policy or contract)[[1]](#footnote-1). This notification must also include the following:

* information/literature about the proposed transfer arrangement including charges and investment options,
* information to members of options available to members under section 34(3) of the Pensions Act, 1990, as amended (the Act), in respect of a transfer payment,
* a section seeking members’ consent to the transfer,
* 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 to an approved insurance policy or contract, 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.

1. The written notice at point two above should be addressed to the deferred member by name and be given, sent or served by delivering the notice to the person to whom it relates; leaving it or sending it by post in a prepaid registered letter or any other form of recorded delivery to such person at the address at which he or she ordinarily resides or in a case in which an address for service has been furnished, to that address; or by means of any electronic method. Please note that the trustees will not be deemed to have satisfied the notification requirement where a letter is returned as undelivered or where address details could not be sourced. This would mean that the transfer could not be effected in relation to those members. Proof of delivery to all deferred members to whom the application relates should be included with the application.
2. Trustees should be mindful of the requirements of the Electronic Commerce Act 2000 in respect of any electronic provision of information, which includes that at the time the information was given it was reasonable to expect that the information would be readily accessible to the person to whom it was directed, for subsequent reference; and the person consents to the receipt of the information in that form.
3. 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.

1. 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.
2. 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 the transfer payment relates to the whole of the preserved benefit (not just a portion of it such as only the additional voluntary contribution (AVC) policies),
* confirm that Directive 2014/50/EU and section 35(1A) of the Act does not apply in respect of their application i.e. none of the deferred members are an outgoing worker,
* 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.

1. 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 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,
* 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, and
* under section 35(1A) of the Act, the trustees of a scheme cannot make a transfer without consent if it relates to an outgoing worker. A transfer can only be effected if such a member has provided consent in writing.

1. Please note that under section 34(7) of the Act a member will not be entitled to a transfer payment if payment of the member’s preserved benefit has commenced, or if the member has not exercised the entitlement to request a transfer within a period of 2 years (or such longer period as may be provided for by the scheme or determined by the trustees of the scheme) after the date of the termination of the relevant employment concerned. [↑](#footnote-ref-1)